



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) .No.6278 of 2019

Kathiresan

... Petitioner

Vs.

1.The Superintendent of Police
Ramnathapuram District

2.The Inspector of Police,
Elanjembur Police Station,
Ramnathapuram.

.. Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order dated 11.03.2019 in Cr.M.P.No.7363 of 2018 on the file of the Judicial Magistrate, Mudukulathur and to direct the second respondent herein to register the complaint sent by the petitioner dated 11.08.2018 and take necessary action in accordance with law within the time stipulated by this Court.

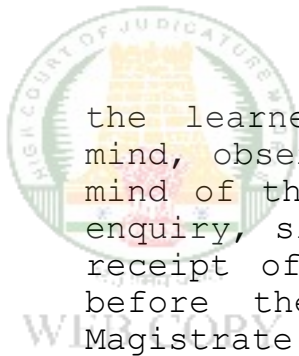
For Petitioner : Mr.B.Arun

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (crl.side)

O R D E R

This petition has been filed to quash the order, dated 11.03.2019 in Cr.M.P.No.7363 of 2018 on the file of the learned Judicial Magistrate, Mudukulathur and to direct the second respondent herein to register the complaint sent by the petitioner, dated 11.08.2018 and take necessary action in accordance with law.

2.The learned counsel for the petitioner would submit that the petitioner has lodged a complaint on 11.08.2018 and the same has been kept pending as on date, without any action therefore, he approached the learned Judicial Magistrate, Mudukulathur, for a direction, under Section 156(3) of Cr.P.C. The learned Judicial Magistrate, Mudukulathur, directed the second respondent to register the case and thereafter, to conduct an enquiry. Instead of that,



the learned Judicial Magistrate, Mudukulathur, with a precluded mind, observed so many things in the order, which prejudiced in the mind of the second respondent and without even conducting a proper enquiry, simply closed the complaint and filed a final report. On receipt of the copy of the same, the petitioner filed objections before the learned Judicial Magistrate, Mudukulathur, and the Magistrate without even pursuing the objections and conducting an enquiry, simply closed the same, by impugned order, dated 11.03.2019.

3.The learned counsel for the petitioner further relied upon the judgment of this Court in ***S.Pandiyarajan Vs.Perumal*** reported in **2017 (2) MWN (Cr.) 618**, the relevant paragraphs held as follows:

" 4.The learned counsel for the petitioner would contend that as per the order passed by the learned Judicial Magistrate No.II, Sattur, the Inspector of Police is bound to register a FIR at the first instance and after investigating the case, a final report has to be filed before the concerned Judicial Magistrate. However, in this case, without registering FIR, the respondent Police filed a closure report, which is illegal. The learned counsel relied on a decision reported in 2006(1) SCC (Cri.) 460 (Mohd.Yousuf Vs. Afaq Jahan (Smt.) and another) in which it is held that registration of FIR involves only the process of entering the substance of the information relating to commission of the cognizable offence in a book kept by the officer in charge of the police station to register an FIR when investigation under Section 156(3) is directed by the Magistrate, even when the magistrate explicitly does not say so and 2016(3) MWN (Cr.) 236 (Sugesan Transport Pvt.Ltd., Vs. The Assistant Commissioner of Police and others) wherein it has been held that failure to register FIR pursuant to order passed by Magistrate under Section 156(3) Cr.P.C. is liable to be prosecuted under Section 21 r/w 44 of District Police Act.

5.The learned Additional Public Prosecutor also admit the fact that without registering FIR the Police has submitted a closure report and on the basis of which, the learned Judicial Magistrate passed the impugned order, which is not legal one.

6.Considering the facts and circumstances of the case and in view of the decisions (cited supra), this Court is inclined to set aside the order in Crl.M.P.No.488 of 2017 passed by the Judicial Magistrate No.II, Sattur, Virudhunagar District. Accordingly, the impugned order is set aside and the respondent Police is directed to comply with the order dated 25.01.2017 passed by the learned



Judicial Magistrate No.II, Sattur by registering FIR and investigate the matter and thereafter, submit a report before the Court concerned as expeditiously as possible."

4.The learned counsel for the petitioner has also relied upon the another judgment of the Hon'ble Supreme Court in **Hemant Yashwant Dhage Vs. State of Maharashtra and others** reported in **2016 (2) Supreme Court Cases (Cri)545**, the relevant paragraph held as follows:

"8.In view of the aforesaid broad consensus amongst the counsel for the various parties, it is not necessary for us to go deeper into the relevant issue of law as to whether the earlier order of this Court dated April 12,2010 warranted registering of F.I.R. by the police before commencing investigation. But we would like to only indicate in brief the law on this subject expressly stated by this Court in the case of Mohd. Yousuf versus Afaq Jahan (Smt.) and another, (2006) 1 SCC 627. This Court explained that registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer incharge of the concerned police station. In paragraph 11 of the aforementioned case, the law was further elucidated by pointing out that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. Because Section 156 falls within chapter XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police officer concerned would always be in a better position to take further steps contemplated in Chapter XII once F.I.R. is registered in respect of the concerned cognizable offence concerned."

5.The learned Government Advocate (criminal side) would submit that on the direction issued by the learned Judicial Magistrate, Mudukulathur, they conducted an enquiry and closed the complaint lodged by the petitioner and also the complaint contains false allegation. The said report was also submitted before the learned Judicial Magistrate, Mudukulathur.

6.Heard the learned counsel for the petitioner and the learned Government Advocate (criminal side) for the respondents.

7.On the complaint lodged by the petitioner, the second respondent did not conduct any enquiry or take action and hence, the petitioner was constrained to file a petition, for direction, under Section 136(3) of Cr.P.C before the learned Judicial Magistrate,



Mudukulathur and the learned Magistrate considered the same and directed the second respondent to conduct an enquiry and pass orders and the relevant portion of the order held as follows:

"Heard. Records perused, the Respondent is directed to expedite the enquiry and complete the same within a period of 4 weeks from the date of receipt of a copy of this order. During the course of enquiry if any cognizable offence is made out then the Respondent police take action in accordance with law. In case of closure of the complaint, a copy of the closure report to be furnished to the complainant."

8.The learned Magistrate considered the case of the petitioner and directed the second respondent to conduct an enquiry. The learned Magistrate ought not to have gone into other things in the futuristic aspects as held by the Hon'ble Supreme Court reported in 2016 (2) Supreme Court Cases (Cri)545. On the direction issued by the learned Magistrate, the second respondent ought to have registered the complaint first and thereafter, conduct an enquiry and if there is any *prima facie* case made out on the complaint, it is open to file a final report or any cognizable offence is not made out, they have to close the F.I.R.

9.In the case on hand, on the direction issued by the learned Magistrate, the second respondent conducted an enquiry and closed the same as false one. Thereafter, the petitioner filed objections before the learned Magistrate and the same was not considered by the learned Magistrate and simply it was closed.

10.Considering the above facts and circumstances, the order dated 11.03.2019 in Cr.M.P.No.7363 of 2018, on the file of the learned Judicial Magistrate, Mudukulathur, is set aside and the Judicial Magistrate, Mudukulathur, is directed to consider the objections raised by the petitioner in a proper perspective and pass order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

11.With the above directions, this Criminal Original Petition is partly allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate,
Mudukulathur.

2.The Superintendent of Police
Ramnathapuram District.

3.The Inspector of Police,
Elanjembur Police Station,
Ramnathapuram.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.ARUN, Advocate SR-87160.

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