



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 30.03.2021

DATE ON WHICH PRONOUNCED : 21.05.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

W.P. (MD)No.12465 of 2017

and

WMP (MD)No.9613 of 2017

P.Surendren alias P.Surendran Nair
Son of M.Padmanabhan Thampi,
President,
Malayadi Primary Agricultural Co-operative
Credit Society Ltd., No.Y149,
Malayadi-629 153,
Via Kaliyakkavilai,
Kanyakumari District - 629 153. ... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Superintendent of Police of Kanyamumari,
At Nagercoil,
Kanyakumari District.
- 2.The Inspector of Police,
Kaliakkavilai,
Kanyakumari District.
- 3.Mr.Jamal
(Father's name not known to the petitioner)
Inspector of Police,
Kaliakkavilai,
Kanyakumari District. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a **Writ of Certiorarified Mandamus**, calling for the records of the second respondent, pertaining to his order in Na.Ka.No..../2017 dated 29.05.2017, quash the same and directing him to register a case (F.I.R) on the petitioner's representation dated 12.02.2016.



For Petitioner : Mr.K.N.Thampi

For R1 & R2 : Mr.M.Ganesan
Government Advocate(Crl.Side)

For R3 : No Appearance

WEB COPY

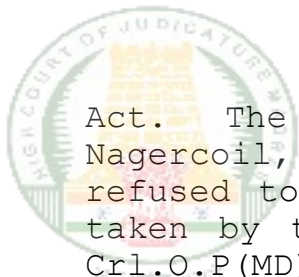
ORDER

This writ petition has been filed seeking a writ of certiorarified mandamus to call for the records of the second respondent, pertaining to his order in Na.Ka.No.../2017 dated 29.05.2017, quash the same and direct him to register First Information Report, on the basis of the petitioner's representation, dated 12.02.2016.

2. The brief facts are as follows:-

The petitioner was the President of Malayadi Primary Agricultural Co-operative Society Ltd., Malayadi, Kanyakumari District. The Kanyakumari District Central Co-operative Bank, Nagercoil, sanctioned a loan of Rs.2,00,000/- for purchase of five milk cows for the Joint Liability Group, in short called J.L.G of Parakunnu, consisting of five members of the said Society. One Natarajan, Valiyavila Veedu, Vanniyoor, Vanniyoor P.O Via Kuzhithurai, Kanyakumari District, was the President of the said J.L.G. The cost of each milk cow was Rs.50,000/-. So, totally Rs.2,50,000/- was required for purchasing of five milk cows. But, the amount of loan was only Rs.2,00,000/-. So, the Joint Liability Group deposited a sum of Rs.50,000/- in the Bank so as to make a total amount of Rs.2,50,000/-. Five milk cows were purchased for the above said J.L.G from one Chandrasekharan and a cheque for the said amount was issued to him on 31.03.2012 and the same was encashed on 09.04.2012. So, no money was available to the credit of the said J.L.G. The said Natarajan did not have any account in his personal name.

3. One Kanakam became the Secretary of the Society in March 2015 and one A.Kumari Bindhu was the Clerk-in-charge. They conspired to misappropriate the money. So, they created bogus vouchers for the above said Rs.50,000/-, which is dated 13.03.2015, in Voucher No.1303. The said Natarajan signed on the payment voucher as if he received the money. So, they have misappropriated a sum of Rs.50,000/-, which belongs to the Society. Later, P.Kanakam retired from the service on 30.05.2015. The Society after coming to know about the offence, issued a memo dated 06.02.2016, to P.Kanakam and A.Kumari Bindhu. The above said A.Kumari Bindhu gave a reply. But, the said P.Kanakam refused to receive the memo. The petitioner sent a petition dated 12.02.2016 to the second respondent. But, no action was taken. Later, a petition was filed by the petitioner seeking information as per the provisions of Right to Information



Act. The Public Information Officer, Kanyakumari District, Nagercoil, gave a reply dated 01.05.2016, that the second respondent refused to take action. In spite of repeated force, no action was taken by the authorities. So, the petitioner filed a petition in CrI.O.P(MD)No.16890 of 2016 for a direction based upon the petition dated 12.02.2016. By the order dated 15.03.2017, the second respondent was directed to expedite the enquiry and complete the same, within a period of two weeks from the date of receipt of a copy of the order. It is also made clear that during the course of enquiry, any cognizable offence is made out, the second respondent shall take action in accordance with law laid down by the Hon'ble Supreme Court in **Lalitha Kumari Vs Government of U.P and Others (2013) (4) Crimes 243 (SC)**.

