



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.10031 of 2021

Aarthi

... Petitioner

Versus

1.The Superintendent of Police,
Office of the District Superintendent of Police,
Thiruvannamalai.

2.The State represented by,
The Inspector of Police,
Anti-Land Grabbing Cell,
Thiruvannamalai.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the 1st respondent Police to register a case on the basis of complaint lodged by the petitioner's father on 24.08.2020.

For Petitioner : Mr.R.Vivekananthan

For Respondents: Mr.A.Damodaran

Government Advocate (Crl. Side)

ORDER

In this case, this Court on 08.06.2021, had passed the following order:-

"This Petition has been filed to direct the first respondent police to register a case on the basis of complaint lodged by the petitioner's father on 24.08.2020.

2. Heard the learned counsel for the petitioner and the learned counsel for Government (Crl. Side) appearing on behalf of the respondents.

3. It appears that the petitioner's father had lodged a complaint to the first respondent on 24.08.2020, which was forwarded to the second respondent and thereafter, no action has been taken, which made him to file a petition under Section 156(3)



WEB COPY

of Cr.P.C., before the learned Judicial Magistrate No.1, Thiruvannamalai, in CrI.M.P.No. 148 of 2021. The learned Judicial Magistrate No.1, Thiruvannamalai, by its order dated 22.01.2021 directed the second respondent to expedite the enquiry and complete the same within a period of two months and also directed that during the course of enquiry, if any cognizable offence is made out, the second respondent shall take action in accordance with law and in case of closure of the complaint, a copy of the closure report to be furnished to the petitioner within a period of four months.

4. The contention of the learned counsel for the petitioner is that the petitioner's father had passed away on 26.04.2021 and hence, the petitioner is pursuing the case by filing the above direction petition. He further submits that the complaint was against one R.K.Balasubramaniam, who was a money lender, taking advantage of his education qualification and registration as an Advocate, though he does not practice law, fleecing the people by charging exorbitant interest and to grab the property. The petitioner is the victim of R.K.Balasubramaniam. A complaint has been lodged against R.K.Balasubramaniam before the Bar Council of Tamil Nadu and Puducherry in Complaint No. 50 of 2021 and the same is pending. On no action by the police, the said R.K.Balasubramaniam got embolden, came and encroached the property of the petitioner, for which, preferred a complaint on 22.05.2021.

5. Mr.Damodharan, learned Counsel for Government (CrI.Side) submits that on the direction issued by the learned Judicial Magistrate No.1, Thiruvannamalai, enquiry was conducted and the case was closed on 09.03.2021 and the closure notice has also been sent to the petitioner and closure report was filed before the Lower Court. He further submits that with regard to the complaint dated 22.05.2021, it is a separate cause of action and the prayer in this case is to register a case on the basis of the complaint dated 24.08.2020, for which the reply of the petitioner is that had the enquiry and the investigation has been proper subsequent occurrence leading to the lodging of the complaint dated 22.05.2021 would not arise. Further, for filing the closure report and for the action taken on the complaint dated 22.05.2021, he seeks time.



WEB COPY

6. On perusal of the materials available on record and also on the submissions made on either side, it is strange to find that the order passed under Section 156(3) Cr.P.C., in CrI.M.P.No. 148 of 2021, dated 22.01.2021 by the learned Judicial Magistrate No.1, Thiruvannamalai, is in printed Format, wherein the certain particulars alone are filled in hand and other particulars are already pre-typed, which shows the manner in which the Judicial officer is dispensing the judicial work. This careless and lethargic act and attitude of the learned Judicial Magistrate No.1, Thiruvannamalai is deplorable and it shows that the import of Section 156(3) Cr.P.C., is not understood properly and why direction to the police to register a complaint and investigate the case is given. The learned Judicial Magistrate No.1, Thiruvannamalai, passing such orders is a pre-typed manner, is depreciated.

7. In view of the same, this Court directs the learned Chief Judicial Magistrate, Thiruvannamalai, to conduct enquiry with regard to the order passed by the learned Judicial Magistrate No.1, Thiruvannamalai in CrI.M.P.No.148 of 2021, dated 22.01.2021 and further to find out how many such orders are passed and file a report to this Court on 22.06.2021.

8. For filing such report, call the matter on 22.06.2021."

2.In continuation and conjunction to the above order, this Court passing the following order.

