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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.A.NO.526 OF 2018

S.Diwakar

.. Appellant

-vs-

1. The Commissioner of Police
Office of the Commissioner of Police
Vepery, Chennai 600 007.

2. The Registrar General,
High Court of Madras
High Court Campus,
Chennai - 600 104.

3. The Secretary,
Bar Council of Tamil Nadu,
High Court Campus,
Chennai - 600 104.

(R2 & R3 deleted vide order of the court
dated 21.09.2017 made in W.A.Sr.No.76425 of 2016.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 03.10.2016 made in W.P.No.9646 of 2016.

Prayer in W.P.No.9646 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India to directing the respondent herein to perform his duty by taking action on the petitioner's complaint cum representation dated 28.12.2015 in accordance with law and in the verge of doing so also to take actions as against the officials stated in it and to provide him a security cover as there prevails a grave threat to petitioner's life and limb in the hands of the persons as stated in his complaint cum representation dated 28.12.2015 and also to pass orders permitting him to have and carrying of a device to protect himself against any acts caused harming him until the providence of the security Cover.



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For Appellant :: Mr.S.Diwakar
Party-in-Person

For Respondent :: Mr.K.V.Sajeevkumar
Special Government Pleader

JUDGMENT

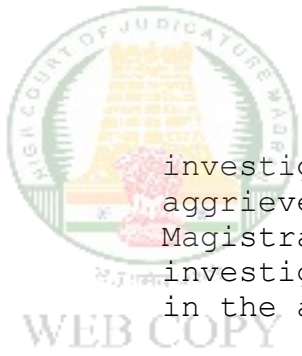
(Judgment of the Court was made by T.RAJA, J.)

The appellant, Mr.S.Diwakar is an Advocate by profession enrolled in the State Bar Council and has been practicing in the High Court and also in the Subordinate Courts. It is his claim that after purchasing the house property situated at No.13/14, Tharachand Nagar Third Street, Virugambakkam, Chennai from his erstwhile owner, he has been living there from the year 2001. But the adjacent owners living in Plot No.44 have been causing public nuisance vitiating air pollution and spoiling the atmosphere. Therefore, they were called upon to refrain from doing so. As the neighbouring house owners continuously kept on indulging in public nuisance and disturbing the atmosphere on the instigation of one Mr.S.M.Vidyapathy, an Advocate, the appellant lodged a complaint against them for their acts of public nuisance. But it is claimed that the said Mr.Vidyapathy aided the persons living in Plot No.44 to lodge a complaint against the appellant before the Bar Council of Tamil Nadu and finally it is stated that the said complaint and the proceedings initiated by the Bar Council were quashed by an order passed by the writ Court. While so, the party in person gave a complaint against one Judicial Officer N.Rajalakshmi while she was serving as the XVII Metropolitan Magistrate, Saidapet, Chennai before the Vigilance Cell of the High Court. From the date of giving a complaint against the said Judicial Officer, the party in person started witnessing improper conduct from his clients and he was also in a way indirectly pressurized to withdraw the complaint made against the said Judicial Officer. One Police Inspector Mr.Saravanan, who appeared to be a close friend of the said Judicial Officer, also started indulging in threatening the appellant and as a result, the party in person claims that he has been disturbed by all the aforementioned persons. Therefore, he was constrained to lodge a complaint before the local police, visiting the office of the Deputy Commissioner of Police in T.Nagar, Chennai, who advised the party in person to approach the Joint Commissioner of Police in St.Thomas Mount, as the Assistant Commissioner of Police, Vadapalani was not even listening to his grievance. Therefore, the party in person pleaded that when he has been not allowed to lead a peaceful and



conducive living in his house property, as several persons have caused multiple nuisance spoiling the atmosphere by smoking and indulging in spoiling the public peace, left with no other choice, he has come to this Court with the writ petition seeking for a direction against the respondent to perform his duty by taking action on his complaint cum representation dated 28.12.2015 in accordance with law and also to provide him security cover, as there prevails a grave threat to his life at the hands of the persons named in the complaint, and to pass appropriate orders. The party in person further submitted that when the writ petition was taken up, the learned single Judge, without touching on the merits of the matter, has wrongly held that the party in person addressed the Court unabated without a pause for half an hour with sound and fury minus substance and he has been undergoing miseries and sufferings internally and his external aggression is nothing but a manifestation of his internal disturbance, therefore, he requires counselling by an expert and not harsh treatment. Observing so, the learned single Judge dismissed the writ petition, as a result the party in person stands remediless, he pleaded. Moreover, the party in person argued that the complaint made against his neighbours, Judicial Officer and one Advocate Mr.S.M.Vidyapathy also ended in vain.

2. We have heard Mr.S.Diwakar appearing in person before us. When the appellant expresses a grievance that his neighbours are disturbing the environment by causing air pollution and creating public nuisance, nowhere he has mentioned when such air pollution and public nuisance have been caused to him. Secondly, when he made an allegation against the then Judicial Officer of XVII Metropolitan Magistrate Court. Saidapet, Chennai, what was the allegation and the complaint made against the said Judicial Officer also have not been disclosed. Moreover, when the party in person claims that his neighbours are disturbing him by creating public nuisance and the complaint given by him under Section 154 Cr.P.C., before the jurisdictional police concerned has not been registered, as per the ratio laid down by the Apex Court in the case of Sakiri Vasu v. State of U.P. and others, (2008) 2 SCC 409, he should have approached 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



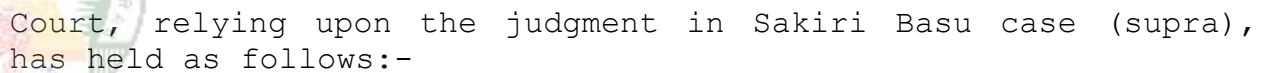
investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation. The Apex Court, in the aforementioned judgment, further observed as follows:-

"26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C., simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

3. Again in the judgment in *Sudhir Bhaskarrao Tambe v. Hemant Yaswant Dhage and others*, (2016) 6 SCC 277, the Apex



3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) Cr.P.C., and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

4. In the light of the settled ratio laid down by the Apex Court in the judgments cited supra, in the case on hand, we are of the considered view that no steps have been shown to be taken by the appellant/party in person to ventilate his grievance before the authorities concerned and without exhausting the alternative remedy available under the law, he has come to this Court by filing the writ petition under Article 226 of the



Constitution of India, which is certainly not maintainable. Besides, we do not find any merit on the submissions made by the party in person to call for interference with the order passed by the learned single Judge and we also do not find any error or illegality in the order of the learned single Judge. Therefore, for the reasons stated above, the writ appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

The Commissioner of Police
Office of the Commissioner of Police
Vepery
Chennai 600 007.

+1cc to Mr.S.Diwakar, Advocate(Party-in-Person), S.R.No.28767

+1cc to the Government Pleader, S.R.No.29407

W.A.No.526 of 2018

KV(CO)
RLP(28/04/2022)