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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.NO.26848 OF 2016

R.Rajendran @ Rajendra

...Petitioners/
Defacto Complainant

Versus

1. The Commissioner of Police,
Coimbatore City,
Kovai 641 013.
2. The Inspector of Police,
Law and Order, D-2, Selvapuram Police Station,
Coimbatore City.
3. C.R.Muthukumar
4. Nakas V.Muthukumar
5. Thambu @ Navaneetha Gopalakrishnan

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, pleaded to call for the records in connection with the final report on the file of the learned Judicial Magistrate V, Coimbatore, in R.C.S.No.34/2015 in Cr.No.301/2015 and quash the same and take necessary action as per law.

For Petitioner : Mr.M.Srividhya

For RR1 : Mr.C.E.Pratap

Government Advocate (Crl.side)

O R D E R

The petitioner has filed this petition seeking to call for the records in connection with the final report on the file of the learned Judicial Magistrate V, Coimbatore, in R.C.S.No.34/2015 in Cr.No.301/2015 and quash the same.

2. Facts leading to the present round of litigation is that the defacto complainant is a wholesale dealer and running a wholesale jewellery shop at Coimbatore. On the basis of the attractive and lucrative advertisement given by the 3rd



respondent, who has been running a Gold Saving Scheme at Selvapuram, the petitioner and his wife became subscribers to the said scheme to develop his business. From 17.04.2011 to 30.01.2013, the 3rd respondent got 4264.41 grams of 24 carat gold and the petitioner made arrangements to pay the subscription to 3rd respondent through the 4th respondent, unfortunately, both the persons jointly conspired together to cheat the petitioner and thereby, the 4th respondent failed to make the payment towards the subscription payable by the petitioner to the 3rd respondent and the 3rd respondent wantonly kept quiet and came to his house with a rowdy element, threatened the petitioner and his wife to execute a Sale Deed in their favour.

3. The petitioner, without any option, has mortgaged a house property with the accused persons and later executed a Sale Deed dated 21.01.2014 in favour of them. The petitioner, in that regard gave a complaint on 03.01.2014 against the 4th respondent and the law enforcing agency, after getting an undertaking from the 4th respondent to return the gold jewels, had closed the complaint. In spite of the said undertaking, the accused persons failed to return the gold jewels and when it was questioned by the petitioner, again he was threatened with dire consequences. Therefore, once again he gave a complaint dated 01.08.2015 to the 1st respondent against the respondents 3 to 5. The petitioner was summoned for enquiry by the Inspector of Police, but he was not able to appear before the said official due to his ill health. While such being the position, the law enforcing agency, without even taking note of the petitioner's incapability, has chosen to stick a notice on the door of the petitioner's house, referring the FIR as mistake of fact in R.C.S.No.31 of 2015 in FIR.NO.301/2015 dated 13.01.2016. Aggrieved by the same, the present petition is filed by the petitioner.

4. The learned counsel appearing for the petitioner submitted that though serious offence is made out in his complaint against the petitioner, the 2nd respondent without even following the detailed procedure prescribed under Cr.P.C and without considering the petitioner's incapability to appear before the respondent police due to his ill health, has referred the complaint as a mistake of fact. The petitioner has also given a detailed petition to the 1st respondent for reinvestigation in the matter, however, no action is taken so far. Therefore, the petitioner left with no other option, is constrained to approach this Court by filing this petition and prays for allowing of this petition.

5. The learned Government Advocate (Crl.Side) submitted that once the matter is closed as mistake of fact, the only remedy open to the petitioner is to file Protest Petition



before the competent Court. The petitioner, without availing the said remedy, approaching this Court by filing this petition is not sustainable and hence prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. As rightly pointed out by the learned Government Advocate (Crl.Side), the only remedy available to the petitioner is to approach the competent Court by way of Protest Petition. Hence, this Court without going into the merits of the case, grants liberty to the petitioner to file an appropriate Protest Petition before the competent Court for redressal of his grievance and further, the petitioner, without exhausting the available remedy before the appropriate Forum, straight away approaching this Court by filing this petition is not maintainable.

8. For the reasons assigned above, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Coimbatore City,
Kovai 641 013.
2. The Inspector of Police,
Law and Order, D-2, Selvapuram Police Station,
Coimbatore City.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Srividhya, Advocate, S.R.No.53070

CRL.O.P.No.26848 of 2016

VGII(CO)
PM/02/12/2021