3.From the closure report dated 22.02.2021, it is seen that the closure report has been sent through the registered post to the complainant, the father of the petitioner on 17.12.2020 which cannot be so. The order under Section 156(3) of Cr.P.C., has been passed by the learned Judicial Magistrate No.I, Tiruvannamalai on 22.01.2021 and the same has been despatched on 23.01.2021. This Court was not in approval in the manner in which the orders passed under Section 156(3) Cr.P.C., since it is not proper and it is in printed form which ex-facio reflects non application of mind by the learned Magistrate while passing the order under Section 156(3) Cr.P.C., by directing the respondent Police to expedite the enquiry based on the complaint given by the complainant and comply the same within a period of two months from the date of the receipt of the copy of the order.

4.This Court received the report in Dis.No.642/2021, dated 18.06.2021 from the learned Chief Judicial Magistrate No.I,



Tiruvannamalai. From the report, it is seen that there have been several such orders passed by the learned Judicial Magistrate No.I, Tiruvannamalai. The learned Judicial Magistrate No.I, Tiruvannamalai appeared in person and on enquiry, he submitted that it was due to work pressure, the orders were passed unintentionally. This Court reluctantly accepts the explanation of the learned Judicial Magistrate No.I, Tiruvannamalai. The learned Judicial Magistrate No.I, Tiruvannamalai is advised not to pass any such order in future and further to follow the directions of the the Hon'ble Apex Court in the case of "Sakiri Vasu Versus State of Uttar Pradesh and Others reported in (2008) 1 Supreme Court Cases (Cri) 440", wherein the powers of the learned Magistrates under Section 156 (3) Cr.P.C., have been enunciated and to follow the guidelines issued by the Hon'ble Apex Court in the case of "Priyanka Srivastava and another Versus State of Uttar Pradesh and Others reported in (2015) 6 Supreme Court Cases 287".

5.The Hon'ble Apex Court in the case of Priyankaa Srivastava (cited above) taking into consideration the manner in which the order under Section 156(3) Cr.P.C., to be passed, had clearly held "after going through the documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C, should be reflected in the order, though a detailed expression of his views is neither required nor warranted". Further, referring to various judgments and principles laid. The following extracts will be beneficial for better undertaking:-

"17.The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C., has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

"156. Police officer's power to investigate cognizable case. -(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such



WEB COPY

officer was no empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

18. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others[2], had to express thus:

"It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173."

19. In Anil Kumar v. M.K. Aiyappa[3], the two-Judge Bench had to say this:

"The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."



WEB COPY

20. In *Dilawar Singh v. State of Delhi*[4], this Court ruled thus:

"18. ...11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

21. In *CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.*[5], the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure.

And again:

"When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under [pic]Section 156 (3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence



WEB COPY

itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

22. Recently, in Ramdev Food Products Private Limited v. State of Gujarat[6], while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: ".... the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."

23. At this stage, we may usefully refer to what the Constitution Bench has to say in Lalita Kumari v. Govt. of U.P.[7] in this regard. The larger Bench had posed the following two questions:-

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the larger Bench opined thus: "49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an



WEB COPY

officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable [pic]offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning. "Shall"

xxx xxx xxx xxx

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent. "Information"

xxx xxx xxx xxx

111. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

xxx xxx xxx xxx

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to



WEB COPY

the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.

24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned



WEB COPY

Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

25. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the



investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

WEB COPY

26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned



WEB COPY

Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

6.The extract of the above guidelines is reproduced to remind the learned Magistrate to follow the same, since this Court had come across several orders, not only of the learned Judicial Magistrate No.I, Tiruvannamalai but also several Magistrates without knowing the import and difference between Section 156(3) of Cr.P.C., and Section 202 Cr.P.C., passed orders. It is deplorable to see such orders, despite the Hon'ble Apex Court giving directions to circulate the Judgment among the learned Magistrates so that they can be more vigilant and diligent while exercising the powers under Section 156(3) Cr.P.C., which is followed in breach. In future this Court hopes no such mechanical orders would be passed.

7.Since the 2nd respondent Police after completion of enquiry closed the complaint on 22.02.2021, the petitioner is given liberty to agitate his rights by filing protest petition before the concerned Court. Further, the 2nd respondent Police is directed to independently consider the complaint lodged by the petitioner on 24.05.2021 which is an offence committed subsequent at a later point of time taking advantage of the closure report, dated 22.02.2021.

8.With the above observation, this Criminal Original Petition is disposed of. With the above observation, this Criminal Original Petition is disposed of.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vv2
To

1.The Judicial Magistrate Court No.I,
Tiruvannamalai.



2.The Superintendent of Police,
Thiruvannamalai.

3.The Inspector of Police,
Anti-Land Grabbing Cell,
Thiruvannamalai.

4.The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr.R.Vivekananthan, Advocate sr 27641 & 30784.

CRL.O.P.No.10031 of 2021

NMI (CO)
SP(20/07/2021)