



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

CRL.O.P. (MD) No.4790 of 2019

and

CRL.M.P. (MD) No.2942 of 2019

M.Manoharan

: Petitioner

-Vs-

1.S.Vijayakumar

2.R.Manikandan

: Respondents

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the order, dated 13.03.2019 made in Cr.M.P.No.903 of 2019 on the file of the learned Judicial Magistrate No.V, Madurai and to set aside the same.

For Petitioner

: Mr.T.Vadivelan

O R D E R

The present petition is filed challenging the order of the learned Judicial Magistrate No.1, Madurai, in Cr.M.P.No.903 of 2019.

2.Admittedly, the petitioner has filed a private complaint and vide impugned order, dated 13.03.2019, the learned Judicial Magistrate No.1, Madurai has decided not to invoke Section 156(3) of Cr.P.C., requiring the police to do the investigation and to lay a final report. Instead, it has indicated that it is proposed not to invoke Section 156(3) of Cr.P.C. and also disclosed its intention to proceed under Section 200 of Cr.P.C. However, it is yet to invoke Section 200 of Cr.P.C., and requiring the petitioner to appear before the Court, with the sworn-statement and list of witnesses.

3.The learned Counsel for the petitioner relying on the judgment of the Honourable Supreme Court in ***Sakiri Vasu vs State of Uttar Pradesh***, reported in ***(2008) 2 SCC 409***, submitted that the course adopted by the learned Judicial Magistrate is not in consonance with the law.

4.***Sakiri Vasu's*** case only reiterates the law on the point. According to Section 156(3) of Cr.P.C., "Any magistrate empowered under Section 190 of Cr.P.C, may order such an investigation by the police." Instead of resorting to Section 156(3) of Cr.P.C., the Magistrate can also take cognizance under Section 200 of Cr.P.C.



5. So far as the impugned order is concerned, the Magistrate has only decided not to invoke Section 156(3) of Cr.P.C. But he is yet to apply his mind on taking cognizance under Section 200 of Cr.P.C. Before taking cognizance, the Magistrate necessarily has to examine both the complainant and such of the witnesses present for him to apply his mind, before deciding if he intends to take cognizance of any of the offences based on the complaint.

6. Hence the Magistrate has merely required the petitioner to appear before him to give his statement and also on the witness. This Court does not find that the learned Judicial Magistrate was in error. Hence, the present petition is hence dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Judicial Magistrate No.V, Madurai.

CMR

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01.04.2019

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