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CrI.O.P.No.28049 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2022

PRONOUNCED ON: 07.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.28049 of 2022

S.Karthikeyan

...

Petitioner

/vs/

1.State Rep.by:

The Superintendent of Police,
District Police Office, Thiruvarur,
Thiruvarur District – 610 004.

2.State Rep.by:

The Inspector of Police,
District Crime Branch,
Thiruvarur District – 621 004.

3.K.Pandidurai

...

Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records connected with Police Notice 40/DCB/Tur/2022 dated 29.10.2022 on the file of the 2nd respondent police and to quash the same.

For Petitioner

...

Mr. K.Kannan

For Respondent
Nos.1 & 2

...

Mr.S.Santhosh
Govt.Advocate (CrI.side)



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ORDER

The petitioner, challenging the Police Notice 40/DCB/TUR/2022 dated 29.10.2022 on the file of the 2nd respondent police, has filed this criminal original petition.

2.The learned counsel for the petitioner submits that the petitioner and the third respondent are the residence of Mannarkudi Town, Thiruvarur District and both are related to each other. There is a dispute between them with regard to money transaction and the petitioner claimed a sum of Rs.1,68,88,385/- from the third respondent and the third respondent repaid a sum of Rs.75,00,000/-only. Hence, there is a dispute between them with regard to the balance amount.

3.In this regard, the third respondent gave a complaint to the Superintendent of Police, Thiruvarur District on 09.04.2022 and the same was forwarded to the Inspector of Police, Taluk Police Station, Mannarkudi and after enquiry, the police closed the complaint as the disputes involved



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in the complaint is civil in nature. Again, the third respondent filed another complaint dated 19.09.2022 before the Superintendent of Police, Thiruvarur and the same was forwarded to the second respondent police. Based upon that, the second respondent issued impugned notice, which is illegal. Further contended that without registering an FIR, the respondent police has no power to issue notice under Section 160 Cr.P.C. To support his arguments, he relied upon the judgment of the Delhi High Court in ***W.P.(Crl).No.611 of 2022 dated 10.06.2022 in KULVINDER SINGH KOHIL VS. STATE OF NCT OF DELHI & ORS.*** Thus, pleaded to quash the same.

4.The learned Government Advocate (Crl.side) appearing for the respondents 1 & 2 submits that the respondent police is having power to enquire attendance of witnesses or any person, who appears to be acquainted with the case may require the attendance before himself for enquiry. Therefore, registration of FIR is not a mandatory, pre-condition for issuing notice under Section 160 Cr.P.C. and thus, pleaded to dismiss the criminal original petition as not maintainable.



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5.I have considered the submission of the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondents 1 & 2.

6.On perusal of records, the fact reveals that the petitioner and the third respondent are the residence of Mannarkudi Town, Thiruvavarur District and both are related to each other. It is also not in dispute. There is a dispute between the petitioner and third respondent with regard to money transaction and also with regard to the properties mortgaged in ICICI Bank in Virudhunagar. Now, the petitioner challenged the impugned notice issued by the second respondent on 29.10.2022.

7.Section 160 Cr.P.C. empowers a police officer making an investigation to enquire the attendance before himself of any person, who appears to be acquainted with the circumstance of the case. Section 160 Cr.P.C. runs as follows:

“160. Police Officer's power to require attendance of witnesses



(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under subsection (1) at any place other than his residence]

8. Therefore, the person could be summoned by the police under Section 160 (1) Cr.P.C. when it appears to the investigating officers that he is acquainted with the facts and circumstances of the case. Further, in view of the decision of the Hon'ble Supreme Court in *Nandini Satpathy's case (AIR 1978 SC 1025)*, the police officer is entitled to question the accused



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and the accused is bound to answer all the questions except those which would incriminate him.

9. Further, immediate registration of FIR is not a must in all cases in view of the decision of the Hon'ble Supreme Court in ***Lalita Kumari Vs. Govt. of UP & Ors. (2014) 2 SCC 1***. In the matter of money transaction, police officer is entitled to hold preliminary enquiry and investigation in order to ascertain whether cognizable offence is made out or not. Further, the decision relied on by the learned counsel for the petitioner is not applicable to the case. Since in that case the summon was quashed on the ground of jurisdiction, therefore, the observation in that decision will not support the petitioner's case. Further the provision of 160 Cr.P.C. did not mandate registration of FIR before issuing notice under Section 160 Cr.P.C. Therefore, I find no merit in the argument placed by the learned counsel for the petitioner and no merit in the criminal original petition. Accordingly, the criminal original petition is dismissed.

Index : Yes/No
Internet : Yes/No
sms

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To

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2.State Rep.by:

The Inspector of Police,
District Crime Branch,
Thiruvarur District – 621 004.

3.The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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