



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.6567 of 2020

R.Subramanian

... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.

2.The Inspector of Police,
Tiruchendur Temple Police Station,
Tiruchendur,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to transfer the investigation initiated on the petitioner's complaint dated 23.04.2020 from the file of the 2nd respondent to some other investigation agency.

For Petitioner : Mr.D.S.Haroon Rasheed

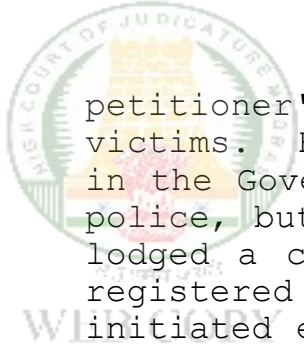
For Respondents : Mr.S.Chandrasekar
(R1 & R2) Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to transfer the investigation pending on the file of the 2nd respondent to some other investigating agency.

2. The learned counsel appearing for the petitioner would submit that on 25.03.2020, at about 12 noon, the petitioner's son went to the 16th day death ceremony of his relative and after attended the same, along his friends Balamurugan and Vathanraj went to the Tiruchendur seashore, particularly, near to the Cemetery, at that time, 15 persons came there with deadly weapons and abused them by using the filing language. Subsequently, all are joined together and attacked the petitioner's son and his friends brutally, by using knife and aruval. In the said occurrence, two persons sustained cut injuries on their head and all over the body.

3. After the occurrence, all the injured were admitted in the Government Hospital at Tiruchendur. In the meantime, after received the complaint from the opposite party, the Inspector of Police, attached with the 2nd respondent Police came and threatened the victim. Further, the Inspector of Police threatened the



petitioner's son, as if they will foist false PCR case against the victims. He would further submit that during the time of admission in the Government Hospital, victims' statement were received by the police, but no fruitful result. Subsequent to that, the petitioner lodged a complaint before the first respondent Police, through a registered post. On 27.03.2020 on receiving the same, no action was initiated either by the first or second respondents. Accordingly, transfer of investigation on the petitioner's complaint is necessary.

4. The learned Additional Public Prosecutor, on instructions, made a submission that no complaint has been received either from the petitioner or from his son. In the said occasion, transfer of investigation on the petitioner's complaint dated 23.04.2020 is not necessary.

5. The submissions made by the counsels appearing on either side are considered.

6. Though it was alleged that as on 23.04.2020 a complaint has been preferred before the respondent Police, the same was denied by the respondent Police. However, the Document Nos.1 and 4 disclose of that fact that on the next day to the occurrence, viz., 25.03.2020 itself, a copy of the complaint was forwarded to the first respondent. In the said circumstances, it is necessary to see the Judgment rendered by this Court in **G.Prabakaran Vs. Superintendent of Police, Thanjavur District**, reported in (2018 (5) CTC 623), wherein it has been 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)



(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.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

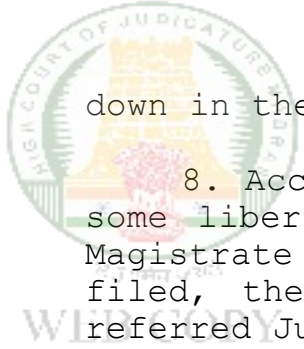
(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154 (3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one."

7. On applying the said principles with the case in our hand, as of now, the petitioner exhausted the remedy under Section 154(3) Cr.P.C., thereby, the next option having by the petitioner is to approach the jurisdictional Magistrate and lodge a complaint. But instead of lodging the complaint before the Jurisdictional Magistrate, the petitioner directly approached this Court, by invoking Section 482 Cr.P.C., which is against the procedures laid



down in the above referred Judgment.

8. Accordingly, in the said situation, it is necessary to give some liberty to the petitioner for approaching the jurisdictional Magistrate by way of filing a complaint. If such complaint is filed, the jurisdictional Magistrate is directed to follow above referred Judgment and to pass necessary orders.

9. With the above direction, this Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.
- 2.The Inspector of Police,
Tiruchendur Temple Police Station,
Tiruchendur,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KK(28.07.2020) 4P 4C