

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2020

Coram:

The Honourable Mr. Justice P.RAJAMANICKAM

Crl.O.P.No.32518 of 2019
and
Crl.MP.No.293 of 2020

A.Mohammed Saleem ... Petitioner

Versus

1. The State
Rep.by Inspector of Police,
Sastri Nagar, Chennai.
2. The Inspector of Police,
Central Crime Branch,
Office of the Commissioner of Police,
Vepery, Chennai -7. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to transfer the investigation in Crime No.786 of 2019 from the file of the first respondent to the file of the second respondent herein.

For Petitioner : Mr.G.Jeremiah
For Respondents : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

This petition has been filed by the defacto complainant to transfer the investigation in Crime No.786 of 2019 from the file of the first respondent to the file of the second respondent.

2. The learned counsel for the petitioner has submitted that the petitioner has lodged a complaint before the first respondent on 01.11.2018 and based on the same, the first respondent has not registered any FIR and hence, the petitioner moved this Court by filing WP.No.33526 of 2018. This Court by the order dated 18.12.2018 has directed the third respondent therein (first respondent herein) to consider the petitioner's representation dated 01.11.2018 and pass appropriate orders, on merits and only thereafter, the first respondent has registered the FIR in Crime No.786 of 2019 under Sections 465 and 471 IPC on 23.11.2019 and thereafter the first respondent has not investigated the matter and

hence, the petitioner has filed the present petition to transfer the investigation to the second respondent.

3. Per Contra, the learned Government Advocate(Crl.Side) has submitted that after registering the FIR, investigation has been done and the case was referred to as " Mistake of Fact " on 25.11.2019 itself and with regard to that notice was also served on the petitioner and hence, he prayed to dismiss this petition.

4. By way of reply, the learned counsel for the petitioner has submitted that an FIR was registered only on 23.11.2019, and thereafter, within two days ie., on 25.11.2019, without enquiring the petitioner and other witnesses, the first respondent has referred the matter as "Mistake of Fact " and notice was also not served on the petitioner and hence, he requests to transfer the investigation to the second respondent.

5. In the Status Report filed by , the first respondent he has stated that an FIR was registered on 23.11.2019 and thereafter, examined the petitioner and other witnesses and the investigation revealed that both the parties filed civil cases claiming right over the disputed property and hence he referred the case as " Mistake of Fact " and he also served R.C.notice to to the petitioner on 25.11.2019. The learned Additional Public Prosecutor has submitted that first respondent has already filed referred charge sheet, before the IX Metropolitan Magistrate, Saidapet, Chennai on 25.11.2019 itself.

6. Since the first respondent has stated that already he has referred the case as " Mistake of Fact " and with regard to that, report was also filed before the concerned Magistrate, this Court is of the view that investigation cannot be transferred at this stage.

7. For the aforesaid reasons, this Criminal Original Petition is dismissed. The first respondent is directed to serve notice to the petitioner by RPAD within a week from the date of receipt of a copy of this order with regard to the filing of the referred charge sheet. It is open to the petitioner to avail any other remedy which is available under law. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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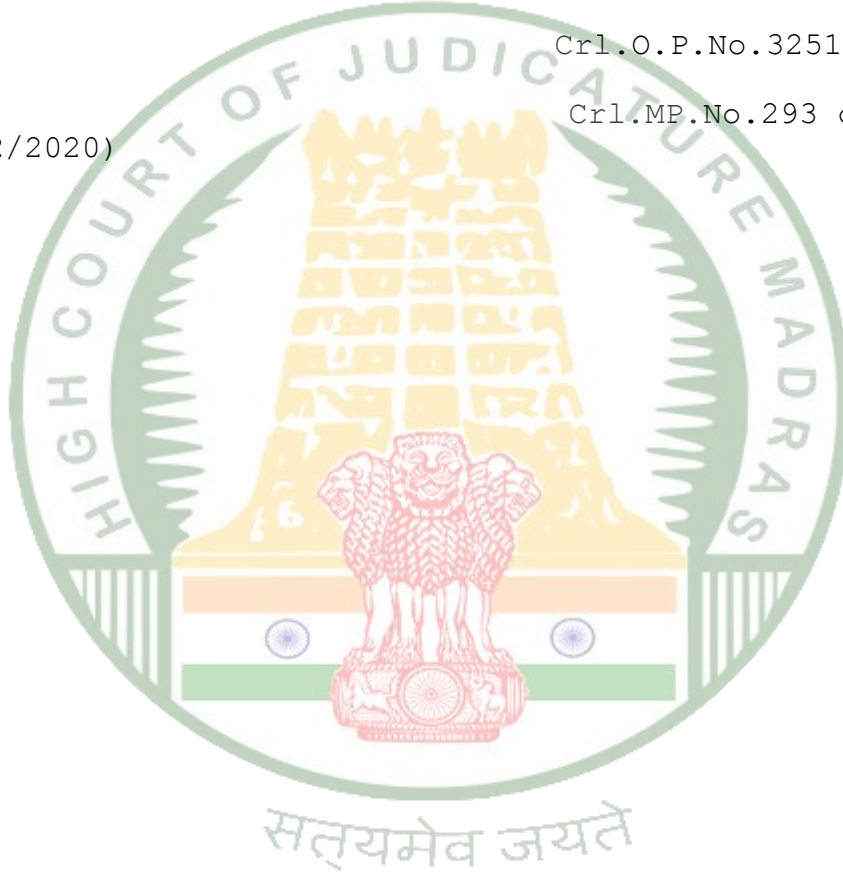
Sub Assistant Registrar

To

1. The Inspector of Police,
Sastri Nagar, Chennai.
2. The Inspector of Police,
Central Crime Branch,
Office of the Commissioner of Police,
Vepery, Chennai -7.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.32518 of 2019
and
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A.SK(26/02/2020)



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