



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.08.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

W.P.(MD)No.8627 of 2020

WEB COPY

B.Velmurugan

... Petitioner

Vs.

1.The Superintendent of Police,
Tenkasi District, Tenkasi.

2.The Inspector of Police,
Serndamaram Police Station,
Tenkasi District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the second respondent to investigate the complaint of the petitioner dated 22.06.2020 within the time stipulated by this Court.

For Petitioner : Mr.T.Selvan

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the second respondent to investigate the complaint of the petitioner dated 22.06.2020 within the time stipulated by this Court.

2.The learned counsel appearing for the petitioner would submit that he had borrowed a sum of Rs.2,00,000/- from the proposed accused and thereafter, he paid interest of Rs.10,000/- per month. In the year 2019, the petitioner repaid the entire amount. However, the proposed accused claimed Rs.4,40,000/- as interest at the rate of 7%. During the time of occurrence, the proposed accused came to the house of the petitioner and used filthy language against the petitioner's wife and also threatened her. Further, the proposed accused did not return the check, which was given by the petitioner as security. In this regard, the petitioner made a complaint before the first and second respondents on 22.06.2020. Since no action has been taken by the respondents herein till date, the petitioner filed this writ petition seeking the aforesaid prayer.

3.The learned Additional Public Prosecutor appearing for the respondents would submit that the Division Bench of this Court has already settled the procedure to be followed in respect to the registration of a case by the Police Officer. According to him, the



prayer sought for by the petitioner is not at all maintainable.

4. Upon considering the arguments advanced by the learned counsel on either side, before entering into the merits and demerits of the case, it is relevant to see a judgment of the Division Bench of this Court in a case of **G.Prabakaran Vs. Superintendent of Police and another** reported in **2018 5 CTC 623**, in which the Division of Bench of this Court has 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 information 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 *Lalita Kumari V. Govt. of U.P. & ors.*, 2013(3) MWN (Cr.) 321(SC).

<https://hcservices.ecourts.gov.in/hcservices/> (x) Judicial Magistrates, while dealing the



Petitions under Section 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalita Kumari V. Govt. of U.P. & ors., 2013 (3) MWN (Cr.) 321 (SC), 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 Pvt. Ltd. V. Assistant Commissioner of Police J-2, Adayar Police Station Adayar, Chennai-600 020 and others, 2016 (3) MWN (Cr.) 236 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.

5. In the said circumstances, now violating the conditions stipulated as above, by this Court, the petitioner herein filed this writ petition, which is unwarranted one. If the second respondent police is refused to consider the representation of the petitioner, it is the duty of the petitioner to approach the Higher Officers of the second respondent and also to follow the above referred guidelines. Instead of following the said procedure stipulated by this Court, filing of this writ petition is devoid of merits. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar (CS)

gns

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, Tenkasi District, Tenkasi.

2. The Inspector of Police, Serndamaram Police Station, Tenkasi District.

W.P. (MD) No. 8627 of 2020

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