



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.02.2021
CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

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WP(MD)No.1738 of 2021

Sivamani

... Petitioner

vs.

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The Superintendent of Police,
District Police Office,
Thanjavur.

3.The Zonal Tahsildar,
Orathanadu,
Thanjavur District.

4.The Revenue Inspector,
Kavarlipatti,
Orathanadu Taluk,
Thanjavur District.

5.The Village Administrative Officer,
Neiveli Vadapathi Village,
Orathanadu Taluk,
Thanjavur District.

6.Thangappan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the 1st and 2nd respondents to take necessary action against the respondents 3 to 6.

For Petitioner : Mr.Ramu.S

For Respondents 1 & 2 : Mr.A.Robinson

Government Advocate (Criminal Side)

O R D E R

The present petition has been filed seeking for a direction to the respondents 1 and 2 to take necessary action against the respondents 3 to 6 based on the petitioner's representations dated 26.12.2020 and 28.12.2020.

2.The main grievance of the petitioner is that the second respondent while registering the First Information Report on the basis of the complaint lodged by the Village Administrative Officer

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against the present petitioner, did not consider the representations filed by the petitioner.

3. Mr. A. Robinson, learned Government Advocate (Criminal Side), who accepts notice on behalf of the first and second respondents drew the attention of this Court to the decision of the Hon'ble Supreme Court in **M. Subramaniam and Another Vs. S. Janaki and Another** reported in **2020 2 Crimes(SC) 261** and submitted that the present writ petition is not maintainable and that the Hon'ble Supreme Court had clearly held that if these kind of writ petitions are entertained by the High Courts, then they would be flooded with such writ petitions and would not be able to do any other work except dealing with such writ petitions merely for direction to the police to register First Information Report and investigate the matter. The paragraphs 6 and 8 of the said judgment reads as under,

"The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others, in which it is observed.

2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and



also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating (2016) 6 SCC 277 officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.

8. In these circumstances, we would allow the present appeal and set aside the direction of the High Court for registration of the FIR and investigation into the matter by the police. At the same time, our order would not be an impediment in the way of the first respondent filing documents and papers with the police pursuant to the complaint dated 18.09.2008 and the police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest."

4. The present petition has been filed seeking for a direction to take appropriate action against the respondents 3 to 6 by the first and second respondents and in fact, the petitioner wants the first and second respondents to register First Information Report against the respondents 3 to 6 and investigate the matter. If the petitioner is aggrieved that his complaint has not been properly dealt with by the police, he can file a petition under 156(3) of the Code of Criminal Procedure before the concerned Magistrate or file a private complaint under Section 200 of the Code of Criminal Procedure before the concerned Magistrate. The judgment clearly spells out the jurisdiction of the Magistrate under Section 156(3) of the Code of Criminal Procedure and that entertainment of writ petition for a direction to the police to register First Information Report and investigate the matter is not maintainable.



5. In these circumstances, the writ petition stands dismissed.
No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

Note: (i) 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 District Collector,
Thanjavur District,
Thanjavur.
2. The Superintendent of Police,
District Police Office,
Thanjavur.
3. Sub Inspector of Police,
Vattathikottai Police Station,
Thanjavur District.

WP (MD) No.1738 of 2021
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ES (CO)
KB (08.03.2021) 4P 4C