4. In pursuance of the said direction, the petitioner was called for enquiry on 29.05.2017. The above said Kanakam and A.Kumari Bindhu were also present. The second respondent compelled the petitioner to agree for the settlement and stated that if he agree for the settlement, First Information Report would not be registered. But, the petitioner refused to agree for the same. Hence, the second respondent threatened and shouted at the petitioner. He verbally abused the petitioner and criminally intimidated him and also wrongly confined him. Later, he received the order through post dated 29.05.2017, stating that the petition enquiry was closed. So, aggrieved over the same, this writ petition is filed.

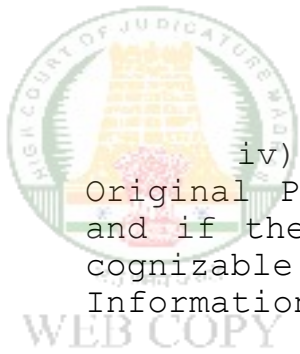
5. It is the duty of the second respondent to register First Information Report. if he had come to know that cognizable offence has been made out. But, he has not done so. At the stage of the registration of the case, no enquiry is contemplated under Section 154 Cr.P.C. So, closure report is not valid under law. The second respondent is acted in a *mala fide* manner and against the law declared by the Hon'ble Supreme Court in **Lalitha Kumari Vs Government of U.P and Others** (cited supra).

6. The counter filed by the second respondent with the following averments:-

i) The petitioner has filed a petition in the capacity of the President, Malyadi Primary Agricultural Co-operative Credit Society Ltd., But, now, he is not the President of the said Society. So, he has no *locus standi* to file present petition.

ii) Only a clerical error has been noted during the course of enquiry, which has been clarified and there was no loss of money to the Society as on date.

iii) As per the direction of this Court issued in CrI.OP(MD) No.16890 of 2016 dated 15.03.2017, enquiry was undertaken and during the course of enquiry, the petitioner has not properly co-operated and not produced any material evidences to strengthen his petition.



iv) Moreover, as per the order in the above said Criminal Original Petition, a direction has been given to hold the enquiry and if the Investigation Officer comes to the conclusion that the cognizable offence has been made out, then he has to register First Information Report.

v) Moreover, as per the judgment of the Hon'ble Supreme Court in **Lalitha Kumari Vs Government of U.P and Others** (cited supra) not in all cases, a direction has been given to register a First Information Report. It is also held that in certain cases, preliminary enquiry has to be conducted depending upon the facts and circumstances of the each case. One of the factors that has been mentioned in the judgment is if any abnormal delay. So, the date of alleged occurrence is 30.03.2015. But, the complaint has been lodged only on 12.02.2016. There was a delay of 11 months in lodging the complaint. So, preliminary enquiry became must concerning the present case. Only on that ground enquiry was undertaken.

vi) He would rely upon the judgment of the Hon'ble Supreme Court reported in **Sakiri Vasu Vs. State of UP (2008) 2 SCC 409**. It has been observed that if a person has a grievance that his case or complaint has not been registered by the police or proper investigation is not being done, then he has to work out his remedy before the concerned Magistrate Court provided under Section 156 (3) Cr.P.C. So, the petitioner cannot seek a writ of mandamus directing the respondent to register the First Information Report. So, the petitioner ought to have moved the concerned Magistrate Court for appropriate remedy and prayed for dismissal of the petition.

