



W.P.No.17409 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2022

CORAM:

THE HON'BLE **Ms.JUSTICE R.N.MANJULA**

W.P.No.17409 of 2021

Bhavani

... Petitioner

Vs.

1. The Commissioner of Police,
Coimbatore City,
Coimbatore.

2. The Inspector of Police,
AWPS (East),
Puliyankulam,
Coimbatore.

3. Sivan

4. Chithirai Chairman

5. Patturaj

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 2 to take appropriate action against the respondents 3 to 5 herein on the basis of the petitioner's representation dated 22.02.2021.

For Petitioner

: Mr.J.C.Rathinavel Pandian

For Respondents 1&2

: Mr.A.Damodaran,

Addl. Public Prosecutor



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ORDER

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This Writ Petition has been filed for the issuance of writ of mandamus to issue a direction to the respondents 1 and 2 to take appropriate action based on the representation of the petitioner dated 22.02.2021.

2. The petitioner had given a complaint to the second respondent police by alleging that her minor daughter was sexually abused by a person under the pretext of love. The grievance of the petitioner is that no action has been taken by the second respondent and hence she had filed a complaint seeking order under Section 156(3) Cr.P.C. before the Judicial Magistrate, Additional Mahila Court, Coimbatore, in C.M.P. No.8722 of 2021. The learned Magistrate has passed an order on 26.03.2021 in C.M.P. No.8722 of 2021 by stating that the said Court has no jurisdiction to try the case and hence the petition should be filed before the proper forum.

3. In compliance of the said order, the petitioner has not filed any petition before the appropriate forum. Instead, this Writ Petition has been filed seeking direction against the respondents 1 and 2 to take appropriate action. In this regard it is relevant to refer the judgment held in the case of



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G.Prabhakaran vs. The Superintendent of Police, Thanjavur reported

in **(2018) 2 LW CrI 489**. In the said judgment, it is held as under :

“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



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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



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factors to be borne in mind to bring a case under the rarest of rare one.

The references stands ordered accordingly.”

4. As per the above guidelines any complainant who is aggrieved due to the refusal of the registering the case on the information furnished by her, has to necessarily invoke the remedy under Section 154 (3) Cr.P.C. For the sake of convenience, Section 154(3) Cr.P.C. Is extracted hereunder:

“154. (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

5. If a Station House Officer like the first respondent failed to take necessary action on the complaint and register FIR, then it is open to the petitioner to send the information to the Higher Authority. If the Higher Authority did not take any action, thereafter the remedy open to the petitioner is



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under Section 156(3) Cr.P.C.

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6. On a persual of the records it is seen that petitioner has sent a petition in a routine manner to both the first and second respondent simultaneously. If such kind of petitions are filed before the Higher Authorities, then the same will be forwarded to the concerned Station House Officer for taking further action.

7. The petitioner has to inform the Superior Police Officer as found in Section 154(3) Cr.P.C. about the inaction on the part of the first respondent and submit the required information. Only if the information is submitted to the Superior Officer in the above said manner, it can be considered that the petitioner had availed the remedy available under Section 154(3) Cr.P.C. After exhausting the remedy under Section 154(3) Cr.P.C., if the petitioner is still aggrieved, she can file a petition under Section 156(3). Since the petition under Section 156(3) has been filed before a wrong forum i.e. before the learned Judicial Magistrate, Additional Mahila Court, Coimbatore, the said petition was dismissed.

8. Since the petitioner's liberty to file fresh petition under Section 156(3) Cr.P.C. is still available, it is open to the petitioner to file proceedings before



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the appropriate Court under Section 156(3) Cr.P.C. and invoke the remedy.

Without exhausting the available remedy, the petitioner had chosen to file a petition seeking direction against the first and second petitioner by filing this Writ Petition.

9. In view of the above said reasons, this Writ Petition is disposed. The petitioner is at liberty to exhaust the remedy available to her under Section 154(3) and thereafter, if necessary, shall also to file a petition under Section 156(3) Cr.P.C.

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Index: Yes/No
Speaking / Non Speaking Order
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R.N.MANJULA, J.

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To



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