



W.P. No. 23951 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

Coram

The HONOURABLE Ms. JUSTICE R.N.MANJULA

W.P. No. 23951 of 2021
and W.M.P. Nos.25270 & 25271 of 2021

P.Vivek

.. Petitioner

Vs.

1. The Inspector of Police,
R-9, Valasaravakkam Police Station,
Chennai – 600 087.
2. The Commissioner of Police,
Office of the Commissioner of Police,
E.V.K. Sampath Salai, Vepery,
Chennai – 600 007.
3. The Inspector of Police,
Fake Document Prevention Wing,
Central Crime Branch,
Office of the Commissioner of Police,
E.V.K.Sampath Salai, Vepery,
Chennai – 600 007.
4. T.Rajaneesh

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in the communication dated 09.01.2020 passed by the third respondent police and quash the same as unsustainable in the eyes of law and direct the third respondent to register a case against the fourth respondent based on the complaint dated 18.09.2019 given by the petitioner and investigate the same and further direct the second respondent to supervise the progress of the investigation by the third respondent.

For Petitioner	:	Mr. R.Arunkumar
For Respondents 1-3	:	Mr. A.Damodaran
		Additional Public Prosecutor

ORDER

This writ petition has been filed for the issuance of a writ of certiorafied mandamus to call for the records in the communication dated 09.01.2020 passed by the third respondent police and quash the same as unsustainable in the eyes of law and direct the third respondent to register a case against the fourth respondent based on the complaint dated 18.09.2019 given by the petitioner and investigate the same and further direct the second respondent to supervise the progress of the investigation by the third respondent.



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2. The learned counsel for the petitioner submitted that a complaint has been given by the petitioner on 18.09.2019 to the third respondent police but the third respondent police has not conducted any enquiry and directed the petitioner to get a direction from the Court.

3. Records would show that the third respondent had closed the complaint by stating that the fourth respondent has also given a complaint on which FIR has been registered in Cr. No.328 of 2019 for the offences under Section 294B, 323, 427 and 506 (ii) IPC. The impugned communication has been given by taking into consideration of the earlier order of this Court dated 19.12.2018 made in CrI.O.P. No.29802 of 2018. In the said order, it has been observed that the respondent police shall not interfere in a dispute which is civil nature and shall advise the parties and relegate them to the appropriate forum. The said Criminal Original Petition has been filed by the fourth respondent against the respondent police to not to harass him. The very same fourth respondent has filed a contempt petition in Cont.P. No.1201 of 2019 by alleging that the respondent police has violated the order of this Court dated 19.12.2018 made in CrI.O.P. No.29802 of 2018 and harassed him. However,



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the said petition was closed on the observation that FIR has been registered in Cr. No.328 of 2019 against the fourth respondent and others.

4. The petitioner has also given the complaint for the same reasons as stated above. However, the petitioner appears to have given an another complaint on the allegation of forgery. No action has been taken on the same by stating the reasons in the order passed in CrI.O.P. No.29802 of 2018. Even in the contempt petition, the Court has taken into consideration of the case registered on the complaint given by the very same petitioner against the fourth respondent. The above facts would show that somehow the police had interfered and a criminal case has been registered .

5. Under such circumstances, the impugned complaint now sought to be given by the petitioner could have been considered by the third respondent independently to find out whether a case has been made out. Instead of that, the third respondent had chosen to sent a communication stating that an order of the Court is necessary in order to take further action in the complaint given by the petitioner.



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6. Since the allegations now made by the petitioner in the present complaint is different, it is obligatory on the part of the third respondent to make an enquiry and do the needful in accordance with law. If for any reasons, the petitioner is not satisfied with the action taken by the respondent police, he is at liberty to avail the remedy contemplated under Section 154(3), 156(3) and 200 Cr.P.C. and in accordance with the guidelines laid down in the judgment of the Division Bench of this Court in ***G.Prabhakaran v. 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*



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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 compliant or closing it will have to be intimated 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



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

The references stands ordered accordingly."

7. In view of the above, this Writ Petition is disposed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking order / Non-speaking order

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R.N.MANJULA, J.,

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