7. Heard both sides.

8. A simple point that has been elaborately argued by the learned counsel for the petitioner going to the minute details of the case. A simple prayer that has been raised by the petitioner is to direct the respondent to register the First Information Report on the basis of the complaint given by him and in pursuance of the earlier order passed by this Court in Crl.OP(MD)No.16890 of 2016 dated 15.03.2017. The substance of the complaint given by the petitioner against one P.Kanakam, the former Secretary of Malaiyalapatti Co-operate Society and A.Kumari Bindu, the Clerk of the Society and one Mr.D.Natarajan is mentioned in the preamble portion. This petition is filed to direct the respondent to register a case on the petitioner's representation dated 12.02.2016. A grievance of the petitioner in the above said case is that even though the complaint was given by him, the respondent police did not register a case on the petition since they are legally duty bound to register a case. The prayer portion of the order in Crl.OP(MD) No.16890/2016 runs like this,



" This petition is filed to direct the respondents to register a case on the petitioner's petition, dated 12.02.2016.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the President of Malayadi Primary Agricultural Co-operative Society Ltd., Y.No.149, Malayadi, Kanyakumari District and that he made a complaint before the respondents police, but the respondents have refused to register a case on the petition given by the petitioner and that they are legally duty bound to register a case on the same and their refusal to do the same is failure to discharge their statutory duties. Hence, this petition is filed seeking a direction to register a case on the petitioner's complaint, dated 12.02.2016 and in support of his contention, the learned counsel appearing for the petitioner has relied on the following judgment."

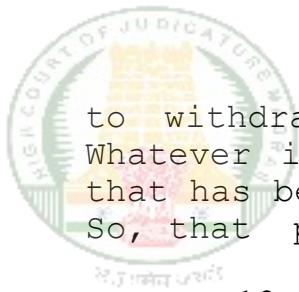
9. The operative portion is runs like this.

" 12. In the result, this petition is allowed and the second respondent is directed to expedite the enquiry and complete the same within a period of two weeks from the date of receipt of a copy of this order. During the course of enquiry, if any cognizable offence is made out, the second respondent police shall take action in accordance with the law laid soen by the Hon'ble Apex Court in Lalitha Kumari Vs, Government of U.P & Others (2013) (4) Crimes 243 (SC). In case of closure of the complaint, a copy of the closure report be furnished to the petitioner within a week of such closure, on receipt of the same, it is open to the petitioner to work out his remedy in the manner known to law."

10. So, according to the respondents, based upon this order, preliminary enquiry was undertaken and in that enquiry, it was found that what happened was only a mistake and the concerned person undertook to repay the amount and so, no offence is made out. This conclusion on the part of the second respondent herein, is challenged in this petition. The Enquiry Officer has been added in his personal capacity in this petition as third respondent.

11. Objection has been raised by the learned counsel for the petitioner that the second respondent is not competent to file counter affidavit on behalf of all the respondents since specific allegation has been made against the third respondent herein, the

<https://hdservicescourts.gov.in/hdservices/>



to withdraw the complaint stating that the amount was repaid. Whatever it may be, a direction was given to conduct enquiry and that has been done by the third respondent in his official capacity. So, that part of enquiry, cannot be found fault.

12. The petitioner vehemently argued that as per the judgment of the Hon'ble Supreme Court case in **Lalitha Kumari Vs Government of U.P and Others** (cited supra), when a cognizable offence is made out, it is the duty of the police to register the case. In this case, *prima facie* ground has been made out, to the effect that Mr.Natarajan and other persons have misappropriated the public money, which belongs to the Society and as such, preliminary enquiry ought not to have been undertaken. He ought to have registered the First Information Report and took up the investigation. So, according to the learned counsel for the petitioner, this is a serious lapse committed by the third respondent in his official capacity which entail him to be proceeded even departmentally as per the judgment of the **Lalitha Kumari Vs Government of U.P and Others** (cited supra).

13. But, the second respondent, would rely upon the judgment, for the purpose of argument that the Hon'ble Supreme Court has not directed the immediate registration of the First Information Report, but has given direction to investigate the case, in which, preliminary enquiry can be conducted. According to him, one of the event is delay in complaint. So, as mentioned earlier, only after a lapse of one year, the complaint has been given and so, the enquiry was undertaken by the third respondent in his official capacity.

