



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P (MD) No.10875 of 2020

Z.Lenington

... Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Marthandam Police Station,
(Law and Order),
Kanyakumari District.

3.Thatheus Mary

4.Vijayan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Mandamus, directing the 2nd respondent to conduct enquiry based on the petitioner's complaint, dated 30.03.2019, pending on the file of the 1st respondent.

For Petitioner : Mr.D.Christenson Jugunu

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

O R D E R

This Writ Petition has been filed praying to issue of a Writ of Mandamus, directing the 2nd respondent to conduct enquiry, based on the petitioner's complaint, dated 30.03.2019, pending on the file of the 1st respondent.

2. The grievance of the petitioner is that he is a District Secretary of Tamilnadu Anna Buildings and Labour Non Organisation, in which, there are 750 members are there. One Thatheus Mary W/o.Vijayan and her husband Vijayan, who are residing in Kanyakumari District, are not related to the said Organisation. However, they have intentionally received 14 membership forms and also received a sum of Rs.1400/-.

3. On 07.02.2018, the 3rd respondent has put her signature and received 20 membership form from the petitioner. The above said membership worth about Rs.2,000/-. Further, on 13.02.2018, in the absence of the petitioner, the 3rd respondent, without any information, had taken away the office table and chair. After knowing the same, the same was questioned by the petitioner, for which the 3rd and 4th respondents threatened and scolded the petitioner by using filthy language and also assaulted the petitioner. Therefore, the petitioner lodged a complaint before the 2nd respondent police in person. Since no action was initiated on the said petition, on 30.03.2019, he submitted one another



representation to the first respondent and the same is also kept under the cold storage. Accordingly, it is necessary to direct the first respondent to consider the petitioner's representation dated 13.03.2019.

4. Upon considering the submission made by the learned counsel appearing for the petitioner, before entering into the merits and demerits of the Writ Petition, it is necessary to find out whether the Writ Petition filed by the writ petitioner is maintainable. At this juncture, it is relevant and useful to refer the Division Bench Judgment of this Court in ***K.R.Prabhakaran v. The Commissioner of Police, Chennai and Anr.***, reported in **(2005 (2) L.W.(Cri) 549)**, wherein, this Court had clearly held that if the alternative remedy is available under Sections 156(3) and 200 Cr.P.C., the Writ jurisdiction is not maintainable. The relevant portion of the Judgment reads as follows:-

"3. In our opinion, if it is alleged that a crime has been committed and some one goes to file an F.I.R., and either the F.I.R. is not lodged at the police station, or, having been lodged, it is alleged that proper investigation is not being done by the police, then the remedy of the complainant is to make an application under section 156(3) Cr.P.C. before the Magistrate mentioning all these facts, and it is open to the Magistrate to direct the police to lodge the FIR and/or to do a proper investigation of the alleged crime. The Magistrate can also pass suitable directions to monitor the investigation if he thinks that it has not been properly held. Hence, in our opinion, the complainant has an equally efficacious remedy under section 156(3) Cr.P.C. to file a suitable application before the Magistrate. Apart from that he has also another alternative remedy of filing a private complaint under section 200 Cr.P.C. In view of these alternative remedies it is not a fit case for exercising our writ jurisdiction..."

5. Further, the Division Bench of this Court in the Judgment in ***G.Prabakaran Vs. Superintendent of Police, Thanjavur District***, reported in **(2018 (5) CTC 623)**, framed the following guidelines;-

" (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.

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(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 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."

6. So, the Judgments, now referred as above, are very clear that the petitioner is having an opportunity to file a complaint before the competent Court, having jurisdiction. In the said circumstances, instead of approaching the Court, which is having jurisdiction to entertain the grievance of the petitioner, the petitioner herein filed this Writ Petition is not maintainable and the same is liable to be dismissed.

7. 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 (CS III)

// 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,
Kanyakumari District.
- 2.The Inspector of Police,
Marthandam Police Station,
(Law and Order),
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

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KK(16.09.2020) 4P 4C

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