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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19/07/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.4661 of 2023

A.Dhanapalan : Petitioner/Complainant

Vs.

1.State rep. by its
The Sub-Inspector of Police,
Appanthiruppathy Police Station,
Madurai District. : 1st respondent

2.Tmt.Chinakathi : 2nd Respondent/Accused

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records and set aside the negative report forwarded by the 1st respondent police dated 22/12/2022 in D.No.3485 in Crl.M.P No.596 of 2022 on the file of the Judicial Magistrate Court No.V, Madurai, dated 27/04/2022 and consequently, direct the 1st respondent police to register appropriate FIR.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.S.Manikandan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.P.Gunasekaran

**O R D E R**

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This criminal original petition has been filed seeking to set aside the negative report forwarded by the 1st respondent police, dated 22/12/2022 in D.No.3485 in CrI.M.P No.596 of 2022 on the file of the Judicial Magistrate Court No.V, Madurai, dated 27/04/2022 and consequently, direct the 1st respondent police to register appropriate FIR.

2.The facts in brief:-

The petitioner herein as complaint filed a petition before the Judicial Magistrate No.V, Madurai stating that he married the 2nd respondent herein, on 13/02/2015 as per the customary religious rites. Because of the marriage, a male child was born to them. Right from the marriage, the wife was not cordial and picked up quarrel even for the petty issue. On 02/06/2017, again she picked up quarrel, insulted him and went to her parental home. At the time of leaving to the matrimonial home, she took the Will, dated 13/03/2009, which was executed by his mother and other property documents. Over the above said, he gave a complaint before Appanthiruppathy Police Station, on



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06/07/2017. But there was no proper action. So, he filed a petition in HMOP No.180 of 2017 seeking restitution of conjugal rights. But that petition was closed. Apart from that, he has also filed a petition before the I Additional District Judge, Madurai, seeking custody of the child in GWOP No.116 of 2019. But in spite of repeated complaints, no proper action was taken. So, he filed a petition under section 156(3) Cr.P.C seeking direction to the respondent No.1 herein to register a case under sections 294(b), 323 and 379(NP) of IPC.

3.That petition was forwarded to the 1st respondent herein for enquiry and report. Enquiry report was also filed, finding that the above said complaint itself is a false one by giving criminal colour to the property issue. Since the complaint has been given against the wife and in-laws, on that account, it was submitted that no further action is required and the parties may be advised to work out their remedy through pending civil suit. The above said closure report was also accepted by the trial court, by order, dated 27/04/2022.



4. Now challenging the above said order, this petition has been filed to set aside the closure report and consequently seeking fresh investigation.

5. When the above said defence was raised before me by the learned counsel appearing for the petitioner, this court directed the petitioner to work out his remedy in the pending civil suit itself. But the learned counsel appearing for the petitioner insisted that the original document is stolen by his wife and now the same is in the custody of his wife and unless the above said original document is produced before the civil court by him, he may not get proper justice. So, according to him, for the purpose of recovering the above said original document, investigation must be undertaken by the police. He annexed the copy of the document with complaint, but respondents failed to note it.

6. When this argument was raised before me, this court completely was at lost to understand the grievance of the petitioner. If the original document is in the custody of the opposite party, a litigant to the civil suit can very well maintain notice to produce the



document as per the provisions of the Civil Procedure Code.

7.It is well settled that if the opposite party failed to produce the document and give any explanation, for which, the petitioner can seek permission of the court to lead secondary evidence. These are the procedural safeguard, that are available to the petitioner. But without availing such remedy, he has taken a shortcut route by way of filing this petition by exaggerating the fact that the wife has stolen away the above said original document by making abuse and assault. This sort of complaint should not be entertained, neither by the criminal court or by police to collect the evidence for a party to produce before the civil court. So on that ground, I am not going into other aspects. I find absolutely no reason to interfere the order, that was passed by the trial court in accepting the closure report submitted by the police. The petitioner has to work his remedy through the proper proceedings before the concerned civil court.



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8. With the above said liberty, this criminal original petition stands **dismissed**.

19/07/2023

Index: Yes/No

Internet: Yes/No

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Note: Issue order copy on 20/07/2023

To,

1. The Judicial Magistrate No.V,
Madurai.
2. The Sub-Inspector of Police,
Appanthiruppathy Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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