



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twentieth day of May Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice B.PUGALENDHI

CRL OP (MD) No.6871 of 2019

P.KANNAN

... PETITIONER /SOLE ACCUSED

Vs

STATE REP.BY
THE SUB INSPECTOR OF POLICE,
CITY CRIME BRANCH, MADURAI CITY,
MADURAI.

(CRIME NO.NOT KNOWN)

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.N.SATHEESHKUMAR, Advocate

For Respondent : Mr.A.ROBINSON, Govt. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

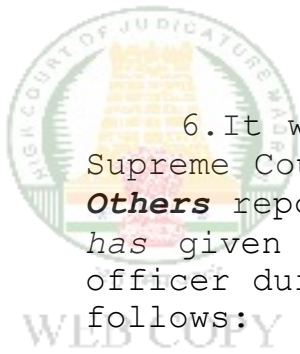
The petitioner/accused, who apprehends arrest at the hands of the respondent police for the alleged offence punishable under Sections 406, 420 and 506(i) IPC in Crime No. not known, on the file of the respondent police, seeks anticipatory bail.

2.Heard Mr.N.Satheesh Kumar, learned Counsel for the petitioner and Mr.A.Robinson, learned Government Advocate (Crl Side) appearing for the State.

3.The case of the prosecution is that the petitioner has sold the land to the de facto complainant and to one Vasumathi, at the higher rate instead of original market value. Subsequently, they demanded the difference amount of sale consideration with the petitioner, the same was denied. Therefore, the de facto complainant has preferred the present complaint before the respondent Police.

4.The learned Government Advocate (Crl., Side) would submit that petition enquiry is pending.

5.On perusal of the records shows that the complaint was received by the respondent police on 26.04.2019 and the respondent police, neither registered the case nor completed the enquiry.



6. It would be relevant to refer to the decision of the Hon'ble Supreme Court in **Lalitha Kumari Vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1**, wherein the Hon'ble Supreme Court has given certain directions to be followed by the investigating officer during the course of investigating a complaint, which are as follows:

"i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

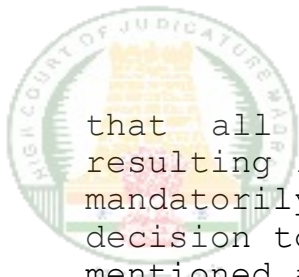
vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct



that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above".

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7. It appears that though the respondent Police received the complaint on 26.04.2019, has not completed the enquiry as per the decision cited supra.

8. In such view of the matter, the following directions are issued:

(i) The Commissioner of Police, Madurai shall withdraw the case from the respondent Police and entrust the same to some other officer, who shall conduct the investigation in accordance with law;

(ii) The Subsequent Investigating Officer shall complete the enquiry within a period of 15 days from the date of receipt of the papers;

(iii) The Investigating Officer shall follow the procedure laid down in Section 41A of Cr.P.C, during the course of enquiry and to follow the guidelines made by the Hon'ble Supreme Court in the case of **Arnesh Kumar vs., State of Bihar (2014) 8 SCC 273**.

9. With the above observation and direction, this criminal original petition is disposed of.

sd/-

20/05/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUB INSPECTOR OF POLICE,
CITY CRIME BRANCH, MADURAI CITY, MADURAI.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE COMMISSIONER OF POLICE, MADURAI.

+1. CC to Mr.N.SATHEESHKUMAR Advocate SR.No.8672

ORDER IN

CRL OP(MD) No.6871 of 2019

Date : 20/05/2019