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Crl OP No.6609/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.6609 of 2021
and
Crl. M.P. Nos. 4381 and 4382 of 2021

Arumugam

... Petitioner

Versus

1.State Represented by,
The Inspector of Police,
Kalapet Police Station,
Puducherry District.
(Crime No.48/2018)

2.Rani

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in S.T.C.No.844 of 2019 pending on the file of the learned Judicial Magistrate No.II, Puducherry District and quash the same.



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For Petitioner : M/s. Swami Subramanian
For Respondent : Mr. K.S.Mohan Das
Public Prosecutor (Puducherry)
for R1.

Mr. S.Xavier Felix for R2

ORDER

The petition is to quash the proceedings in STC.No.811 of 2010 initiated for the alleged offence under Section 320 IPC.

2. Mr. Swami Subramanian, the learned counsel for the petitioner, submitted that the first respondent has no jurisdiction to investigate and file a final report in respect of the offence alleged in the final report as it is a non-cognizable offence; that the procedure prescribed for investigating non-cognizable offences has not been followed in the instant case; that the first respondent ought to have referred the informant to the learned Magistrate and thereafter, can investigate the said offence on the orders of the learned Magistrate; that however, in the instant case, the first respondent, on receipt of the complaint, sought permission from the learned Magistrate to investigate this offence and such a procedure is not contemplated under the Criminal Procedure Code. He relied upon the Judgements of this Court in *A. Balakrishna vs. The Inspector of Police*



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in ***CrI.O.P.No.8662 of 2020*** dated ***28.09.2020*** and Karnataka High

Court in (i) ***Sri Lokesh T R @ Loki vs. State of Karnataka*** and (ii) ***Charan Kumar vs. The State of Karnataka*** in support of his submission that Section 155 (1) (2) Cr.P.C., mandates that the officer-in-charge of the Police Station has to refer the informant and not the information alone to the learned Magistrate, and hence, he prayed for quashing of the proceedings against the petitioner.

3. Mr.K.S.Mohan Das, the learned Public Prosecutor (Puducherry) for the first respondent and Mr.S.Xavier Felix, the learned counsel for defacto complainant/second respondent, submitted that since the first respondent has obtained permission from the learned Magistrate, there is no illegality in the first respondent filing the final report for the non-cognizable offence. Hence, they prayed for the dismissal of the quash petition.

4. This Court finds that the impugned final report has been filed for the offence under Section 323 IPC. The said offence is a non-cognizable offence. In the instant case, on receipt of the complaint, it appears that the first respondent had sought permission from the



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learned Magistrate to register an FIR and investigate. However, this Court finds that Section 155 Cr.P.C provides for a different procedure which has not been followed. Section 155 Cr.P.C., reads as follows:

"155. Information as to non-cognizable cases and investigation of such cases - (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.



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(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

5. Section 155 (1) of Cr.P.C makes it very clear that where information is received by an officer-in-charge of a Police station regarding the commission of a non-cognizable offence, he/she shall refer the informant to the learned Magistrate. There is a difference between referring the informant to the learned Magistrate and seeking permission from the learned Magistrate directly by the Investigating Officer. The Legislative mandate has to be followed scrupulously. This Court in similar circumstances, had held in ***A. Balarkrishnan vs. The Inspector of Police*** dated **28.09.2020** that officer-in-charge of Police Station has to refer the informant to the learned Magistrate and not just the information.

The relevant portion is extracted herein for better understanding:

"9. In the above judgment the Section 155(i) and (ii) of Cr.P.C., clearly mandates that the Officer-in-Charge of the police station has to refer the informant and not the information alone to the Magistrate concerned. In the case on hand, neither the information regarding the commission of non-cognizable offence



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recorded in the register as mandated by the above said provision nor informant was referred to the concerned Magistrate. It is clear violation of the provision of Section 155 (i) and (ii) of Cr.P.C. Therefore, the FIR impugned in this petition cannot be sustained and it is liable to be quashed.”

6. The reading of Section 155(1) of Cr.P.C., would make it very clear that the Court mandates the Police Officer to refer the informant to the learned Magistrate. The reason is not far to seek. The learned Magistrate may, on such reference, either take the complaint on file or pass an order directing the Police to investigate the case. The Police officer cannot seek permission or an order from the learned Magistrate without referring the informant to the learned Magistrate. Therefore, the procedure adopted by the Police in seeking permission/order from the learned Magistrate to investigate non-cognizable offences without referring the informant and the orders passed by the learned Magistrate on such requests are against the provisions of the code. The procedure can be summarised as follows:



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(a) If the Police officer-in-charge of Police Station receives a complaint relating to non-cognizable offences, he/she shall refer the informant to the Magistrate. It is needless to say that the learned Magistrate can either take the complaint on file or direct an investigation by the Police.

(b) Section 155(2) Cr.P.C., provides that an order has to be passed by the learned Magistrate directing the Police to investigate and not mere permission. Hence, the learned Magistrate has to pass an order supported by reasons for allowing the Police to investigate. Cryptic orders such as "permitted" would not satisfy the provisions of the code.

(c) The learned Magistrate shall not pass an order on an application by the Police for investigating non-cognizable offences without the informant being referred to him/her.

7. Any investigation conducted in respect of the non-cognizable offences without following the aforesaid procedure would render the final report illegal. The final report would be illegal even if ultimately the



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Police unearthed a cognizable offence during the course of the investigation as the registration of the FIR and initial investigation would be contrary to the procedure. (This view is also has been taken by the Kerala High Court in *Haneefa Vs. State of Kerala* reported in **2022 LiveLaw (Ker) 638**.

8. Therefore, this Court is of the view that admittedly since the first respondent has violated the said procedure, the impugned final report is liable to be quashed. Hence, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

13.06.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

WEB COPY

1. The Judicial Magistrate No.II,
Puducherry District
2. The The Inspector of Police,
Kalapet Police Station,
Puducherry District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J



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