14. Moreover, he is also empowered to do the same as per the direction given by this Court in CrI.OP(MD)No.16890 of 2016. So, what was undertaken by the third respondent in his official capacity to enquire into the complaint in the initial stage is not prohibited under law and is perfectly valid also. So, action of the third respondent in conducting the preliminary enquiry in the facts and circumstances of the case and as well as in the light of the direction given by this Court in the above said CrI.OP(MD)No.16890 of 2016 cannot be found fault. So, the argument on the side of the petitioner that straightaway he ought to have registered the First Information Report without conducting preliminary enquiry is not acceptable. Moreover, if the petitioner was very particular about the registration of the First Information without preliminary enquiry, he ought to have made the very same prayer before this Court while arguing the matter in CrI.OP(MD)No.16890 of 2016.

15. It is not the case of the petitioner that the substance complaint was not taken into account by this Court, while passing the order that the third respondent has to conduct the enquiry. There was no direction to the third respondent is in his official capacity to register the First Information Report and then take up



the investigation. There was no such direction. So, the grievance of the petitioner, at this stage, cannot be accepted. Moreover, this Court cannot go into once again the relief portion in that petition and direct the second respondent herein now to register the First Information Report. Such request is not at all available in this Court. So, the argument on the side of the petitioner that straightaway First Information Report ought to have been registered by the third respondent in his official capacity is not at all acceptable and what has been undertaken by the third respondent is perfectly valid as per the direction given by this Court.

16. But, the reason given by the third respondent for closing the complaint may be a matter for serious arguments. But, this reason given by the third respondent cannot be gone into by this Court, at this stage. This is of the factual aspects, which this Court cannot go into in this petition.

17. The argument of the learned counsel for the petitioner shows that the petitioner is not satisfied anything less than registering the First Information Report against Mr.Natarajan and others. When this complaint itself has been closed by the third respondent, the remedy available to him is the matter of heavy argument as mentioned earlier.

18. The power of the Court by exercising its jurisdiction under Section 226 of the Constitution of India to direct the Police Officers to register the First Information Report has been settled more or less now, in view of the judgments of the Hon'ble Supreme Court, which we will take a brief survey. The issue is no more troubling the Court, when the Police Officer closed the complaint. The remedy available to the complainant is to seek appropriate remedy before the concerned jurisdictional Magistrate either under Section 156 (3) Cr.P.C or by way of private complaint. We will start the discussion on the latest judgment available on this point. In **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 judgment including one that has been rendered in **Sakiri Vasu Vs. State of U.P (2008) 2 SCC 409**. It has been 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

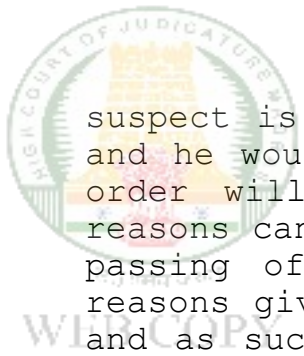


Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

19. So, based upon this judgment, the Hon'ble Supreme Court held that the the course available to the complainant is to approach the concerned Magistrate Court by way of filing a petition under Section 156 (3) Cr.P.C. So, when I point out this position to the learned counsel for the petitioner, he would say that the case was filed with regard to the misappropriation of Society money, which is based upon the official document available in the Society. Now, it is upto to the Society and he is not be in a position to procure and produce the official document either before the concerned Court or before the Investigation Officer. Whether such explanation can be accepted or not, is the next question, which arises for consideration. I am unable to agree with the explanation offered by the learned counsel for the petitioner on this aspect. In a petition filed under Section 156 (3) Cr.P.C, the Magistrate is well within his power to direct a investigation to be undertaken by the police. At that time, they can call for any official document from a Department. Similarly, even if a private complaint is filed, the complainant is well within his power to send for the document from the concerned department. So, the inability alleged by the petitioner is not at all existing. So, this explanation cannot be accepted and this petition can be considered only as short cut to overcome the statutory remedy available under Section 156(3) Cr.P.C and as well as under Sections 190 & 200 Cr.P.C.

20. Now, shortly we go into the arguments advanced by the learned counsel for the petitioner. The first argument advanced by the learned counsel for the petitioner is that the third respondent had no jurisdiction to record the statement without registering the First Information Report. But, for the reasons stated above, this argument is not correct. He would also further contend that under Section 154 Cr.P.C, no option is available to the Police Officer other than to register the First Information Report and this argument will answer the reasons given by the Hon'ble Supreme Court in Lalitha Kumari case. But, he would rely upon the judgment of this Court in **S.Sethu Raja Vs. Chief Secretary, Government of Tamilnadu and Others (2007) 5 MLJ 404**. But, it is a case of the death occurred in a foreign country. No preliminary enquiry was required in that case.

