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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.13734 of 2021

Mr. Christopher Noel Britto

...Petitioner

Versus

1. The State rep. by
The Inspector of Police,
Wellington Police Station,
Coonoor Taluk,
The Nilgiris.

2. Christina Rodrigues

3. Desmond Rodrigues

4. Philomena

5. Roy Rodrigues

6. Julianna

...Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with the order of the learned Judicial Magistrate, Coonoor in CMP No.1420/2019 dated 04.09.2019 and set aside the same and thereby direct to conduct fresh investigation after registration of FIR in accordance with law by some other officer or agency other than the 1st respondent.

For Petitioner : Mr. R. Srinivasan,
for I. John Arockiadas

For Respondent : Mr. A. Damodharan,
Government Advocate (crl. side)
for R1

ORDER

This Criminal Original Petition is filed to call for the records in connection with the order of the Judicial Magistrate,



Coonoor in CMP No.1420/2019, dated 04.09.2019 and set aside the same and thereby, direct to conduct a fresh investigation after registration of the First Information Report in accordance with law.

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2. The petitioner has lodged a complaint to the Judicial Magistrate, Coonoor. which was numbered as CMP No.1420 of 2019. Thereafter, the complaint was forwarded by the Judicial Magistrate to the Inspector of Police, Wellington Police Station, to register the First Information Report and to proceed with the investigation. The respondent police without registering First Information Report filed a report stating that no cognizable offence is made out. Based on the same, the learned Magistrate dismissed the complaint of the petitioner.

3. The learned counsel for the petitioner would submit that once an order is passed under Section 156(3) Cr.P.C., the respondent police is duty bound to register the First Information Report and to investigate the case and file a final report, which can be both negative or positive, depending upon the materials collected. On the threshold, he cannot conduct an enquiry and give a report stating that no case has been made out without registering the First Information Report. The lower Court, accepting the report of the respondent police, passed an order dated 04.09.2019, which is not proper. Before filing the report, no notice was served to the petitioner and the petitioner was deprived the given an opportunity to protest and produce any materials. Hence, the said order should be set aside.

4. I have considered the submissions and perused the materials available on records carefully.

5. From a perusal of the report of the Inspector of Police, Wellington Police Station, dated 16.07.2019, it is seen that the Magistrate had referred the above case in CMP No.1420 of 2019 under Section 156(3) Cr.P.C and the same received by the respondent police on 17.06.2019 and thereafter, conducted an enquiry calling both the petitioner and the counter complainant therein and verified the particulars with regard to the engagement and visited the house, which was arranged for them to reside after marriage, at Bangalore and also presentation of articles and other aspects. Thereafter, filed a report dated 16.07.2019. Based on the same, the Magistrate, by his order dated 04.09.2019, dismissed the complaint of the petitioner.

6. Considering the submissions and on perusal of the materials, it is seen that the lower Court referring the Lalitha Kumari Case is on a wrong premise. As per Lalitha Kumari case, if any complaint given to the Investigating Officer pertaining



to the matrimonial dispute, preliminary enquiry can be conducted and report to be filed within 14 days and this is only for the purpose of ascertaining and to find out whether cognizable offence is made out or not, nothing more, it is not necessary to go into the details of the allegations in the complaint. Further, in this case, the complaint is forwarded under Section 156(3) of Cr.P.C. by the Magistrate. As per Section 156 Cr.P.C., direction is given to the police to register a First Information Report and thereafter, to proceed with the investigation and to file a final report. In this case, such direction not complied, the Magistrate also failed to look into this aspect.

7. In view of the same, the order, dated 04.09.2019, passed by the Judicial Magistrate, Coonoor, is hereby set aside and the said Magistrate is directed to direct the Inspector of o Police, Wellington Police station to register the First Information Report as per the earlier order dated 17.06.2019 and direct him to conduct enquiry and thereafter, either file a positive report or closure report, as the case may be. In case of closure, notice has to be served on the petitioner so that facilitate the petitioner to file protest petition if he so desires.

8. With the above direction, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Judicial Magistrate,
Coonoor, Nilgiris.
- 2.The Inspector of Police,
Wellington Police Station,
Coonoor Taluk,
The Nilgiris.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.I.John Arockiadas, Advocate Sr.39348

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srg 01/09/2021