

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.24547 of 2017 and  
CrI.M.P.Nos.14197 of 2017 & 10858 of 2018

S.Saravanan

... Petitioner

Vs.

1.Krishnakumar

2.Porpatham

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the order passed by the Judicial Magistrate No.I, Ponneri made in CMP.No.5528 of 2016 dated 09.01.2017 and consequently direct the learned Judicial Magistrate No.I, Ponneri to take the complaint on file, issue process to the accused and deal with them in accordance with law.

For Petitioner : Mr.G.Pugazhenth

For Respondents : No Appearance

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Judicial Magistrate No.I, Ponneri made in CMP.No.5528 of 2016 dated 09.01.2017 and to direct the learned Magistrate to take the complaint on file.

2. It is seen that the petitioner filed a private complaint in C.M.P.No.5528 of 2016 before the learned Judicial Magistrate No.I, Ponneri, and the learned Magistrate conducted detailed enquiry and also appointed one Inspector of Police to conduct investigation as against the same police officer. The portion of the order reads as follows:

"The report of the investigation officer shall be filed with in three months from the date of the order. It is made clear and abundant caution to the Investigation Officer this court hereby orders that at the time of the investigation with regard to the investigation raised by this Court, the investigation officer shall not any way enquire the Honble Judicial Magistrate II Poonthamalle and the Investigation officer shall collect the Certified copy of remand order only. Further this court aware of the fact that

the accused are police official and the investigation officer also police official but this court having faith in the Investigation officer has ordered for investigation against their colleagues and this court hopes that the Investigation officer will stand to the faith of this Court. The office is directed to provide the copy of the order, petition filed by the petitioner and Copy of F.I.R no 438 / 2015 to Mr.Sudalaimani Inspector of Police, Arrambakam immediately. Report by 10.04.2017."

3. It is seen that the learned Magistrate conducted enquiry, which is not at all required under Section 202 Cr.P.C. This Court and the Hon'ble Supreme Court of India repeatedly held that the Magistrate while receiving private complaint has to find out whether there is any prima facie case made out for the offence as against the accused person or not. Further it is seen that the Magistrate can examine the supportive witnesses to make out the case on the basis of the complaint and the documents. Whereas the present impugned order has been passed by the learned Magistrate after conducting so many enquiries and also appointed one investigation officer which the learned Magistrate ought not to have conducted enquiry and also appointed investigation officer. Therefore, the impugned order cannot be sustained and accordingly the order passed in C.M.P.No.5528 of 2016 dated 09.01.2017 by the learned Judicial Magistrate No.I, Ponneri is set aside.

4. Further it is seen from the impugned order that there is prima facie case against the respondent and as such the learned Judicial Magistrate No.I, Ponneri is directed to take cognizance of the private complaint dated 23.04.2015 lodged by the petitioner and issue summons to the accused persons and proceed with the trial on merits and in accordance with law.

5. With the above direction this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

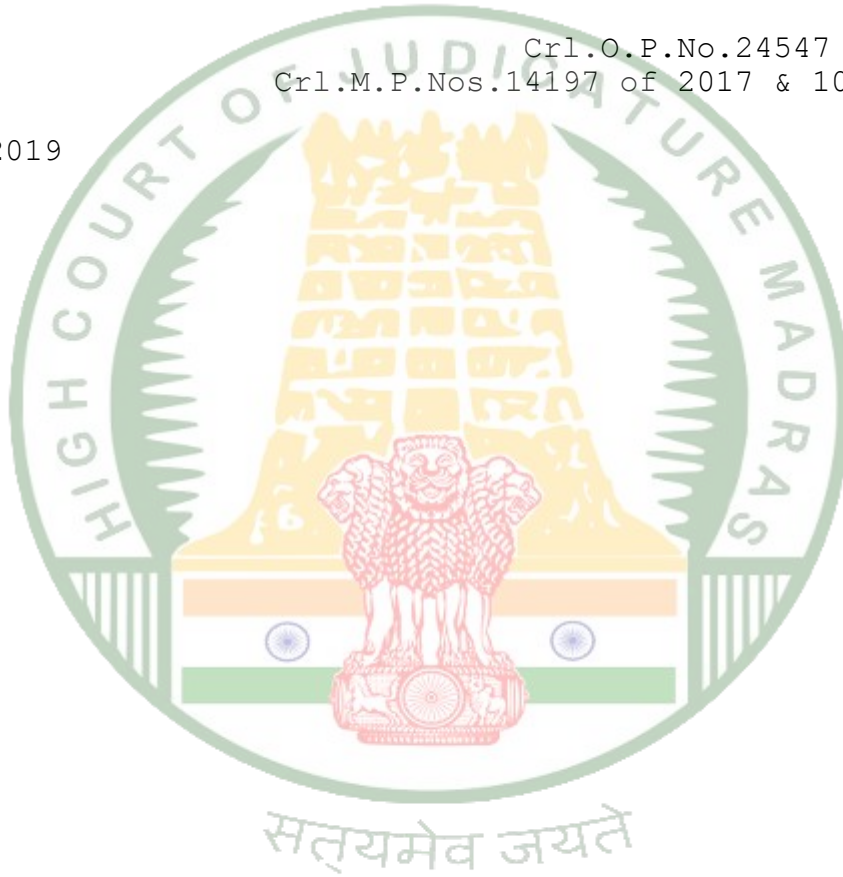
1.The Judicial Magistrate No.I, Ponneri

2.Do Thro The Chief Judicial Magistrate,  
Thiruvallur.

+lcc to Mr.G.Pugazhenthii, Advocate sr.34845

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