



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:09.08.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.653 of 2020

and

Crl.MP(MD)No.6499 of 2020

S.Annaraj

: Petitioner/Respondent

Vs.

1.The State rep. by
The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.

2.V.Santhi

: Respondents/Complainants

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure, against the order passed by the Judicial Magistrate No.II, Thoothukudi District, in Cr.M.P No.2800 of 2020, dated 21.10.2020.

For Petitioner : Mr.R.Anand
For 1st Respondent : Mr.RMS.Sethuraman
Counsel for State Government
(Criminal side)
For 2nd Respondent : Mr.R.J.Karthick

O R D E R

This Criminal Revision is directed against the order passed by the Judicial Magistrate No.II, Thoothukudi District, in Cr.M.P No.2800 of 2020, dated 21.10.2020.

2.It reveals from the records that the 2nd respondent herein filed a petition in Cr.MP No.2800 of 2020 on the file of the Judicial Magistrate No.II, Thoothukudi under section 156(3) of Cr.P.C seeking for a direction to register FIR and investigation for the offence under sections 147, 109, 120(b), 447 and 427 of IPC. After hearing both sides, the learned Magistrate, by order, dated 21.10.2020 allowed the petition and directed the police to register FIR and appointed the Superintendent of Police, Thoothukudi District, as Investigation Officer. Aggrieved by the same, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.It is seen from the records that the 2nd respondent herein filed the petition in Crl.MP No.2800 of 2020 under section 156(3) of Cr.P.C. The learned Judicial Magistrate ordered for registering FIR as against the petitioner herein and 5 others and further directed



the Superintendent of Police, Thoothukudi District, to investigate the case.

5.It is the duty of the Magistrate, while allowing the petition filed under section 156(3) Cr.P.C, to refer the complaint to the Station House Officer, for investigation and then the Investigating Officer, after due enquiry, thought fit, should register FIR and further investigate the case and file a final report before the jurisdictional Magistrate court. But in this case, the learned Magistrate directed the Station House Officer to register FIR and further directed the Superintendent of Police, Thoothukudi District to investigate the case. It is not correct. The cognizance of the case cannot be decided at this stage. Only after due enquiry, it is to be decided that whether FIR is to be registered or not. In the instant case on hand, the learned Magistrate forwarded the complaint to the Superintendent of Police and directed him to conduct enquiry and after the enquiry by the Superintendent of Police, it is to be decided whether the registration of FIR is necessary or not. Further, there is any material to connect the petitioner into the cause of the offence that cannot be decided at this stage. When a petition under section 156(3) Cr.P.C is filed before the Magistrate, the role of the Magistrate is very limited and it is not necessary to go into the merits of the case. But on perusal of the impugned order passed by the Magistrate, she came to the conclusion that *prima facie* case is made out and hence, she directed the police official to register the case. Hence, the order passed by the Magistrate is not correct. Further, in the present case, the dispute is civil in nature. Hence, it is the duty of the Magistrate to decide whether the petition filed under section 156(3) Cr.P.C is maintainable or not. Under these circumstances, this court is of the view that the impugned order passed by the learned Magistrate is not correct and it is liable to be set aside.

6.In fine, this Criminal Revision is allowed. The impugned order, dated 21.10.2020 passed in Crl.MP No.2800 of 2020 by the Judicial Magistrate No.II, Thoothukudi, is set aside. The case is remitted back to the learned Judicial Magistrate No.II, Thoothukudi to dispose of the case afresh, purely on merits and in accordance with law, after contemplating the procedures under section 156(3) of Cr.P.C, preferably within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

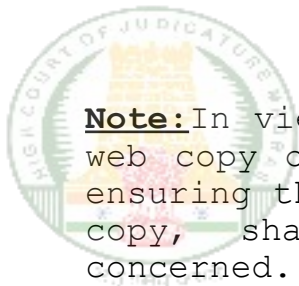
Sd/-

Assistant Registrar (CS III)

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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 Judicial Magistrate No.II,
Thoothukudi.
- 2.The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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RS (06.09.2021) 3P 5C