



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.06.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.168 of 2020

C.Susila : Petitioner/De-facto complainant

Vs.

1.K.Selvaraj
2.Mariamammal
3.Chinnasamy
4.Chinnathai
5.Kaleeswaran

: R1 to R5/Proposed A1 to A5

6.The State rep. by its
The Inspector of Police,
All Women Police Station,
Srivilliputtur,
Virudhunagar District.

: 6th respondent/Complainant

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the order, dated 07.12.2019 passed in Cr.M.P.No.1798 of 2019 by the Sessions Judge/Special Court for offence under Section SC/ST Act (PCR), Virudhunagar District at Srivilliputtur.

For Petitioner : Mr.S.Deenadhayalan

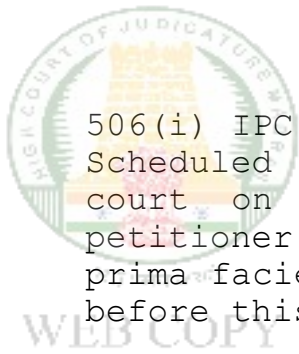
For R1 to R5 : Mr.M.Jothi Bash

For 6th Respondent : Mr.A.P.G. Ohm Chairma Prabhu
Government Advocate(Criminal side)

O R D E R

This criminal revision is directed against the order, dated 07.12.2019 passed in Cr.M.P.No.1798 of 2019 by the Sessions Judge/Special Court for offence under Section SC/ST Act (PCR), Virudhunagar District at Srivilliputtur.

2.The petitioner herein has filed a petition in Cr1.MP No.1798 of 2019 under section 156(3) Cr.P.C before the Principal Sessions Court, (Special Court for SC/ST (POA) Act cases), Virudhunagar District at Srivilliputtur to forward the complaint to the 6th respondent police to register a case under sections 494, 109,



506(i) IPC r/w section 3(I)(xii), 3(1)(w) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The trial court on 07.12.2019 has recorded the sworn statement of the petitioner and dismissed the complaint stating that there is no prima facie case made out. Aggrieved by the same, the petitioner is before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner/complainant is that the trial court failed to appreciate the factual aspect that the 6th respondent police, after having received the complaint, however, did not take any effective steps either to register the case or to take any appropriate action for investigation and the averments in the complaint disclosed cognizable and bailable offence punishable under sections 494, 109, 506(i) IPC r/w section 3(1)(xii), 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and prima facie case is made out against the accused persons and the documents filed in respect of sworn statement was not considered by the trial court and the trial court failed to appreciate that the 6th respondent police has not given convincing reasons for not taking any steps on the complaint of the petitioner and hence, the impugned order passed by the trial court has to be set aside and prays for allowing this criminal revision.

5. Further, the learned counsel appearing for the petitioner submitted that the Magistrate under Section 156(3) Cr.P.C to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including maintaining the same, even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C. For that, the learned counsel appearing for the petitioner submitted a ruling reported in **(2018) 4 MLJ (Cr1) 157 (D.Ramesh Vs.Vijayakumar)**, wherein it has been held as follows:-

"...To order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

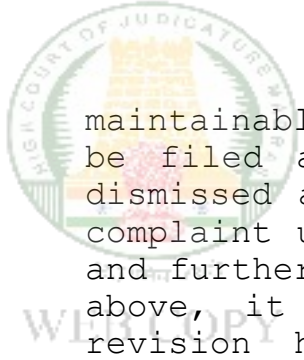
<https://hcservices.ecourts.gov.in/hcservices> 25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at



the police station and or/a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and regulate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26.If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C., instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27.As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C., simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Section 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C and not by filing a writ petition or a petition under Section 482 Cr.P.C."



maintainable in law since the complaint under section 156(3) shall be filed along with affidavit or otherwise, it is liable to be dismissed and in the particular case, the petitioner has filed the complaint under section 156(3) Cr.P.C in the verified petition form and further, if any FIR has been registered without following stated above, it is liable to be quashed and prays that the criminal revision has to be dismissed. For that, the learned counsel appearing for the respondents 1 to 5, submitted the following judgments:-

(i) 2015(3) MWN (Cri) 171 (SC) (Priyanka Srivastava and another Vs. State of U.P and others);

(ii) 2019(3) MWN (Cr.) 194 (N.Amsaveni Vs. R.Loganathan and one another).

(iii) 2019(1) MWN (Cri) 53 (DB) (G.Prabakaran Vs. Superintendent of Police, Thanjavur District and one another)

7.The main contention raised on the side of the petitioner/complainant is that her husband married another woman and when she went to the house of the accused and questioned it, they called her caste name and assaulted her. The petitioner/complainant stated that she gave complaint on 03.10.2019. It is to be noted that to prove the offence under section 494, the remedy open to the petitioner is that she has to file private complaint under section 200 Cr.P.C and the police has no power to register the case under section 494 IPC. Hence, for registering the case under section 494 IPC, the petition filed by the petitioner under section 156(3) Cr.P.C is not maintainable. Further, the petitioner has stated that she gave online complaint on 03.01.2019. To prove that no receipt was filed and the copy of the complaint was also not filed. Hence, the argument put forth on the side of the petitioner stating that she gave complaint to the police and no action was taken by the police is not at all acceptable.

8.For the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is correct, which requires no interference of this court.

9.In the result, this criminal revision fails and the same is **dismissed** with liberty to the petitioner to file a petition before the concerned court under section 200 Cr.P.C.

Sd/-

Assistant Registrar (AS)

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To

1.The Sessions Judge/Special Court for
the offence under SC/ST Act (PCR),
Virudhunagar District @ Srivilliputhur.

2.The Inspector of Police,
All Women Police Station,
Srivilliputtur,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC(MD)No.168 of 2020
16.06.2020

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SDS (06.08.2020) 5P-4C