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Crl.OP.No.32365 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.32365 of 2022

K.Gunasekar

... Petitioner

Vs.

The State by
The Inspector of Police,
Omerabad Police Station,
Tirupattur District.

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the respondent police not to harass the petitioner otherwise than under due process of law in connection with Crime No.242 of 2005 on the file of the respondent.

For Petitioner

: Mr.P.S.Kothandaram

For Respondent

: Mr.S.Santhosh
Government Advocate(Crl.side)



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ORDER

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2. The learned counsel for the petitioner submitted that on the basis of the complaint given by one Amsanathan, a case in Crime No.242 of 2005 was registered for "man missing" by the Umarapath, Vellore Police Station. In the year of 2016, the said Amsanathan filed a writ petition in W.P.No.14630 of 2016 before this Court, seeking cancellation of sale deed in Document No.1197 of 2005 dated 18.04.2005 and Document Nos.5868, 5869 of 2014 dated 21.08.2014, executed by his son A.Magesh in favour of the petitioner and others. The man missing complaint was given mainly for the reason that the said A.Magesh was missing. Subsequently, A.Magesh and her sister A.Amsaveni were impleaded in the Writ petition. This Writ petition came to be dismissed by giving liberty to them to file an appropriate suit before the competent Civil Court. It is grievance of the petitioner that the person A.Magesh, who is said to have been missing in Crime No.242 of 2005, is alive. Even now, the respondent police is



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harassing the petitioner, on the basis of the complaint given by Amsanathan.

Therefore, this petition has been filed.

3. The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that originally FIR was registered for man missing. After investigation, FIR was altered to Section 363 of IPC. The petitioner is second accused in this case. Petition enquiry is pending.

4. Heard the learned Counsel for the petitioner and learned Government Advocate (Crl.Side) for the respondent police.

5. This Court fails to understand that though the FIR was registered in the year of 2005 for man missing and subsequently altered for the offence under Section 363 of IPC, investigation has not been completed till now and kept pending. Therefore, respondent police is directed to complete the investigation in Crime No.242 of 2005 at the earliest and file the final report. The petitioner is directed to cooperate for enquiry.



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5. It is the grievance of the petitioner that the respondent has been harassing him under the guise of an enquiry/investigation and hence, has invoked the inherent powers of this Court under Section 482 of Cr.P.C.

6. In the present case in hand, the petitioner has complained of harassment by the police based on a complaint and seek for this Court's intervention by way of a direction. The term 'harassment' by itself has a very wide meaning and hence, what could be harassment to the petitioner may not be the same to the police officer.

7. In order to circumvent such situations, the following guidelines are issued:

a) While summoning any person named in the complaint or any witness to the incident complained of, the police officer shall summon such person through a written summon under Section 160 Cr.P.C., specifying a particular date and time for appearing before them for such an enquiry/investigation.



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b) The respondent police is directed to serve summons mentioning the CSR number, date of complaint and the name of the complainant.

c)The minutes of the enquiry shall be recorded in the general diary/station diary/daily diary of the police station.

d)The police officer shall refrain himself or herself from harassing persons called upon for enquiry/investigation.

e)The guidelines stipulated for preliminary enquiry or registration of FIR by the Hon'ble Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh and others [2014 (2) SCC (1)]** shall be strictly adhered to.

8. With the above direction, the Criminal Original Petition stands disposed of.

03.01.2023

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

1. The Inspector of Police,
Omerabad Police Station,
Tirupattur District.
2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN,J.
shk

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