21. He would further rely upon the judgment of the Hon'ble Supreme Court reported in **Amish Devgan Vs. Union of India and Others (2021) 1 SCC** for the purpose of argument that reason to



suspect is enough and only the investigation will reveal the truth and he would further argue that affidavits filed subsequent to the order will not validate the order itself. According to him, reasons cannot be mentioned by way of an affidavit subsequent to the passing of impugned order. On the point to the effect that the reasons given in the counter is not reflected in the impugned order and as such, it is not needed and accepted. As mentioned earlier, even though the reasons given by the third respondent for closing the First Information Report are seriously doubted, then the correctness of reasons can be found out only when steps are undertaken by the petitioner under Section 156 (3) Cr.P.C. For that purpose, he would rely upon the following judgments:-

i) reported in **Chandra Singh And Others Vs State of Rajasthan and Another (2003) 6 SCC 545.**

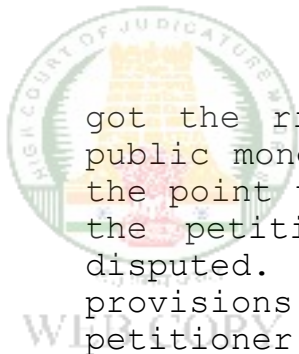
ii) reported in **Madha Dental College and Hospital Vs, The Tamil Nadu Dr.MGR Medical University 2011(1) CWC 933.**

22. It is true that the reason given subsequent to the impugned order cannot be taken into account. But, here, as I mentioned earlier, the remedy available to the petitioner lies under Section 156 (3) Cr.P.C challenging the reason given by the third respondent in the closure report.

23. Regarding the alternative remedy, the learned counsel for the petitioner would rely upon the judgment reported in **R.Amudha Vs The Manager, UTI Bank, Madurai 2014 (1) CWC 321.** But, in that case, the dispute is with regard to contract of insurance. But, here this is not of such a nature. The point for consideration in judgment reported in **Superintendent of Police, CBI And Others Vs. Tapan Kumar Singh (2003) 6 SCC 175** with regard to the satisfaction of the Police Officers with regard to the information available regarding the offence. It has been held that if he has reasons to suspect, on the basis of information received, that a cognizable offence has been committed, he is bound to record the information and conduct an investigation. At this stage, it is also not necessary for him to satisfy himself about the truthfulness of the information.

24. The petitioner would heavily rely upon the judgment of this Court in **D.Prasanna Vs. State and Another 2007 CrI. L.J. 233** for the purpose of argument that existence to get the remedy will not bar the petition to approach this Court by way of writ petition and or a petition under Section 482 Cr.P.C. But, the recent announcement will show that this issue is no more *res integra*. So, this judgment cannot be followed in the present position.

25. The petitioner would rely upon the number of judgments for the purposes of argument that even though now the petitioner is not holding the post of the President of the concerned Society, he



got the right of prosecute the offender when misappropriation of public money is noticed. This argument has been advanced to connect the point that is raised in the counter affidavit. Now, the right of the petitioner to prosecute the offender cannot be denied and disputed. Being a citizen, he is entitled to prosecute under the provisions which he thinks fit. So, on this ground, the right of the petitioner cannot be disputed by the respondents. So, this Court need not go into the details in the judgments cited by the petitioner on this point.

26. So, finally I conclude that the writ petition is not at all maintainable and liberty is given to the petitioner to approach the concerned Judicial Magistrate Court either by way of filing a petition under Section 156 (3) Cr.P.C. or filing a private complaint under Section 190 (1) Cr.P.C, if so advised. So, with this liberty, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 of Kanyakumari,
At Nagercoil,
Kanyakumari District.
2. The Inspector of Police,
Kaliakkavilai,
Kanyakumari District.

**W.P. (MD)No.12465 of 2017
and WMP(MD)No.9613 of 2017
21.05.2021**

na(CO)

TR(11.06.2021) 10P 3C