



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.07.2021

DELIVERED ON : 19.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

CRL.O.P (MD) .No.8689 of 2021

P.Karuppasamy

... Petitioner

Vs.

1. The State Represented by
The Inspector of Police,
City Crime Branch,
Tirunelveli City.
- 2.V.Arjunan
S/o.Veerapandian,
(Ex.Secretary),
TNEB Dr.Ambedkar Employees Union,
Office Assistant (Production),
TANGEDCO/TNEB Office,
Sivanthipatti Road,
Thiagaraja Nagar,
Tirunelveli 11.
- 3.P.Marcos,
S/o.Periasamy,
(Ex.Treasurer)
TNEB Dr.Ambedkar Employees Union,
Assistant Executive Engineer,
No.230/110/11, Kilowatt,
TNEB Sub Station,
Keelaveeranam,
Tenkasi District-627 861.
- 4.V.Sivakumar,
S/o.Venkatesh
(State Vice President),
TNEB Dr.Ambedkar Employees' Union,
Assistant Executive Engineer,
No.230/110/11, Kilowatt,
Kayathur TNEB Sub-Station,
Rajapudukudi,
Thoothukudi District-627 302.



5.K.G.Samy,
State General Secretary,
TNEB Dr.Ambedkar Employees Union,
TANGEDCO/TANTRANSCO Limited,
NPKRR Maligai,
No.144, Anna Salai, Chennai-2.

6.Mr.K.R.M.Adidraavidar,
State President,
TNEB Dr.Ambedkar Employees Union,
TANGEDCO/TANTRANSCO Limited,
NPKRR Maligai,
No.144, Anna Salai,
Chennai-2.

... Respondents

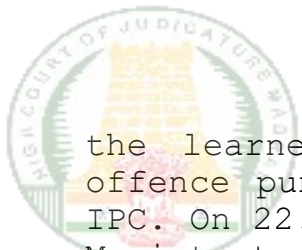
PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and set aside the closure report dated 26.03.2021 on the file of the 1st respondent and to register the case against the respondent Nos.2 to 6 in light of the order in Cr.M.P.No.7110 of 2020 dated 22.12.2020 passed by the learned Judicial Magistrate Court No.1, Tirunelveli under Section 156(3) of Cr.P.C.

For Petitioner : Mr.K.Dinesh
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records and set aside the closure report dated 26.03.2021 on the file of the 1st respondent and to register the case against the respondent Nos.2 to 6 in light of the order in Cr.M.P.No.7110 of 2020 dated 22.12.2020 passed by the learned Judicial Magistrate Court No.1, Tirunelveli under Section 156(3) of Cr.P.C.

2. The case of the petitioner is that the petitioner is a Member of the Tamil Nadu Electricity Board Dr.Ambedkar Employees Union Association and the private respondent Nos.2 to 6 are functioning as officio of association as Ex-Secretary, Ex-Treasurer, State Vice President, State General Secretary and State President respectively. During that time, the respondent Nos.2 to 6 had misappropriated the association Member's Welfare Funds to a tune of Rs.8,00,000/- (Rupees Eight Lakhs Only) for the period from January 2015 to December 2019. On that period, they have also created forged documents. On coming to know about the illegal activities of the respondent Nos.2 to 6, the petitioner lodged a complaint before the first respondent. But the enquiry was conducted in a biased manner and no case has been registered. Therefore, the petitioner had filed a petition under Section 156(3) of Cr.P.C. to register the case against the respondent Nos.2 to 6 in Cr.M.P.No.7110 of 2020 before



the learned Judicial Magistrate Court No.1, Tirunelveli for the offence punishable under Sections 460, 490, 420, 468 and 477(A) of IPC. On 22.12.2020, an order has been passed by the learned Judicial Magistrate, directing the respondent No.1 to conduct an enquiry and complete the same within a period of four weeks from the date of receipt of a copy of this order and if any cognizable offence is made out during the course of enquiry, action may be taken on that basis and in case of closure of the complaint, a copy of the closure report may be furnished to the petitioners. In spite of that, no case has been registered by the Police. Instead, the closure report has been filed in a biased manner.

3. Seeking quashment of the complaint, this petition has been filed mainly on the ground that it is the duty of the Police officer to register the case and investigate the matter. Since the alleged offences are cognizable offences, without registering the F.I.R, enquiry conducted is without jurisdiction.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

5. The only question arise is whether any illegality has been committed by the first respondent in filing the closure report before the learned Judicial Magistrate No.1, Tirunelveli in Cr.M.P.No.7110 of 2020 without registering the First Information Report. The grievance of the petitioner is that the offence alleged against the private respondents are cognizable offence such as 460, 409, 420, 468, 477(A) of IPC. As per the direction issued by the learned Judicial Magistrate, the first respondent ought to have registered the First Information Report. Therefore, for that purpose, the petitioner relied upon the judgments of this Court passed in Cr.R.C.(MD).No.249 of 2017 in the case of **S.Pandiyarajan vs. Perumal and others**, and in Crl.O.P(MD).No.2258 of 2021 in the case of **P.Karuppasamy vs. The Inspector of Police, City Crime Branch, Tirunelveli City**. Since a valid point is involved in this matter, we need not go into the factual aspects. For the limited purpose of considering the point raised by the petitioner, a cursory reading of the closure report is necessary. Further, a case has been registered against this petitioner for having misappropriated the funds which was earmarked for paying electricity charges, in C.C.B.Cr.No.26 of 2020 for the offence punishable under Section 409, 477A, in which, the petitioner was released on anticipatory bail and also suspended from service. Apart from that, a closure report has also been submitted as mistake of fact.

6. Therefore, now the remedy that is available to the petitioner against the closure report is to file a protest petition before the concerned Court. The contention on the part of the



registering the First Information Report, cannot be accepted. In the case of **M.Subu and Another Vs. S.M.T and Another 2020 16 SCC 728**, the Hon'ble Supreme Court consisting of 3 Hon'ble Judges has gone through the earlier judgments including one that has been rendered in **Sakiri Vasu Vs. State of U.P (2008) 2 SCC 409** and observed like this:-

"In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154 (3) Cr.P.C by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

7. Moreover, the Constitutional Bench of the Hon'ble Supreme Court of India in Lalitha Kumari's case, it is observed that the police has got a power to conduct preliminary enquiry, depending upon the facts and circumstances of the case and some of the categories which are mentioned in the above said judgment are matrimonial/family disputes, commercial offences, medical negligence cases, corruption cases, cases where there are abnormal delay, latches in initiating criminal prosecution. The Hon'ble Supreme Court has further stated that the above said categories are only illustrative in nature. From the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India, it is seen that the power of the police Officers to make preliminary enquiry is not taken away. Even if a direction is issued by the learned Magistrate under Section 156(3) Cr.P.C, there is no bar for the Police officers to make preliminary enquiry, when the facts and circumstances so warrant. Here the facts and circumstances of the case clearly show that it warranted a preliminary enquiry which was rightly decided and undertaken by the Investigating Officer. So, I find absolutely no merit in this petition. The only option available to the petitioner is to approach the concerned Court through appropriate proceedings for redressing the grievance.



8. Now, in this case, the enquiry has been conducted and the complaint was also closed. The only option available to the petitioner is either to file a protest petition before the concerned court or file a private complaint. Without resorting such course, filing of this petition for a direction to register the First Information Report is out of place and cannot be accepted.

9. With this liberty, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

ssb

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 No.1,
Tirunelveli.
- 2.The Inspector of Police,
City Crime Branch,
Tirunelveli City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RK(22.09.2021) 5P 4C