

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8662 of 2020 and
Crl.M.P.Nos.4154 & 4155 of 2020

A.Balakrishnan
S/o. Arumugam

...Petitioner/Petitioner

Vs.

1. The Inspector of Police
Pollachi Town Police Station
Pollachi, Coimbatore District.
(Crime No.1162/2020)

2. B.Girikumar

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in Crime No.1162 of 2020 on the file of the first respondent police and quash the First Information Report pending against the petitioner.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents

For R1 : Mr.S.Karthikeyan

Additional Public Prosecutor

For R2 : Mr.R.Shase

O R D E R

The Criminal Original Petition has been filed to quash the FIR in Crime No.1162 of 2020 on the file of the first respondent, registered for the offence under Sections 288 and 427 of IPC, as against the petitioner.

2. The learned counsel for the petitioner would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.1162 of 2020 for the offences punishable under Sections 288 and 427 of IPC, as

against the petitioner herein. Since the offences are non-cognizable offences, the Officer-in-Charge of the police station shall enter or cause to be entered the substance of the information in a book to be kept by such Officer in such form as the State Government may prescribe in this behalf, and refer 'the informant' to the jurisdictional Magistrate. Further, Section 155 (ii) of Cr.P.C., mandates that no police officer shall investigate a non-cognizable case without the order of a Magistrate.

2.1. He further submitted that the impugned FIR states that after receipt of the complaint from the second respondent, the first respondent requested the learned Judicial Magistrate No.I, Pollachi, to register the complaint as against the petitioner herein. Accordingly, the learned Magistrate by an order dated 29.05.2020, permitted the first respondent to register the FIR. There is absolutely no material to show that how the learned Magistrate had satisfied himself that this case was a fit case to register FIR. Therefore, the first respondent violated the provisions under Section 155(i) and (ii) of Cr.P.C., and the same has resulted in miscarriage of justice. In this regard the learned counsel for the petitioner also relied upon the Judgment reported in (2011) 1 CTC 395, in the case of Kathiravan Vs. Commissioner of Police, and prayed for quashment of the present FIR.

3. Per contra, the learned counsel appearing for the second respondent would submit that the second respondent lodged a complaint before the first respondent alleging that the second respondent is running a bakery shop in the name and style of Vishnu Bakery in the premises owned by the petitioner herein. It is further stated that there is a civil dispute pending between the second respondent and the petitioner on the file of the District Munsif Court, Pollachi, in respect of the tenancy issue. While being so, the petitioner and his sister-in-law's son were attempted to vacate the second respondent by putting up holes in the upper portion of the building and caused life threats on passing electric current in the said holes filled with water. Further the employees of the petitioner having entered the premises through back portion entry and did some work in the premises under the possession of the petitioner using drilling machine, despite objected by the second respondent herein.

3.1. He further submitted that on 28.05.2020, at about 06.45 hrs, the entire premises got collapsed after the closure of the bakery shop. Further the bakery materials worth about 2.5 lakhs, furniture and show case worth about 3.5 lakhs and cash of Rs.25,000/- were kept inside the shop, when the building was collapsed. Therefore, the second respondent lodged a complaint

before the first respondent as against the petitioner herein. Further, there are very serious allegations are there in the complaint. Even then the first respondent without registering the offence under Section 307 of IPC, simply registered the case for the offences under Sections 288 and 427 of IPC, that too both the sections are non-cognizable offences. Even though the offences are non-cognizable offence in nature, the first respondent has rightly obtained necessary orders from the learned Judicial Magistrate No.I, Pollachi, and registered the FIR in Crime No.1162 of 2020. Therefore, there is no infirmity in the order dated 29.05.2020 passed by the learned Judicial Magistrate No.I, Pollachi, and hence he prayed to dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent would submit that the offences registered in Crime No.1162 of 2020, as against the petitioner herein are non-cognizable offences and as such the first respondent has rightly obtained necessary orders from the learned Judicial Magistrate No.I, Pollachi, by order dated 29.05.2020. He further submitted that there are specific allegations as against the petitioner to attract the offences, which has to be investigated in depth. Therefore he sought for dismissal of this petition.

