



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.3929 of 2019

A.M.Sarasu

: Petitioner/Petitioner

Vs.

- 1.The Inspector of Police,
Karur Town Police Station, : 1st Respondent
- 2.S.Palanisamy
- 3.Maheswari
- 4.Srinivasan
- 5.Ashok
- 6.Rupper Stamp @ Kuzhandaisamy
- 7.K.Ganesan
- 8.Shanmuga Vadivu
- 9.Venkadachalam
- 10.Bal @ Mani
- 11.Gopal
- 12.Samiyathal
- 13.Pitchaimuthu
- 14.Kanagaraj
- 15.Mani
- 16.Raja : R2 to R16/A1 to A15

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the order, dated 22.02.2019 in CMP No.87 of 2019 on the file of the Judicial Magistrate No.1, Karur, and set aside the same and consequently, direct the 1st respondent to register the FIR, based on the petitioner's complaint on the file of the Judicial Magistrate No.1, Karur.

For Petitioner : Mr.C.Mayilvahana Rajendran

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For R2 and R3 : Mr.T.M.Madasamy

For R4 to R16 : No appearance

O R D E R

This petition has been filed seeking to set aside the order made in CMP No.87 of 2019, dated 22.02.2019 on the file of the
<https://hcservices.ecourts.gov.in/hcservices/>



Judicial Magistrate No.1, Karur and consequently, direct the 1st respondent to register the FIR, based on the petitioner's complaint on the file of the Judicial Magistrate No.1, Karur.

2.The facts in brief:-

WEB COPY The petitioner has filed a petition before the trial court under section 156(3) Cr.P.C seeking direction to the jurisdictional police to register a case and investigate the offence with the following allegations:- Because of the matrimonial dispute between the petitioner and her husband, she is living separately. The accused 1 and 2 are the adjacent land owners. She got 900 sq. feet of vacant land on the western side. The first accused demanded the above said land, but that was refused by the petitioner. So because of the above said enmity, he was making frequent trouble and quarrel. On 23/11/2018, the petitioner went to the Karur Family Court for attending the hearing. The old aged mother of the de-facto complainant was available in the house. At that time, A1 and A2 along with others, came to the house with JCB vehicle bearing registration No.TN-33-AR-6216 and tried to demolish the compound wall. The petitioner returned to the property at about 10.15 am and tried to prevent the illegal activities of the accused. At that time she was resisted, abused in filthy language and also criminal intimidation. They have also tore her dress, while snatching two sovereigns of gold jewels. At that time, the neighbour Jothi came to the rescue and she was also assaulted. A6 misbehaved indecently and tried to assault her. They have also caused damage to the compound wall. The de-facto complainant was admitted in the Amaravathi Hospital, Karur. On 23/11/2018, one Ponnusamy, a constable came to the hospital, enquired her and obtained the signature in the empty papers. Even after a lapse of several days, no proper action was taken. Again on 28/11/2018 also, the accused came to her house, abused her in filthy language, criminally intimidated and assaulted. On 23/11/2018, she lodged a complaint with the Karur Police Station. She also sent the complaint through post, on 11/12/2018. In-spite of repeated complaints, no proper action was taken.

3.The trial court registered the petition in Crl.MP No.87 of 2019 and the complaint was forwarded to the Inspector of Police, Karur Town police, for necessary action by following the dictum laid down by the Hon'ble Supreme Court in **Lalitha Kumar's case** and the report was ordered to be filed. A report has been filed by the police stating that it is a civil dispute. A petition was filed on the side of the petitioner and the petition was closed with a direction to the petitioner to avail or exercise the remedy under section 200 Cr.P.C. Challenging that order, this petition came to be filed.

4.Heard both sides.



5.The learned counsel appearing for the petitioner would submit that even on the face of the complaint, cognizable offence has been made out, as laid down by the Hon'ble Supreme Court in **Lalitha Kumari's** case, FIR ought to have been registered by the respondent police, on the basis of the complaint. The Judicial Magistrate has also committed an error in forwarding the complaint without a positive direction to register a case. Further error was committed by the Magistrate by accepting the report of the police stating that it is purely a civil dispute. The offence of such nature ought to have been properly investigated, since the entire occurrence has been captured in a CCTV Camera and the records has also been submitted to the concerned court as well as the police. So according to him, the order is illegal in nature and so, the 1st respondent must be directed to register a case and investigate the matter.

6.It is further contended that the observation of the Judicial Magistrate that the petitioner can avail the remedy under section 200 Cr.P.C is also illegal, since the petitioner might not have any resource of proving the case before the trial court. Only the police is competent and empowered to investigate the matter.

7.The question, which arises for consideration is whether any such positive direction can be given to the police to register a case and investigate the matter by setting aside the order that has been passed by the learned Judicial Magistrate.

8.Even though the grievance that has been expressed by the petitioner to the effect that she might not have any resource to prove the guilt of the accused before the trial court, but that cannot be a reason for exercising the jurisdiction. The trial court has exercised the jurisdiction, which is legal in nature and that observation or direction order cannot be set aside, while exercising the jurisdiction under section 482 Cr.P.C. Even after filing the complaint under section 200 Cr.P.C, the petitioner can work out her remedy. Such a right is always available to the petitioner.

9.The learned counsel appearing for the respondents 2 and 3 would rely upon the judgment of the **Allahabad High Court in the case of Virendra Kumar Fauzi Vs. State of U.P and 9 others, in Criminal Revision No.1162 of 2015**, dated 12/07/2018, wherein a petition filed under section 156 Cr.P.C was dismissed by the trial court. Challenging that order, revision has been preferred on the ground that since cognizable offence has been made out on the basis of the complaint, as per the dictum laid down by the Hon'ble Supreme Court in **Lalitha Kumari's** case, the Judicial Magistrate ought to have directed the police to register the case. The High Court of Allahabad has also relied upon the decision of the Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of U.P. And others (2008 (2) SCC 409)**, wherein the powers of the High Court under section 482 Cr.P.C or under Article 226 of the Constitution of the India, are



elaborately discussed. It has opined that the High Court as such has no power under section 482 Cr.P.C to order to register a case. The complainant can avail the remedy under section 154(6) Cr.P.C or 156 (3) Cr.P.C or 200 Cr.P.C

10. Here liberty has been granted to the petitioner to avail the remedy under section 200 Cr.P.C. So I am of the considered view that this petition is not at all maintainable and the petitioner has to work out her remedy through appropriate proceedings as observed or ordered by the trial court.

11. In the result, this criminal original petition is **dismissed**.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/06/2022

Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Judicial Magistrate No.1, Karur.

2. The Inspector of Police,
Karur Town Police Station,
Karur.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Section officer, Criminal Section,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

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RD(24.06.2022) 4P 6C