



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P(MD)No.10364 of 2020

WEB COPY

Subramanian

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Alagarkovil Road,
Madurai - 2.

2.The Inspector of Police,
Anna Nagar Police Station,
Madurai City.

3.Military Mani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the Respondent Nos.1 and 2 to take appropriate action against the 3rd respondent by conducting an enquiry on the basis of the petitioner's representation, dated 26.06.2020.

For Petitioner : Mr.P.Krishnasamy

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

O R D E R

This present Writ Petition has been filed praying for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take appropriate action against the 3rd respondent, by conducting an enquiry, on the basis of the petitioner's representation, dated 26.06.2020.

2. The case of the petitioner is that the petitioner had received a hand loan of Rs.3,00,000/- from the 3rd respondent with a condition to repay the same within the period of three months. Due to COVID-19, the above said amount could not be repaid by the petitioner, as per the agreed terms, for which, the 3rd respondent attacked the petitioner and his family members and threatened with dire consequences. Thereafter, a Panchayat was held on 20.02.2020 at Sundari Town Complex, Melur, Madurai District, for which, the petitioner's friend, 3rd respondent and his friend Sathish came



and during the time of negotiation, the 3rd respondent herein stated as " I have a gun with that gun to kidnap not only you, but also your wife, son, daughter-in-law, and grandson and collect Rs.3,00,000/- from you".

3. However, in the said panchayat, the petitioner had repaid a sum of Rs.1,00,000/-, to the 3rd respondent in the presence of the Panchayathars and their friends. In respect to the remaining amount, the 3rd respondent contacted the petitioner's relative through the cell phone and demanded to repay a sum of Rs.2,00,000/- within three months. Due to paralysis of the Industry, the petitioner was not able to repay the said amount within the said period. However, from 20.05.2020 to till date, the 3rd respondent has been threatening the petitioner and his family members every day saying that the petitioner will pay more exorbitant interest, otherwise, the 3rd respondent will shoot and kill the petitioner.

4. Further case of the petitioner is that though the said illegal act committed by the 3rd respondent was informed to the respondents 1 and 2, by way of representation, dated 26.06.2020, there was no action on the part of the 1st and 2nd respondents. In this regard, on 17.08.2020, the petitioners herein sent the representation to the respondents 1 and 2, through registered post and the same was received by the respondents 1 and 2. Even after the same, the respondents 1 and 2 are acting as silent spectator in this issue. Therefore, the petitioner prays for issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to consider and pass orders on the representation given by the petitioner.

5. The learned Additional Public Prosecutor appearing for the respondents 1 and 2, on instructions, would submit that the alleged representation, dated 26.06.2020 given by the petitioner has not been received by the respondents 1 and 2 and therefore, they are not in a position to initiate action against the 3rd respondent.

6. I have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents 1 and 2.

7. The sum and substance of the writ petition filed by the petitioner is that he praying to direct the 2nd respondent to register the case against the 3rd respondent, for the thread made him in the Panchayat.

8. At this juncture, it is relevant and 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:-

" (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 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 compliant 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



not withstanding 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."

9. Accordingly, applying the principles enumerated in the above referred Judgment, now the only option available to the petitioner is to approach the jurisdictional Magistrate and to file a complaint under Section 156(3) of Cr.P.C. If the same has also not given any useful result, then only, the petitioner is entitled to file an application before this Court under Section 482 of Cr.P.C. Therefore, since already there was an alternative remedy available to the petitioner, filing this type of writ petition is unnecessary and therefore, the writ petition filed by the petitioner is devoid of merits and accordingly, the same is liable to be dismissed.

10. In the result, this Writ Petition is dismissed with liberty to the petitioner file a complaint before the jurisdictional Magistrate under Section 156(3) of Cr.P.C. No costs.

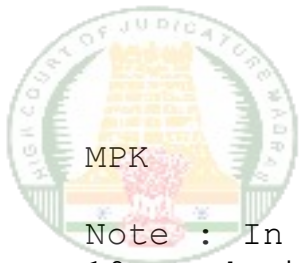
Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar (CS)



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 Commissioner of Police,
Madurai City,
Alagarkovil Road,
Madurai - 2.

- 2.The Inspector of Police,
Anna Nagar Police Station,
Madurai City.

W.P (MD) No.10364 of 2020
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KM (10.09.2020) 5P 3C