



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP(MD)No.6976 of 2021

Mahalingam

... Petitioner

vs.

- 1.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- 2.The Sub Inspector of Police,
Kandavarayanpatti Police Station,
Sivagangai District.
- 3.Gandhimani
- 4.Nithyakalyani
- .

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the respondents 1 and 2 to consider the petitioner's complaints dated 05.03.2021 and 06.03.2021 within the time frame stipulated by this Court.

For Petitioner :Mr.S.A.Ajmal Khan

For R1 and R2 :Mr.A.Robinson,

Government Advocate (Criminal Side)

O R D E R

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

2.The main grievance of the petitioner is that the private respondents attacked the petitioner brutally, and though the petitioner lodged a complaint against them with the second respondent, no action has been taken by the second respondent till date.

3.In the decision in ***M.Subramaniam and Another Vs. S.Janaki and Another*** reported in ***2020 2 Crimes(SC) 261***, 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,

<https://hcservices.ecourts.gov.in/hcservices/> ~~"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 said decision is followed by a Division Bench of this Court in the case of **G.Prabakaran Vs., Superintendent of Police** reported in **(2018) 4 MLJ (Cr1) 513**, wherein it has been held thus:-

".....

35. Accordingly, we answer the references in the following manner, while giving certain directions:

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once



such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

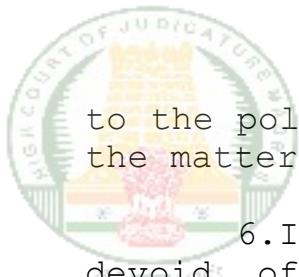
(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one. The references stands ordered accordingly.

5.The present petition has been filed seeking for a direction to the second respondent to take necessary legal action against the respondents 3 and 4 and in fact, the petitioner wants the second respondent to register First Information Report against the respondents 3 and 4 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. The judgment clearly spelt 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.

6. In the circumstances, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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.

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To

1. The Superintendent of Police,
Sivagangai District,
Sivagangai.
2. The Sub Inspector of Police,
Kandavarayanpatti Police Station,
Sivagangai District.

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GS (21.04.2021) 5P 3C