5. Heard Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner, Mr.R.Shase, learned counsel appearing for the second respondent and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

6. The only ground raised by the petitioner herein is that the first respondent did not follow the procedure laid down under Section 155 (i) and (ii) of Cr.P.C., while registering the FIR for the non-cognizable offences. On the complaint lodged by the second respondent the first respondent requested the learned Judicial Magistrate No.I, Pollachi, to permit the first respondent to register the FIR for the offence under Sections 288 and 427 of IPC as against the petitioner. The learned Judicial Magistrate No.I, Pollachi, by order dated 29.05.2020 permitted the first respondent to register the case as against the petitioner herein. According to the first respondent, the FIR was registered in Crime No.1162 of 2020 for the offence under Sections 288 and 427 of IPC with the allegations that the petitioner is the landlord and the second respondent herein is the tenant. There is a dispute between them in respect of their tenancy, which is pending before the District Munsif Court, Pollachi.

7. While being so, the petitioner along with his sister-in-law's son put up holes in the upper portion of the building

and caused life threats to the second respondent by passing electric current in the said holes filled with water. Further it is alleged that the employees of the petitioner entered into the premises through back portion entry and did some work in the premises under the possession of the petitioner by using drilling machine, despite objected by the second respondent herein. Therefore, on 28.05.2020, at about 06.45 hrs, after the closure of the bakery shop, the entire premises got collapsed and thereby caused damage to the bakery to the tune of worth about 2.5 lakhs, furniture and show case worth about 3.5 lakhs along with cash of Rs.25,000/-. Immediately the second respondent lodged complaint before the first respondent and the second respondent was issued with CSR No.114 of 2020. Thereafter, the first respondent registered the case in Crime No.1162 of 2020 for the offence under Section 288 and 427 of IPC, after getting necessary permission from the learned Judicial Magistrate No.I, Pollachi. It is relevant to extract the provisions under Sections 155(i) and (ii) of Cr.P.C.,

"(i) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(ii) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

8. According to the Section 155(i) and (ii) of Cr.P.C., when the police officer registering the complaint for the non-cognizable offences, he has to refer the informant to the concerned Judicial Magistrate, for obtaining necessary permission to register the case. Further, without the order of the Magistrate concerned, the police officer cannot register the case for the offence of non-cognizable offences. In this regard, the learned counsel for the petitioner relied upon the Judgment reported in (2011) 1 CTC 395 in the case of Kathiravan Vs. Commissioner of Police, which held as follows:-

"26. The offences listed in Arokiya Marie's case as heinous crimes regarding which a direction can be issued under Section 482 Cr.P.C to register a case in order to ensure that the evidence of such crime do not get erased by passage of time can be supplemented by other offences of grave nature and the offences exclusively triable by the court of sessions. In such

cases also the High Court under Section 482 Cr.P.C shall exercise its discretion under Section 482 Cr.P.C to issue a direction for registration of a case. In other cases, the High Court shall not issue a positive direction to register cases. The same does not mean that the police can simply keep quiet. Even in cases wherein the complaint discloses the commission of non-cognizable offences alone, the police officer who is receiving the complaint cannot simply keep such a complaint without following the procedure prescribed under Section 155 of the Cr.P.C. Section 155 Cr.P.C reads as follows:-

155. Information as to non-cognizable cases and investigation of such cases. -

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

27. As per sub-section (2) of Section 155, no police officer can investigate a non-cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial. But taking umbrage under the said clause, the police officer cannot be allowed to remain

inactive without following the procedure prescribed in Section 155 Cr.P.C. Sub-clause (1) of Section 155 Cr.P.C enjoins a duty on the police officer in-charge of a police station who receives information regarding commission of a non-cognizable, within the limits of such station to enter such information in a book kept for that purpose and refer the informant to the Magistrate. The section mandates the police officer in charge of the police station to refer the informant and not the information alone to the Magistrate concerned. Experience has shown that in all cases wherein the police are of the view that the offences made out are non-cognizable, they think that they need not register a case and need not refer the informant to the Magistrate concerned. It is to be noted that Section 155 Cr.P.C does not prohibit registration of a case if the averment discloses the commission of a non-cognizable offence alone. What is prohibited is to investigate the same without obtaining the order of the Magistrate. By the omission on the part of the police to refer the informant to the Magistrate concerned if such police officer is of the view that the complaint discloses only a non-cognizable offence, the procedure prescribed in sub-section (1) of Section 155 is being made a dead letter in practice. The said practice, according to the considered view of this court, will amount to miscarriage of justice, which has got to be remedied by issuing suitable directions in this regard to the police officer concerned in exercise of this court's inherent power under Section 482 Cr.P.C.

