



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

WEB COPY

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

Crl.O.P.(MD)No.2365 of 2018

V.N.Sivakumar

... Petitioner

-Vs-

The Inspector of Police,
Keeraithurai Police Station,
Madurai.
Cr.No.26 of 2016

... Respondent

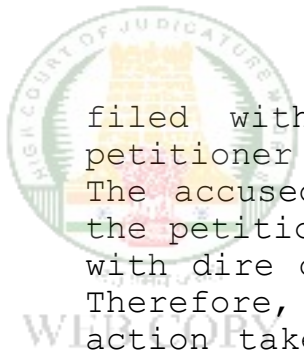
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4884 of 2017 dated 01.11.2017.

For Petitioner	: Mr.N.Sathish Babu
For Respondent	: Mr.K.Suyambulinga Bharathi
	Government Advocate (crl.side)

ORDER

This petition has been filed challenging the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4884 of 2017, dated 01.11.2017.

2.The learned counsel for the petitioner would submit that the petitioner lodged a complaint before the respondent police against the accused persons with the allegations that the petitioner formed a Society and holding the post of Secretary and the other Committee Members/associating office bearers has been elected periodically. At the time of occurrence, the petitioner was serving as the Secretary of the Sangam and also correspondent of the School and the same was approved by the District Educational Authority. While being so, one of the accused, namely P.Seenivasan, filed a suit in O.S.No.799 of 2016 claiming that he was elected as the Secretary for the period 2016-2019 and along with him other office bearers have also been elected and for declaration, declaring that the above said election is valid and consequential prayer restraining the present office bearers including the petitioner from any way interfering with their possession in the school administration, as if they are administering the above said School. The said suit is



filed with fabrication of so many documents. Therefore, the petitioner lodged a complaint before the trial Court on 23.12.2016. The accused persons have trespassed into the School by threatening the petitioner and office bearers and also School teachers, students with dire consequences. It is also recorded in the C.C.T.V camera. Therefore, he lodged a complaint, for which, there is absolutely no action taken on the complaint lodged by the petitioner before the respondent police. Since they did not take any action as against the accused and therefore, the petitioner approached the concerned Judicial Magistrate by way of a private complaint and sought for a direction under Section 156 (3) of Cr.P.C.. The learned counsel for the petitioner would further submit that without following the procedure the learned Judicial Magistrate mechanically dismissed the complaint for the reason that the entire dispute is civil in nature. Further, the reasons assigned by the Magistrate are that the complaint should be lodged where the documents fabricated by the accused persons. Therefore, he sought for setting aside the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4884 of 2017, dated 01.11.2017.

3.The learned Government Advocate (criminal side) would submit that the learned Magistrate had rightly rejected the complaint filed by the petitioner seeking direction under Section 156 (3) of Cr.P.C. Since the allegations are civil in nature and due to their *inter-se* selection dispute between the office bearers and the Secretary of the Association.

4.Heard both sides.

5.The petitioner initially lodged a complaint before the respondent and the respondent did not take any action on the complaint lodged by the petitioners. Therefore, the petitioner approached the concerned jurisdictional Magistrate namely, Judicial Magistrate No.IV, Madurai, by way of a private complaint for a direction under Section 156 (3) of Cr.P.C. The learned Magistrate on receipt of the complaint, refused to direct the respondent to conduct enquiry for the reason that the documents filed before the Civil Court by the accused person in O.S.No.799 of 2019, on the file of the Principal Sub Court, Madurai, where the fabricated documents filed by the accused person, the complainant ought to have lodged the complaint. Further stated that insofar as the other allegations are concerned, they are very simple in nature.

6.Whatever the allegations made in the complaint, it cannot be rejected on its threshold without conducting any enquiry. Admittedly, the learned Magistrate did not enquire any of the witnesses including the defacto complainant and on bare reading of the complaint, the impugned order has been passed. Therefore, the learned Magistrate did not follow the procedures as contemplated under Sections 202 and 203 of Cr.P.C.



7.Considering the above facts and circumstances of the case, this Court is of the view that the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.4884 of 2017, dated 01.11.2017, is set aside and the matter is remanded back for fresh consideration.

8.On receipt of the records, the learned Judicial Magistrate No.IV, Madurai, is directed to conduct enquiry as contemplated under Sections 202 and 203 of Cr.P.C. and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9.In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

- 1 The Judicial Magistrate No.IV,
Madurai.
- 2 The Inspector of Police,
Keeraithurai Police Station,
Madurai.
- 3 The Additional Public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.

+1 CC to M/s.N.SATHISH BABU, Advocate (SR-86003[F] dated 09/09/2019

Crl.O.P.(MD)No.2365 of 2018
09.09.2019

ls
MS/25.09.2019/3P.5C