



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.08.2021
Date of Order	26.10.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VANCrI.O.P.(MD)No.8800 of 2021

S.Kannan : Petitioner

Vs.

State through

The Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhunagar District.

: Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to direct the respondent to register a case upon the order passed in Cr.M.P No.8737 of 2019 on the file of the learned Judicial Magistrate Court, Aruppukottai, Virudhunagar District, dated 18.02.2020 and to take action against the accused person in accordance with law.

For Petitioner : Mr.G.Balumahendran

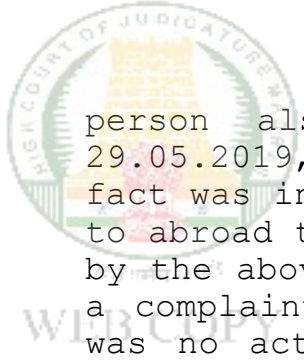
For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner seeking for direction to the respondent herein to register the case, on the basis of the complaint given by his wife and as per the direction issued by the Judicial Magistrate, Aruppukottai, in Cr.M.P No.8737 of 2019, dated 18.02.2020.

2.The case of the petitioner in brief:-

The petitioner was working in abroad. After his marriage, they had two children. When he was working in abroad, one Markkandayyan. S/o.Nagaraj came to this petitioner's house for maintenance and compound wall construction work. At that time, the wife of the petitioner and the said Markkandayyan developed intimacy and by force of the said Markkandayyan, they had physical relationship. The above said Markkandayyan threatened the wife of the petitioner that he will kill the petitioner and their child. The above said



person also caused damage to the house-hold articles. On 29.05.2019, when the petitioner returned to India, the above said fact was intimated to him. Again on 04.08.2019, the petitioner went to abroad to continue his job. Because of the continuous threat made by the above said Markkandayyan, the wife of the petitioner, lodged a complaint on 08.08.2019 before the respondent police. But there was no action. So, she filed CrI.MP No.8737 of 2019 before the Judicial Magistrate, Aruppukottai and by an order, dated 18.02.2020, the respondent was directed to register a case, enquire and investigate the same. While so, on 19.02.2020 at about 5.00 am, the wife of the petitioner was found in unconscious state of mind and she was taken to the Government Hospital, Kariyappatti, but however, she was declared dead. So, the case in Crime No.69 of 2020 was altered into 174 of IPC, which was registered, on 19.02.2020. Again, the petitioner went to abroad and returned to India on 24.04.2021. Thereafter also, the threat continued. So in-spite of specific direction in the above said criminal case, no investigation or enquiry was undertaken. Hence, this petition.

3. When this matter was taken up for hearing, the learned Additional Public Prosecutor would submit that based upon the order passed by the Judicial Magistrate, Aruppukottai, in CrI.MP No.8739 of 2019, enquiry was undertaken and during the course of enquiry, it was found that the complainant Panchavarnan committed suicide and so, the enquiry could not be completed and it was closed. The closure report also shows that because of suicide, the complaint also came to be closed. So, the closure report *per se* is not maintainable. So, a direction has been issued by the learned Judicial Magistrate, Aruppukottai, to register the case and enquire the matter, if cognizance offence is made out. Simply because of the complainant died, the cause of action of the criminal liability will not abate and still it exists. The offence that has been alleged in the above case against the said Markkandayyan is serious in nature. So, the closure of the complaint given by the said Panchavarnam may not be proper. But however, remedy is available to the petitioner that he can approach the trial court and file a protest petition and work out his remedy promptly. Even though the closure of the complaint is not valid in law, this court cannot exercise its jurisdiction under section 482 of the Criminal Procedure Code, to direct the respondent herein to register the case. Such a course is not available, as it is settled proposition of law now. So, I am of the considered view that the petitioner can be directed to file a protest petition before the trial court and if such a protest petition is filed, the learned Judicial Magistrate, Aruppukottai, shall consider the same on merits. The closure report copy shall be served to the petitioner within a period of 15 days from the date of receipt of the copy of this order.



4. With the above said directions, this Criminal Original petition stands **disposed of**.

Sd/-

Assistant Registrar (CS-II)

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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 Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhu Nagar District.
2. The Judicial Magistrate,
Aruppukottai.
Virudhu Nagar District.
3. The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

Cr1.OP(MD)No.8800 of 2021
26.10.2021

PK(CO)
KB(17.11.2021) 3P 4C