

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M. DHANDAPANI

W.P.No.29063 of 2019

L.Duraivelu

... Petitioner

/Vs/

- 1.State of Tamilnadu,
Represented by its Secretary,
Home Department,
Fort St., George,
Chennai-600 009.
- 2.The Superintendent of Police,
1st Floor, Thayar Kulam,
Collectorate Campus,
Kancheepuram District.
- 3.Thirunavakarasur,
The Then Sub-Inspector of Police,
G-5, Choonammedu Police Station,
(Presently working as Sub-Inspector
of Police, Sadras Police Station, Sadras,
Kancheepuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to conduct an enquiry and to take appropriate legal or departmental action against the 3rd respondent herein.

For Petitioner : Mr.G.T.Subramanian
For RR1&2 : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner, seeking for the issuance of writ of mandamus to direct the 2nd respondent police to conduct an enquiry and to take appropriate legal or departmental action against the 3rd respondent herein.

2. According to the petitioner, he lodged a complaint before the third respondent police against one S.Raji and his brothers alleging that they attempted to trespass into the petitioner's property on 23.03.2014 and assaulted him and caused injuries. But, the third respondent police has not taken any action on his complaint, is colluded with the accused persons and at their instance a false case has been foisted against the petitioner and others and laid a charge sheet. After the trial, the said case against the petitioner and others ended in acquittal by judgment dated 12.12.2018 by the Judicial Magistrate Court, Madhuranthagam. After acquittal, it appears that the petitioner made a representation to the second respondent/Superintendent of Police, dated 12.03.2019 against the third respondent to take appropriate action for not having registered his complaint, foisting the case against the petitioner and others. Since no action was taken by the second respondent in this regard, the petitioner has approached this Court for the relief sought for in this writ petition.

3. Having gone through the entire affidavit filed in support of the petition, this Court is of the considered view that the writ petition is not maintainable. After lodging the complaint before the concerned police and if the police is not registering the case, the aggrieved person/complainant can approach the Superintendent of Police with written application under Section 154(3) of CrPC., and even in a case the Superintendent of Police also does not register an FIR or no proper investigation is done, the aggrieved person can approach the Magistrate concern under Section 156 (3) of CrPC. Without resorting to the procedure as contemplated in the CrPC, it appears that the petitioner has come forward with the present writ petition.

4. Based on the acquittal in the case, which according to the petitioner, has been falsely foisted against them, the petitioner seeks a direction to the 2nd respondent to take action against the 3rd respondent. It is pertinent to note that generally in a criminal case, acquittal was rendered only on failure of the prosecution to prove its case beyond all reasonable doubts and that too by giving benefit of doubt to the accused. In this case, it is not mentioned as to whether as against the acquittal, the de-facto complainant therein, had preferred any appeal. Since the petitioner has not exhausted the remedy available by invoking the provisions of CrPC, when his complaint was not registered by the third respondent/Sub-Inspector of Police, he cannot maintain the present writ petition and seek writ of mandamus against the second respondent to take and action against the third respondent. Therefore, this Court does not find any merits to entertain the present

writ petition. Hence, the present writ petition is dismissed as devoid of merits.

5. Accordingly, the Writ Petition is dismissed with liberty to workout his remedy in the manner known to law. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

To

1. The Secretary,
Government of Tamilnadu,
Home Department,
Fort St., George,
Chennai-600 009.

2. The Superintendent of Police,
1st Floor, Thayar Kulam,
Collectorate Campus,
Kancheepuram District.

+1 cc to Mr.M.Mahmood Aslam Advocate sr86966
+1 cc to the Government Pleader sr86482

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