



W.P No.23585 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

W.P No.23585 of 2021

R.Usha

... Petitioner

Vs.

1. The Commissioner of Police
Salem.
2. The Assistant Commissioner of Police
Suramangalam, Salem.
3. The Sub Inspector of Police
Fairlands Police Station
Salem.
4. Ramesh

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent to transfer the investigation to such other officer on the complaint lodged by the petitioner on 22.02.2021 and registered in CSR No.133 of 2021.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.A.Damodaran for R1 to R3
Additional Public Prosecutor



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ORDER

This Writ Petition has been preferred, seeking a Writ of Mandamus directing the 1st respondent to transfer the investigation on the complaint lodged by the petitioner on 22.02.2021 which was registered in CSR No.133 of 2021 to some other officer.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents 1 to 3.

3. The learned counsel for the petitioner submitted that the petitioner has given a complaint against the 4th respondent as early as on 22.02.2021 on the allegation of cheating by making assurance of securing a job; but, so far no action has been taken.

4. The learned Additional Public Prosecutor, on instructions submitted that there is a counter complaint given by the 4th respondent and for which CSR No.133 of 2022 has been given and both the petitions are pending for enquiry.



5. The records would show that on the complaint given by the petitioner on 22.02.2021, CSR No.133 of 2021 has been given. The prayer sought for by the petitioner is to transfer the complaint to some other agency for investigation. In this regard, the learned Additional Public Prosecutor vehemently objected that unless an FIR has been registered, the petitioner is not entitled to seek a remedy for transfer. It is not the contention of the petitioner that the respondents 1 to 3 do not have jurisdiction to receive the complaint and hence the complaint should be transferred to any other police station. The petitioner's contention is that the respondent police did not take appropriate action so far and hence, the complaint has to be transferred to some other agency.

6. In this regard, it is relevant to refer the judgment of the Division Bench of this Court held in the case of ***G.Prabhakaran v. The Superintendent of Police, Thanjavur*** reported in ***(2018) 2 LW CrI 489***. In the said case, it is held that when there is an alternate efficacious remedy available under Section 156 (3) of Cr.P.C., the power of the Court under Section 482 of Cr.P.C., cannot be invoked. In the said judgment, it is held as under :



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“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 to the informant immediately and in any case not later than 7 days. Once such a decision is made, the



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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



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To
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2. The Assistant Commissioner of Police
Suramangalam, Salem.
3. The Sub Inspector of Police
Fairlands Police Station
Salem.
4. The Public Prosecutor
High Court of Madras.



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R.N.MANJULA, J.,
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