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W.P.No.27233 of 2021

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.27233 of 2021 and
WMP.No.28737 of 2021

K.Kumar

... Petitioner

Vs.

State by
Sub Inspector of Police,
Orathur Police Station,
Cuddalore District

... Respondent

PRAYER:

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to call for the final report filed in CC.No.90 of 2018 on the file of the learned Judicial Magistrate No.II, Chidambaram and to quash the same and consequently to direct the respondents to conduct denova investigation and to file a fresh charge sheet in crime No.199 of 2017 on the file of the learned Judicial Magistrate No.II, Chidambaram by issuing a writ of certiorarified mandamus.

For Petitioner : Mr.M.Vijaya Kumar

For Respondent : Mr.A.Gopinath,
Government Advocate (Crl.Side)



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ORDER

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This writ petition has been filed for issuing a writ of certiorarified mandamus calling for the final report filed in CC.No.90 of 2018 on the file of the learned Judicial Magistrate No.II, Chidambaram and to quash the same and consequently to direct the respondents to conduct denova investigation and to file a fresh charge sheet in crime No.199 of 2017 on the file of the learned Judicial Magistrate No.II, Chidambaram.

2. The petitioner lodged complaint alleging that the accused persons had previous enmity with the petitioner with regards to a land dispute and they had stolen a motor. Therefore, when the defacto complainant proceeded to police station to lodge a complaint, the accused persons waylaid him and threatened him with dire consequences stating that 'if not selling the property to him' and also attacked him with knife. Hence, the complaint. On receipt of the said complaint, the respondent registered FIR in crime No.199 of 2017 for the offences under Sections 341, 294(b), 323 and 506(i) of IPC. Thereafter, the petitioner approached this Court in CrI.OP.No.3365 of 2018 for the alteration of FIR to include the offence under Sections 307 & 379 of IPC. While pending the petition, the respondent altered offences as under Sections 341, 294(b),



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323, 506(i) of IPC and 379 of IPC. After completion of investigation, final report was filed for those offences. However, there was no recovery from the accused persons. The petitioner filed application for return of property which was stolen by the accused. However, it was dismissed on the ground that no property was recovered from the accused and no property was deposited in crime No.199 of 2017.

3. Heard, the learned counsel appearing on either side.

4. Admittedly, the respondent simply altered offence into under Sections 341, 294(b), 323, 506(i) of IPC and 379 of IPC without any recovery from the accused. On perusal of FIR, clearly shows that motor belongs to the petitioner was stolen by the accused persons. Therefore, without any recovery, the prosecution cannot bring the charge under Section 379 of IPC to home. Therefore, the respondent is directed to conduct de novo investigation in crime No.199 of 2017 and to file final report within a period of twelve weeks from the date of receipt of copy of this order. On receipt of the same, the trial court is directed to proceed with the trial in accordance with law.



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5. With the above directions, this writ petition is disposed of.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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To

- 1.The learned Judicial Magistrate No.II,
Chidambaram
- 2.Sub Inspector of Police,
Orathur Police Station,
Cuddalore District
- 3.The Government Advocate,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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