



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.07.2021

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.64 of 2021

WEB COPY

Arun Jothi

: Petitioner/Complainant

Vs.

1.Vanniyan
2.Kesavan
3.Santhi
4.Jeya
5.Murugan

: Respondents/Accused

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure, to call for the records relating to the impugned order passed by the Judicial Magistrate, Valliyoor, in Cr.M.P No.534 of 2020, dated 28.09.2020 and to set aside the same and consequently, direct Judicial Magistrate, Valliyoor to pass order for referring the petition under section 156(3) Cr.P.C to the Inspector of the Police, Palavur Police Station, Tirunelveli District.

For Petitioner

: Mr.V.Sasikumar

For Respondents

: Mr.G.Karuppasamy Pandian

O R D E R

This Criminal Revision is filed to call for the records relating to the impugned order passed by the Judicial Magistrate, Valliyoor, in Cr.M.P No.534 of 2020, dated 28.09.2020 and to set aside the same and consequently, direct the Judicial Magistrate, Valliyoor to pass order for referring the petition under section 156 (3) Cr.P.C to the Inspector of the Police, Palavur Police Station, Tirunelveli District.

2.It is the case of the petitioner that on 26.05.2020 at about 6.30 am, the respondents trespassed in his property and damaged the stone and fencing and when it was questioned, the respondents abused him with filthy language and attempted to attack him with deadly weapons. In this connection, the petitioner lodged a complaint before the Sub Inspector of Police, Palavur Police Station, Tirunelveli District and also sent a representation to the Superintendent of Police, Tirunelveli District. As no action was taken by them, the petitioner preferred a complaint under section 156(3) of Cr.P.C before the Judicial Magistrate, Valliyoor, in Cr.M.P No.534 of 2020 to take action against the respondents for the



offences punishable under sections 447, 427, 379, 294(b) and 506(ii) IPC. The learned Judicial Magistrate, Valliyoor, by order, dated 28.09.2020 dismissed the petition. Aggrieved over the same, the petitioner is before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

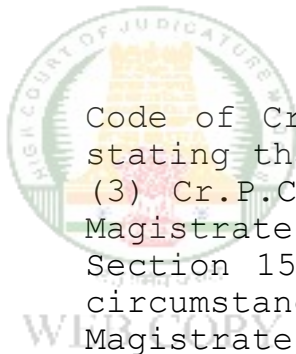
4. It is the main contention of the learned counsel for the petitioner that if any petition is filed under section 156(3) Cr.P.C, it is the bounden duty of the Magistrate to see whether any prima facie case is made out in the complaint or not and he should not go into the merits of the case and that if any complaint is filed under Section 190 of Cr.P.C, the learned Judicial Magistrate is duty bound to forward it to the police under section 156(3) Cr.P.C or treat the same as a private complaint under section 200 Cr.P.C and direct the party to produce the materials to prove the prima facie case and that the learned Judicial Magistrate, Valliyoor without following the settled procedures, dismissed the petition.

5. No doubt, if the petition is filed under section 156(3) Cr.P.C, the learned Magistrate has to apply his mind to know whether the allegations in the complaint prima facie make out a case and the Magistrate should not mechanically pass order directing the police to investigate the case. In case, if the allegations constitute a cognizable offence, then, the Magistrate is duty bound to forward the complaint to the concerned police for registering the FIR and for further investigation.

6. It is settled law that when a complaint is filed before the court of competent jurisdiction, the Magistrate will have two options and as per the first option, he can take the complaint on file under section 200 Cr.P.C by examining the complainant and witnesses, if any and he can pass order either to dismiss the same under section 203 Cr.P.C or to issue process under Section 204 Cr.P.C. As per the second option, if the complaint discloses any cognizable offence, he can refer the matter for further investigation under section 156(3) Cr.P.C to find out the truth of the allegations. But if a petition is filed under section 156(3) Cr.P.C, the Magistrate can either forward the said petition to the police for investigation or treat the said petition as private complaint under section 200 Cr.P.C.

7. Under Section 190(1)(a) Cr.P.C., the Magistrate has to receive the complaint and thereafter, under Section 200 Cr.P.C shall examine upon oath of the complainant and the witness present, if any, for recording the sworn statement of the complainant and other witnesses and the Magistrate may take cognizance of the offences or he may dismiss the complaint under Section 203 Cr.P.C on considering the oath of the complainant and witnesses.

8. Coming to the instant case on hand, the learned Judicial Magistrate, Valliyoor, without following the procedures contemplated under the



Code of Criminal Procedure Code, has simply dismissed the petition stating that the request of referring the petition under section 156 (3) Cr.P.C is declined. This court is of the view that the learned Magistrate by dismissing the petition filed by the complainant under Section 156(3) of Cr.P.C has committed illegality. In view of the circumstances, the impugned order passed by the learned Judicial Magistrate, Valliyoor, in Cr.M.P No.534 of 2020, dated 28.09.2020 is liable to be set aside and the case is remitted back to the learned Magistrate for fresh disposal.

9.In the result, this criminal revision is allowed. The impugned order, dated 28.09.2020 passed by the Judicial Magistrate, Valliyoor, is set aside. The case is remitted back to the trial court namely the Judicial Magistrate to dispose of the case in Cr.M.P No.534 of 2020 afresh, purely on merits and in accordance with, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

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 Judicial Magistrate,
Valliyoor.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-23811[F] dated 26/07/2021)

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MGJ (23/08/2021) 3P 4C