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CrI.O.P.No.25464 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.25464 of 2022

J.Joseph

...

Petitioner

/vs/

The State, Rep by its
The Inspector of Police, (Crimes),
H.8, Thiruvottiyur Police Station,
Chennai 600 019.

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to direct the respondent to register the case based on the petitioner's complaint dated 06.10.2022.

For Petitioner

...

Mr.C.Samadharma Arasu

For Respondent

...

Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the respondent to register the case based on the petitioner's complaint dated 06.10.2022.



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2. Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioner submitted that the petitioner has given a complaint on 6.10.2022; but the respondent police has not taken any action on the said complaint; hence he is seeking a suitable direction to the respondent police to register the FIR on the complaint given by the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that the petition enquiry is pending on the complaint given by the petitioner on 06.10.2022.

5. The petitioner has got an efficacious remedy under Section 156(3) of Cr.P.C. and shall get appropriate order from the jurisdictional Magistrate himself. The learned Division Bench of this Court has already held in the case of ***G.Prabhakaran v. The Superintendent of Police, Thanjavur*** reported in ***(2018) 2 LW Crl 489*** that there is an alternate efficacious



remedy available under Section 156 (3) of Cr.P.C. Hence the power of the Court under Section 482 of Cr.P.C., cannot be invoked in all circumstances.

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 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 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



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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.”

6. In view of the above direction, the Registry ought not to have taken the case on file without placing the matter on the point of maintainability. The petitioner has come to this Court without exhausting the remedy available under Section 156 (3) of Cr.P.C., after observing the procedure contemplated in Section 154(3) of Cr.P.C.

7. With the above observations, this Criminal Original Petition is disposed.

20.10.2022

Index: Yes/No
Internet: Yes/No
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R.N.MANJULA ,J.

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To

1.The Inspector of Police, (Crimes),
H.8, Thiruvottiyur Police Station,
Chennai 600 019.

2.The Public Prosecutor,
High Court, Madras.

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20.10.2022