



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P(MD).No.811 of 2020

R.Kumarasamy

... Petitioner / Defacto Complainant
Vs.

The State Rep.by
The Inspector of Police
District Crime Branch
Theni District, Theni

... Respondent / Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate, Theni District in Crl.M.P.No. 4681 of 2019 dated 30.08.2019.

For Petitioners	:	Mr.D.Selvanayagam
For Respondent	:	Mr.S.Chandrasekar
		Additional Public Prosecutor

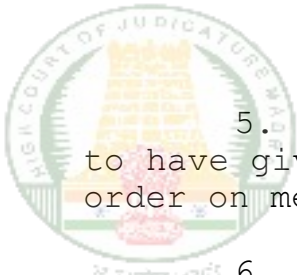
ORDER

This Criminal Original petition has been filed to set aside the order passed by the learned Judicial Magistrate, Theni District in Crl.M.P.No. 4681 of 2019 dated 30.08.2019.

2. The learned counsel for the petitioner would submit that originally based on the complaint given by the petitioner a case in Crime No.30 of 2015 was registered by the respondent police for offence under Sections 120(b), 447 and 420 of IPC. Thereafter the respondent have completed investigation and filed final report stating that no prima facie has been made out as against the accused and thereby further action has been dropped against the accused. Against which the petitioner filed protest petition on 19.08.2019. The learned Magistrate perused the records and found that it is a fit and proper to proceed under Section 200 of Cr.P.C and at the request of the petitioner the matter is adjourned to 30.08.2019 for recording sworn statement. The petitioner/complainant was absent due to his ill health he filed petition under Section 256 of Cr.P.C. The learned Magistrate strangely contrary to the observation on 19.08.2019 stating that prima facie case has not been made out and thereby dismissed the complaint.

3. Perused the materials placed on record.

4. On 19.08.2019 the petitioner was unable to appear due to his ill health and a petition under Section 256 of Cr.P.C had been filed. Strangely contrary to the view taken on 19.08.2019 that is a fit and proper case to proceed under Section 200 of Cr.P.C, the learned Magistrate by stating that prima facie case has not been established had dismissed the petition.



5. In the opinion of this Court, the learned Magistrate ought to have given an opportunity to the petitioner, heard him and passed order on merit rather than dismissing it by a cryptic order.

6. In the result, this Criminal Original Petition is allowed and the order dated 30.08.2019 is set aside and the learned Judicial Magistrate, Theni District shall record sworn statement and thereafter proceed in accordance with law, if it is found that offences are made out as against the accused.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To;

1.The Judicial Magistrate, Theni District

2. The Inspector of Police

District Crime Branch

Theni District, Theni

copy to:

The Additional Public Prosecutor

Madurai Bench of Madras High Court.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-2600[F]

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SMA/06/02/2020/2P/5C