



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

CORAM :

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THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Crl.O.P. (MD)No.1873 of 2021

S.Ayyanar

...Petitioner

/Vs./

1.K.Sivasankar
2.Umamaheshwari
3.M.K.Ganesaraja
4.Kaasi Vishwanathan
5.R.Manimehalai
6.K.Balakkannan
7.S.Lakshmanan

8.The Inspector of Police,
Thevaram Police Station,
Theni District.

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Cr.M.P.No.2370 of 2020, dated 07.01.2021 on the file of the Judicial Magistrate Court, Bodinayakanur, Theni District and set aside the same, and consequently direct the Judicial Magistrate, Bodinayakanur, Theni District to transfer the petitioner's complaint in Crl.M.P.No.2370 of 2020 to the eighth respondent, Inspector of Police, Thevaram Police Station to register First Information Report.

For Petitioner	: Mr.R.Murugappan
For Respondent No.8	: Mr.S.Chandra Sekar Additional Public Prosecutor

ORDER

The present petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the orders passed by the learned Judicial Magistrate, Bodinayakanur, Theni District, in Cr.M.P.No.2370 of 2020, dated 07.01.2021.

2. The main grievance of the petitioner is that though he filed a private complaint before the Judicial Magistrate Court, Bodinayakanur, under Section 156 (3) of the Code of Criminal



Procedure, the learned Judicial Magistrate, Bodinayakanur, without applying his mind, dismissed the application holding that the dispute between the petitioner and the private respondents is purely civil in nature.

3. The dismissal order passed by the learned Judicial Magistrate, Bodinayakanur reads as follows:

"Petitioner present. Enquiry heard. Prima facie case not made out as against the respondents and on perusal of records it seems that there is civil dispute pending. The petitioner and respondents only because of the emimity this petition may filed by the petitioner. Hence this petition dismissed as the alleged incident is civil nature one"

4. It is well settled that when a private complaint is filed under Section 200 of the Code of Criminal Procedure before the Magistrate, he has two options either to get the matter investigated through police under Section 156(3) of the Code of Criminal Procedure or to proceed under Section 200 of the Code of Criminal Procedure by examining the complainant and his witnesses

5. When the Magistrate proceeds under Section 156(3) of the Code of Criminal Procedure, he has to refer the case to the police concerned to investigate and report to him with regard to the allegations found in the petition and when the Magistrate proceeds under Section 200 of the Code of Criminal Procedure, he has to take cognizance of the offence and follow the procedures prescribed in Section 200 under Chapter XV of the Code of Criminal Procedure. The Magistrate has a duty to record evidence let in by the complainant and also to examine the witnesses and if necessary, even to call for a police report under Section 202 of the Code of Criminal Procedure and then to decide as to whether he has to proceed under Chapter XV of the Code of Criminal Procedure or has to dismiss the complaint.

6. In the instant case, the Magistrate, without even examining the complainant and his witnesses has come to a conclusion that the matter in dispute between the petitioner and the private respondents is purely civil in nature.

7. Considering the facts and circumstances of the case, the order passed by the learned Judicial Magistrate, Bodinayakanur, Theni District, in Cr.M.P.No.2370 of 2020, dated 07.01.2021 is set aside and the learned Judicial Magistrate, Bodinayakanur, Theni District, is directed to consider the private complaint filed by the petitioner afresh and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order/uploading of the order.



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

Sd/-

Assistant Registrar

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SM

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,
Bodinayakanur,
Theni District.
- 2.The Inspector of Police,
Thevaram Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Order made in
Crl.O.P. (MD)No.1873 of 2021
09.02.2021**

PK(CO)
SRS (19/03/2021) 3P : 4C