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Crl.O.P.(MD)No.7200 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.7200 of 2023

Rameshkumar

... Petitioner

Vs.

1.The Superintendent of Police,
Kanniyakumari District.

2.The Inspector of Police,
Colachel Police Station,
Colachel, Kanniyakumari District.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the 2nd respondent to comply with the order of the Learned Judicial Magistrate, Eraniel, in CRL.M.P.No.3219 of 2022 dated 22.06.2022 and consequently to register the FIR and investigate the case.

For Petitioner : Mr.P.R.Ferlin Castro

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking direction to the 2nd respondent to comply with the order of the Learned Judicial Magistrate, Eraniel, in CRL.M.P.No.3219 of 2022 dated 22.06.2022 and consequently to register the FIR and investigate the case.



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2.The learned Additional Public Prosecutor would submit that on the basis of the complaint given by this petitioner on 28.04.2022, enquiry was undertaken in CSR No.255 of 2022. During the course of enquiry, it was found that the allegations are baseless and not true. Hence, the complaint was closed. With regard to the cremation of the dead body, they were advised to workout their remedy before the Sub Collector, Padmanabhapuram. The above said closure is dated 28.04.2022. After the above said closure, it appears that the petitioner approached the learned Judicial Magistrate, Eraniel, on 03.06.2022, seeking direction. That petition was considered and directions was issued in Crl.M.P.No. 3219 of 2022, dated 22.06.2022.

3.The learned Additional Public Prosecutor would submit that since already the above said complaint given by the petitioner was closed after enquiry in CSR No.255 of 2022. The final report was filed before the concerned Court stating that no further enquiry is required.

4.The grievance of the petitioner is that since cognizable offence is made out, the respondent ought not to have made enquiry, in pursuance of the order passed by the trial Court, they ought to have registered the FIR.



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5. Reading of the FIR shows that some sort of trouble arisen between the parties over the cremation of dead bodies and the pollution.

With regard to the above said only they were advised to approach the Sub Collector, Padmanabhapuram. With regard to the allegation of criminal intimidation and other things, it is not true.

6. The learned counsel for the petitioner would rely upon the following Judgments for the purpose of argument that once a direction is issued by the jurisdictional Magistrate, the police is duty bound to register the FIR and proceed and they cannot hold preliminary enquiry.

1. Judgment of the Honourable Supreme Court made in the case of ***Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*** reported in ***(1976) 2 SCC 252*** and
2. Judgment of the Honourable Supreme Court made in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and Others***, reported in ***(2014) 2 SCC 1***.

7. Even in *Lalita Kumari's case* it has been clearly set out the circumstances, under which the preliminary enquiry can be held. Though the circumstances listed out in the above said judgment are not exhaustive in nature, but, when we look into the nature of the complaint,



the preliminary enquiry that was undertaken by the respondent police cannot be found fault, since the issue is arising between the parties over the cremation of the dead bodies. Certainly, they would have undertaken the preliminary enquiry. So the course adopted by the respondent police cannot be found fault. It also found that the petitioner has not made out a prima facie acceptable evidence to register the FIR, even the criminal intimidation was found to be not true. Therefore, the petitioners are at liberty to move the Jurisdictional Magistrate under private complaint.

8. With the above said liberty, this criminal original petition stands disposed of.

19.04.2023

Index : Yes/No

Internet : Yes/No

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To

1. The Superintendent of Police,
Kanniyakumari District.
2. The Inspector of Police,
Colachel Police Station,
Colachel, Kanniyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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