

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED 08.02.2021  
CORAM  
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH  
Crl.O.P.No.2026 of 2021  
and Crl.MP.No.1124 of 2021

N.R.Babulal .. Petitioner

Vs.

1. E.R.Ramanan

2. The Inspector of Police,  
Salem Town Police Station,  
Salem.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to CRP.No.14 of 2019, on the file of the learned Additional District Judge-I, Salem, order dated 05.02.2019 in CMP.No.138 of 2019 on the file of learned Judicial Magistrate-I, Salem to set aside the order passed dated 03.12.2020 in CRP.No.14 of 2019 on the file of learned Additional District Judge-I, Salem.

For Petitioner : Mr.S.Kalyanaraman  
For Respondents : Mr.Mohamed Riyaz R2  
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below in CRP.No.14 of 2019, dated 03.12.2020 on the file of the learned I Additional District and Sessions Judge, Salem.

2. The case of the petitioner is that based on the complaint given by the first respondent, an FIR came to be registered in Crime No.486 of 2016 and the petitioner was also arrested and remanded to judicial custody. The second respondent Police investigated the case and a referred charge sheet was filed before the Court below on 22.01.2019.

3. The petitioner filed a petition under Section 156(3) of Cr.P.C. before the learned Magistrate on the ground that a false case has been lodged against the petitioner and therefore, according to the petitioner, an offence under Section 211 of IPC has been committed by the first respondent. The learned Magistrate by an order dated 05.02.2019 had directed the respondent Police to investigate the case and file a final report.

4. Aggrieved by the order passed by the learned Judicial Magistrate, the first respondent seems to have filed a revision petition before the Court below and the revision petition was allowed by the said Court. Aggrieved by the same, the present petition has been filed before this Court.

5. The learned counsel for the petitioner primarily raised two grounds challenging the order passed by Court below. The first ground that was raised by the learned counsel for the petitioner is that an order passed under Section 156(3) of Cr.P.C. is under pre-cognizance stage and therefore, the first respondent will not have locus-standi to even participate in the proceedings and challenge the order. The second ground of attack was that the learned Magistrate, by an order dated 26.04.2019, has recalled the earlier order passed under Section 156(3) of Cr.P.C. on the ground that it is an irregular order which is vitiated under Section 461 of Cr.P.C. The learned counsel submitted that this order virtually amounts to reviewing the earlier order and the same is specifically barred under Section 362 of Cr.P.C.

6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

7. It is seen from records that the respondent Police has filed a referred charge sheet before the Court below in Crime No.486 of 2016. This referred charge sheet is yet to be taken cognizance by the learned Magistrate. Even before the case reached that stage, the petitioner seems to have filed a petition under Section 156 (3) of Cr.P.C. on the ground that a false case has been given against him and he wanted an FIR to be registered under Section 211 of IPC. The Court below has found that the learned Magistrate even before acting on the referred charge sheet filed by the respondent Police, has acted upon the petition filed by the petitioner under Section 156(3) of Cr.P.C. and the same is clearly pre-matured.

8. When a referred charge sheet is filed before the concerned Court, the Court on going through the same, can take cognizance of the same or can independently assess the materials and issue process to the accused person. That apart, where referred charge sheet has been filed, notice has to be given to the defacto complainant to enable him to file a protest petition and only thereafter, decision should be taken by the concerned Court. Till a final decision is taken, the petitioner cannot be permitted to parallelly file a petition under Section 156(3) of Cr.P.C. on the ground that a false case has been given against him. Whether the case given against the petitioner is false or

not, is yet to be ascertain by the concerned Court. Therefore, the petition filed by the petitioner under Section 156(3) of Cr.P.C. is clearly pre-matured. The Court below was exercising its powers under Section 397 of Cr.P.C. The power of revision can be exercised even without there being a formal petition filed before the Court and it is more in the nature of testing the regularity of any proceedings of an inferior Court. The Court below on going through the records has found that the order passed by the learned Magistrate was irregular and the petition itself ought not to have been entertained till a decision is taken on the referred charge sheet filed by the respondent Police.

9. In view of the above, this Court does not find any ground to interfere with the order passed by the Court below in the revision petition . The petitioner has to necessarily wait for the final outcome of the referred charge sheet filed by the respondent Police and thereafter, proceed further in accordance with law.

10. This Criminal Original Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,  
Salem Town Police Station, Salem.
  2. The Public Prosecutor, High Court, Madras.
  3. The Judicial Magistrate-I, Salem.
  4. The Additional District Judge-I, Salem.
- +1cc to Mr.S.Kalyanaraman, Advocate, SR.No.7146.

Cr1.O.P.No.2026 of 2021  
and Cr1.MP.No.1124 of 2021

SR-II(CO)  
CSR: 10/03/2021