



Crl.O.P No.25148 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.11.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.25148 of 2022
and Crl.M.P.No.16223 of 2022

B.Chandramohan

... Petitioner

Vs.

1.State represented by
The Sub-Inspector of Police,
Thavalakuppam Police Station,
Thavalakuppam,
Puducherry – 605 007.

2.Sevagan @ Xavier

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to direct the 1st respondent police to comply the order dated 07.05.2018 in complaint No.100/PCA/2017 passed by the police complaint Authority, Puducherry.

For Petitioner : Mr. S.Vijayakumar

For R1 : Mr. V.Balamurugane
Public Prosecutor (Puducherry)



ORDER

WEB COPY This petition is filed to direct the 1st respondent police to comply the order dated 07.05.2018 in complaint No.100/PCA/2017 passed by the Police Complaints Authority, Puducherry.

2. The learned counsel for the petitioner submitted that on the complaint given by her before the Police Complaints Authority, an order has been passed on 07.05.2018 which reads as hereunder:

“ ...

6. As such, we are of the considered view that the case of the complainant on behalf of his daughter Anandhi cannot simply be brushed aside. In the result, the Director General Police, Puducherry, is directed to depute an Inspector of Police to probe into the matter thoroughly and if any cheating case or any other cognizable criminal offence is made out, to register FIR and report compliance within a period of three months.”

3. The learned counsel for the petitioner submitted that the respondent police did not comply the said order and had failed to conduct enquiry and take further action.



4. The learned Public Prosecutor (Puducherry) submitted that the Police Complaints Authority, Pondicherry, has got the jurisdiction only to inquire the complaints and grievances of the police personnel and it has got no jurisdiction to deal with the complaint given by a private party. In this regard, attention of this Court was drawn to the judgment of this Court held in W.P. No.21587/2019 dated 25.07.2019. In the said judgment it is held as under:

“12.Pursuant to the Judgment of the Hon'ble Supreme Court, the Government of Puducherry passed G.O.Ms.No.71 dated 09.12.2016, constituting a Police Complaints Authority, headed by a retired judge of this Court along with three other members. The powers and functions of the Police Complaints Authority as stated in the G.O., is extracted hereunder:

Powers and Functions:

(1) The power of the Police Complaints Authority may be as under:

(i) The Authority may require any person or authority to furnish information on such points or matters, as in the opinion of the Authority may be useful for or relevant to the subject matter of enquiry.

(ii) The Authority, before finalising its opinion, shall give the Police Officer heading the police force in the Union Territory an opportunity to present the Department's view and additional facts, if any, not already in the notice of the Authority and in such cases, the Authority may review its findings on receipt of additional information from the Police Officer heading the police force in the Union Territory that may have a material bearing on the case.

(iii) In the cases directly inquired by the Authority, it may, upon completion of the inquiry, communicate its findings to the police officer heading the police force in the Union Territory with a direction to,



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(a) register a First Information Report; and for

(b) Initiate Departmental action based on such findings, duly forwarding the evidence collected by it to the police.

(iv) The directions of the Authority shall ordinarily be binding, unless for the reasons to be recorded in the writing, the Union Territory Administration decides to disagree with the findings of the Authority.

(2) The functions of the Police Complaints Authority will be as under:-

(i) The Authority shall inquire into allegations of "serious misconduct" against police personnel, as detailed below, either suo moto or on a complaint received from any of the following quarters:-

(a) a victim or any person on his/her behalf.

(b) the National or the State Human Rights Commission;

(c) the police, or

(d) any other source.

Explanation: 'Serious misconduct' for the purpose of this chapter shall mean any act or omission of a police officer that leads to or amounts to,

(a) death in police custody;

(b) grievous hurt, as defined in Section 320 of the Indian Penal Code 1860;

(c) rape or attempt to commit rape;

(d) arrest or detention without due process of law;

(e) extortion;

(f) land/house grabbing; or

(g) any incident involving serious abuse of authority

Provided that the Authority shall inquire into a complaint of such arrest or detention, only if it is satisfied prima facie about the veracity of the complaint.



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13.The powers and functions that has been prescribed by the Government order is in line with the judgment of the Hon'ble Supreme Court in Prakash Singh case.

14.The important issue that needs to be addressed by this Court is as to whether this Police Complaints Authority can issue directions to register an FIR under Section 156(3) of Cr.P.C., to conduct further investigation under Section 173(8) of Cr.P.C., etc. It is to be borne in mind that such directions are regularly issued by the Police Complaints Authority in Puducherry, where the disputes are between private parties and one of the private party files a complaint before the Police against another private party. It must also be borne in mind that the Complaints are not against any Police Officer, as contemplated by the judgment of the Hon'ble Supreme Court in Prakash Singh and Others, referred supra.

15.In the considered view of this Court, the scope of the function performed by the Police Complainants Authority, cannot be taken to such a level, wherein, the authority starts functioning as an alternative to Courts. That is not the purpose for which Police Complainants Authority was constituted by the Hon'ble Supreme Court. The Hon'ble Supreme Court has categorically said that the State-level Complainants Authority would take cognizance of only allegations of serious misconduct by the Police personnel and recommend for taking departmental action and/or criminal action against the delinquent Police Officer. This recommendation is binding on the authority concerned.

16.The Police Complainants Authority owes its existence to the judgment of the Hon'ble Supreme Court in Prakash Singh case and the consequent Government Order passed by the Government of Puducherry. It



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can act only within the four corners of the authority vested in it. In the considered view of this Court, the power to give a direction to register an FIR or to transfer investigation or to complete the investigation within a particular period or to alter the offence or to direct further investigation or to file a further report, are all matters falling within the jurisdiction of a competent Court, as prescribed under the Code of Criminal Procedure. These powers can never be exercised by the Police Complainants Authority since by exercising such a power, it exceeds its authority and jurisdiction and starts acting like an alternate Court of law. If this goes unchecked, there is a possibility where there can be a clash between the direction given by a Court and a direction given by a Police Complainants Authority. This will lead to unnecessary complications. This Court went into this issue since this Court found a series of directions given by the Police Complaints Authority, Puducherry for registration of FIR, for transfer of investigation, for further investigation etc., and based on those directions, petitions are filed before this Court seeking for implementation of the directions.

17. A copy of this order shall be marked to the Police Complaints Authority and the said Authority shall take note of this order and carry on with its functions within the power and jurisdiction vested in it by the judgment of the Hon'ble Supreme Court in Prakash Singh case and the consequent G.O., passed by the Government of Puducherry."

5. It is further submitted by the learned Public Prosecutor that appropriate reply has been given to the petitioner by stating that the petitioner, being a private party, does not have the right to invoke the jurisdiction of the Police Complaints Authority, Pondicherry.



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6. Despite the first respondent had denied the Police Complaint Authority to entertain complaints made by private persons, the order dated 07.05.2018 of the Police Complaint Authority was not challenged by him. Even in the absence of any order passed by the Police Complaints Authority, it is obligatory on the part of the first respondent police to take up complaints and to deal the same in accordance with law.

7. Since the grievance of the petitioner in the complaint given against the second respondent has not been taken up for any enquiry, I feel it is appropriate to direct the first respondent to do the needful and complete enquiry within a stipulated time.

8. In view of the above, this Criminal Original Petition is disposed and the first respondent shall do the needful and complete the enquiry in accordance with law within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is rejected.

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

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To:

- 1.The Sub-Inspector of Police,
Thavalakuppam Police Station,
Thavalakuppam,
Puducherry – 605 007.
2. The Police Complaints Authority,
Puducherry.
- 3..The Public Prosecutor,
High Court, Madras.

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