



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.09.2020**

CORAM:

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

W.P. (MD)No.11313 of 2020

R.Gothandapani

... Petitioner

Vs.

1.The Superintendant of Police,
Sivagangai District.

2.The Inspector,
Sivagangai Town Police Station,
Sivagangai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents herein to consider the petitioner's representation dated 24.06.2019 and take necessary action within the time stipulated by this Court.

For Petitioner : Mr.K.P.Ramesh

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

O R D E R

The petitioner filed this writ petition praying for issuance of a writ of mandamus to direct the respondents herein to consider the petitioner's representation dated 24.06.2019 and take necessary action within the time stipulated by this Court.

2.The grievance of the petitioner is that on 24.06.2019 at about 11.00 a.m., one Mookaiah and his two sons came to the petitioner's house along with 15 identified persons in three cars and trespassed into the house in which the petitioner was resided. Thereafter, the said Mookaiah and his son started shouting in filthy language and threatened the petitioner to give Rs.10,00,000/- to them which was given already to one third party. Since the petitioner refused to give the same, they plugged a sum of Rs.2,00,000/- and further demanded to hand over the blank cheques. Since, there is no alternative, the petitioner handed over two cheques to the said Mookaiah. In respect of the said occurrence, on the same day the petitioner herein has given a complaint before the second respondent. Since the second respondent has not taken any action, the petitioner approached the first respondent and presented a complaint on 24.06.2019 and thereafter, the said



complaint has also been kept pending with the first respondent without any action. Therefore, appropriate direction is necessary to the first respondent to consider the representation given by the petitioner dated 24.06.2019.

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3.Per contra, the learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the representation given by the petitioner dated 24.06.2019 is pending with the first respondent.

4.Upon considering the submissions made by either side, it would be relevant to see the averments found in the representation dated 24.06.2019. The representation given by the petitioner would reveals the fact that during the time of occurrence, the proposed accused and others wrongly entered into the house in which the petitioner was resided and made threatening and afterwards, plugged the money from the petitioner. The said incident constituted the cognizable offence for which a case has been registered immediately by the respondent police, but in the case no effort has been taken by the respondent police for registering the First Information Report. Therefore, it would be appropriate to direct the petitioner to follow the guidelines given by this Court reported in **2018 (5) CTC 623 (G.Prabakaran Vs. Superintendent of Police, Thanjavur District and others)**, which reads 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 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."

5. Therefore, by following the guidelines already stipulated by this Court, the petitioner is directed to present the complaint before the learned Judicial Magistrate who is having the jurisdiction, under Section 156(3) of Cr.P.C. and if such complaint is presented by the petitioner, the learned Judicial Magistrate concerned is directed to consider the same and pass appropriate orders as early as possible in accordance with law.



6. With the above directions, this Writ Petition is disposed of.
No costs.

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// True Copy //

Sd/-

Assistant Registrar (CSII)

/ /2020

Sub Assistant Registrar (CS)

cp

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,
Sivagangai District.
2. The Inspector,
Sivagangai Town Police Station,
Sivagangai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.K.P. RAMESH, Advocate (SR-16706[F] dated 11/09/2020)

W.P. (MD) No.11313 of 2020
10.09.2020

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