

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Cr1.O.P.No.17275 of 2020

M.Arunchalam

...Petitioner

Vs.

1.The Commissioner of Police,
Chennai,
Chennai District.

2.State represented by
The Inspector of Police,
K-11 Police Station,
Koyambedu,
Chennai.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the second respondent to register a FIR on the basis of the petitioner complaint dated 05.09.2020.

For Petitioner : Mr.K.Myilsamy

For Respondents: Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

(through video conference)

This Criminal Original Petition has been filed seeking direction to direct the second respondent to register an FIR based on the complaint dated 05.09.2020 given by the petitioner.

2. Heard Mr.K.Myilsamy, learned counsel for the petitioner and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the respondents police.

3. Today when this petition is came up for hearing, the learned counsel for the petitioner fairly conceded that after preferring the complaint before the respondent police, the petitioner herein has not approached the Jurisdictional

Magistrate by way of filing the complaint under Section 156(3) Cr.P.C.

4. In the said circumstances, it is necessary to decide whether this petition filed by the petitioner under section 482 Cr.P.C., is entertainable at this stage. In this regard, in the case of G.Prabakaran vs. Superintendent of Police, Thanjavur District and another reported in 2018 (5) CTC 623, the Division Bench of this Court held as follows:

"(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156 (3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere."

5. Further the said view taken by this Court was affirmed by our Hon'ble Apex Court in the case of M.Subramaniam and Others vs. S.Janaki and Others reported in 2020 (5) CTC 464.

6. Therefore, after closing the enquiry by the police officer, the remedy available to the complainant is to file a complaint before the jurisdictional Magistrate under section 156 (3) of Cr.P.C. In otherwise, the petition filed for the relief of direction to direct the respondent police to register the FIR is against the ratio laid down in the above referred judgments.

7. Hence, in view of the above, the prayer sought for by the petitioner is devoid of merits. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar

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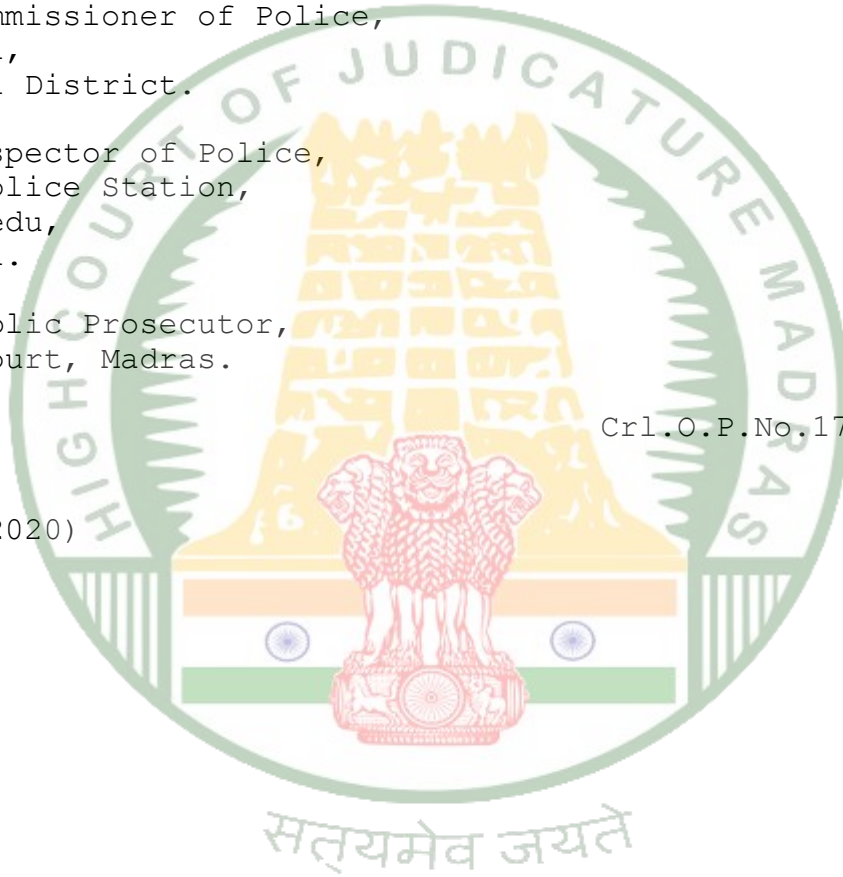
Sub Assistant Registrar

To

1. The Commissioner of Police,
Chennai,
Chennai District.
2. The Inspector of Police,
K-11 Police Station,
Koyambedu,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.17275 of 2020

SS(CO)
RV(02/12/2020)



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