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Crl.R.C.No.2107 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2107 of 2023

Abdul Haq rep by his brother
& General Power of Attorney Agent,
Abdul Majid Visharam,
No.54/3, Ponnappa Street,
2nd Lane, Purasawakkam,
Chennai – 600 084.

... Petitioner

Vs.

The Inspector of Police (L & O),
M-5, Ennore Police Station,
Ennore, Chennai – 600 057.

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Code of Criminal Procedure, praying to set aside the order dated 17.10.2023 passed in Crl.M.P.No.3499 of 2023 by the learned Judicial Magistrate, Thiruvottiyur and consequently direct the respondent police to register the complaint, enquire into the matter and file a final report within the time stipulated by this Court.

For Petitioner : Mr.M.G.Jaseem Mohamed

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This petition has been filed to set aside the order dated 17.10.2023 passed in Crl.M.P.No.3499 of 2023 by the learned Judicial Magistrate, Thiruvottiyur and for a consequential direction to the respondent police to register the complaint, enquire into the matter and file a final report within the time stipulated by this Court.

2.The petitioner as complainant had lodged a complaint with the respondent police and CSR No.304 of 2023 assigned on 22.05.2023. Since no action has been taken, the petitioner filed a petition under Section 156(3) Cr.P.C. in C.M.P.No.3499 of 2023 before the learned Judicial Magistrate, Thiruvottiyur seeking a direction to the respondent police to register the complaint dated 22.05.2023. The learned Judicial Magistrate, by order dated 17.10.2023, dismissed the said petition for the reason that the complaint of the petitioner found to be civil in nature. Aggrieved by the said order, the petitioner has filed this revision.



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3. According to the petitioner, on the complaint of the petitioner, *prima-facie* case made out. The respondent police though assigned CSR as early as on 22.05.2023, not taken any action. The petitioner approached the respondent police several times, which not evoked any response, hence, he filed a petition before the Lower Court. Along with the petition, he filed all necessary documents which has not been considered by the Lower Court, hence, the finding of the Lower Court is not proper.

4. The learned Additional Public Prosecutor submitted that this petition is not maintainable for the reason that on the petitioner's complaint CSR assigned. During pendency of the CSR, the petitioner approached the Court below under Section 156(3) Cr.P.C. without complying with the mandate under Section 154(3) Cr.P.C. as per the dictum of the Division Bench of this Court in the case of *G.Prabakaran Vs. Superintendent of Police, Thanjavur and others* reported in 2008 LW(Crl) 489, wherein, in



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paragraph 41 it is clarified that under what circumstances the petition under Section 156(3) Cr.P.C. to be entertained by the Lower Court and the petition under Section 482 Cr.P.C. to be entertained by this Court. In this case, it is seen that the petitioner not followed the dictum of the Division Bench of this Court. Hence, sought dismissal of this petition.

5.The learned counsel for the petitioner submits that dismissal of the petition would extinguish the petitioner's right of approaching the police officials as per the dictum of the Hon'ble Apex Court. Hence, sought for appropriate orders.

6.Considering the submissions made and on perusal of the material it is seen that the Lower Court without verifying the fact as to whether the petitioner complied with the dictum of this Court in *G.Prabakaran's* case, passed the impugned order. Hence, the order passed by the learned Judicial Magistrate, Thiruvottiyur in C.M.P.No.3499 of 2023 dated 17.10.2023 is set



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aside. The petitioner is granted liberty to further pursue his complaint, which is at the stage of CSR. Thereafter, the petitioner shall make a representation to the superior police officials under Section 154(3) Cr.P.C. by following the dictum of Division Bench of this Court and the respondent police shall take appropriate course of action, in the event of police not taking any action following the dictum of Division Bench of this Court, the petitioner to take appropriate recourse available to him.

7. With the above directions, the Criminal Revision Case is allowed.

12.12.2023

Index : Yes/No

Speaking order / Non-speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

rsi

To

- 1.The Inspector of Police (L & O),
M-5, Ennore Police Station,
Ennore, Chennai – 600 057.
- 2.The Judicial Magistrate,
Thiruvottiyur.
- 3.The Public Prosecutor,
High Court, Madras.

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12.12.2023