



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM :

THE HONOURABLE **Mrs. JUSTICE R. HEMALATHA**

W.P. (MD) No. 5272 of 2021

WEB COPY

T. Karuppasamy

...Petitioner

/Vs./

1. The Superintendent of Police,
Viruthunagar District, Viruthunagar.

2. The Deputy Superintendent of Police,
Viruthunagar District, Viruthunagar.

3. The Inspector of Police,
Ammapatti Police Station,
Ammapatti, Viruthunagar District.

4. Senthilkumar

5. S. Balasubramanian

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the third respondent to conduct preliminary enquiry based on the complaint of the petitioner, dated 09.02.2021 and also initiate action against the respondents 4 and 5.

For Petitioner

: Mr. M. Pandian

For R1 to R3

: Mr. S. Chandrasekar

Additional Public Prosecutor

ORDER

By consent, this Writ Petition is taken up for final hearing at the admission stage itself.

2. The present petition is filed seeking to direct the third respondent to conduct preliminary enquiry based on the complaint of the petitioner, dated 09.02.2021 and also initiate action against the respondents 4 and 5.

3. In the decision in **M. Subramaniam and another Vs. S. Janaki and another, reported in 2020 (2) Crimes (SC) 261**, in which, it has been



"....18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution."

6. The said ratio has been followed in *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others*², 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...."

4. In view of the Judgment rendered by the Hon'ble Supreme Court of India, the present petition is dismissed. No costs.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj i

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 Superintendent of Police,
Viruthunagar District, Viruthunagar.
2. The Deputy Superintendent of Police,
Viruthunagar District, Viruthunagar.
3. The Inspector of Police,
Ammappatti Police Station,
Ammappatti, Viruthunagar District.

W.P. (MD) No. 5272 of 2021
11.03.2021

=
SSS (CO)
KK (07.04.2021) 3P 4C