28. Therefore, this court deems it fit to classify the cases into cases in which a direction to register a case could be granted and cases in which such a direction cannot be granted. In the second category of cases, instead of directing the police to register a case, it shall be just and appropriate to issue a direction to the police officer concerned to register a case if he comes to the

conclusion that a cognizable offence has been made out by the contents of the complaint or to refer the informant to the Magistrate concerned as per Section 155(1) Cr.P.C if he comes to the conclusion that the information (complaint) discloses only a non-cognisable offence. Apart from the above said two classes of cases in which different directions are to be issued, there are other cases which have been got to be closed, after recording the submissions made on behalf of the respondent that FIRs have been registered on the basis of the complaint concerned in such petitions."

9. In the above judgment the Section 155(i) and (ii) of Cr.P.C., clearly mandates that the Officer-in-Charge of the police station has to refer the informant and not the information alone to the Magistrate concerned. In the case on hand, neither the information regarding the commission of non-cognizable offence recorded in the register as mandated by the above said provision nor informant was referred to the concerned Magistrate. It is clear violation of the provision of Section 155(i) and (ii) of Cr.P.C. Therefore, the FIR impugned in this petition cannot be sustained and it is liable to be quashed.

10. Accordingly, the Criminal Original Petition is allowed and the FIR in Crime No.1162 of 2020 on the file of the first respondent police is hereby quashed. However, the second respondent is at liberty to lodge a fresh complaint and proceed further in accordance with law, if so advised. Consequently connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR(CS VII)

//TRUE COPY//

SUB ASSISTANT REGISTRAR

rts

To

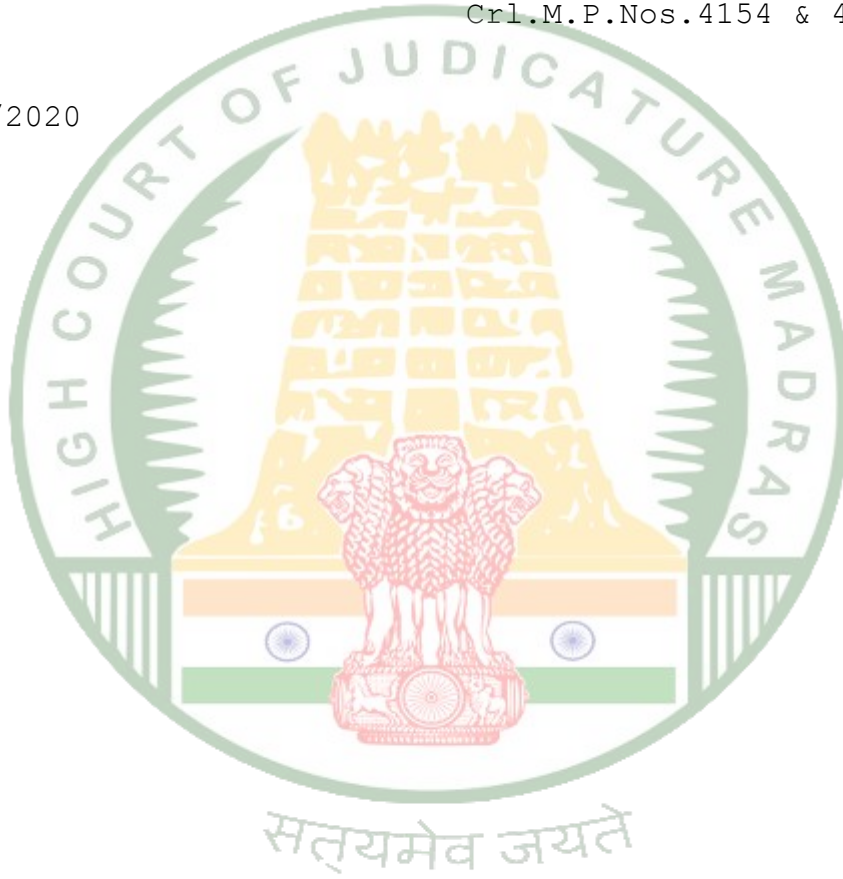
1. The Inspector of Police
Pollachi Town Police Station
Pollachi, Coimbatore District.

2. The Public Prosecutor
High Court of Madras.

+lcc to Mr.M.Guruprasad, Advocate, SR31636

Crl.O.P.No.8662 of 2020 and
Crl.M.P.Nos.4154 & 4155 of 2020

CO (PVS)
BDL/21/12/2020



WEB COPY