



CrI.O.P(MD).No.9758 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).No.9758 of 2021

and

CrI.M.P.(MD)No.4988 of 2021

S.P.D.Karuppaiah

...Petitioner

Vs

The Inspector of Police,
Karaikudi South Police Station,
Karaikudi,
Sivagangai District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the order in Cr.M.P.No.668 of 2021 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi dated 10.02.2021 and to set aside the same and consequentially direct the respondent police to register FIR.

For Petitioner
For Respondent

: Mr.T.Seeni Syed Amma
: Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This petition is filed to quash the order in Cr.M.P.No.668 of 2021 dated 10.02.2021, on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.



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2. According to the petitioner, he filed a private complaint before the Principal District Munsif cum Judicial Magistrate, Karaikudi in Cr.M.P.No. 668 of 2021. The petitioner has filed a petition under Section 156(3) of Cr.P.C., to forward the matter to the concerned jurisdictional police to register the case and investigate the matter. But the trial Court has treated the case under Section 200 of Cr.P.C., and posted the matter for recording the statement of witness.

3. According to the petitioner, treating the petition under Section 156(3) of Cr.P.C., into Section 200 of Cr.P.C., is not permissible and thereby, the order passed by the learned Magistrate is liable to be set aside.

4. No counter was filed for the respondents.

5. The learned counsel appearing for the petitioner contended that the petitioner has filed a petition under Section 156(3) of Cr.P.C., before the learned Magistrate and the learned Magistrate instead of forwarding the matter to concerned jurisdictional police, has treated the case as Section 200 of Cr.P.C., and posted for further proceedings and the learned Magistrate ought to have forwarded the matter to concerned jurisdictional Police when



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the matter is specifically filed under Section 156(3) of Cr.P.C. Hence, the order passed by the learned Magistrate is liable to be set aside.

6.The learned Government Advocate appearing for the respondent contended that the learned Magistrate has recorded that there is no *prima facie* case made out for forwarding the matter to concerned police station and posted the case for recording sworn statement. Therefore, this Court may pass suitable orders.

7.This Court heard both sides and perused the materials available on records.

8.The main contention of the petitioner is that when the petition was filed under Section 156(3) of Cr.P.C., the learned Magistrate ought to have forwarded the same to the jurisdictional police instead of treating it as Section 200 of Cr.P.C. It is well settled law that the learned Magistrate has power to take cognizance under Section 200 of Cr.P.C., where the petition filed under Section 156(3) of Cr.P.C., the Magistrate has a discretion to treat an application under Section 156(3) of Cr.P.C., as a complaint under Section 200 of Cr.P.C. Therefore, the contention of the petitioner that the learned Magistrate ought not to have treated the petition under Section 200 of Cr.P.C.,



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is not acceptable.

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10.It is rightly contended by the learned Government Advocate that the learned Magistrate on 10.02.2021 passed an order that “*Records perused. The office is directed to provide Cr.M.P., number for this petition. On perusal of the case records, this Court opine that there is no prima facie case to proceed further to send the case records for registration of FIR before the respondent police. Hence, for recording of sworn statement.*”

11.On perusal of records, this Court observed that there is an order passed by the learned Magistrate that no *prima facie* materials available to proceed further to send the case records for registration of FIR before the concerned police, hence, for recording the sworn statement, the case was posted on 26.03.2021. Once the Magistrate came to a conclusion that there is no *prima facie* materials available to proceed further, the learned Magistrate ought to have dismissed the petition instead the learned Magistrate has posted the case for recording sworn statement. However, no statement was recorded for the past two years.

12.Without going into merits, it is appropriate to set aside the order of the learned Magistrate and remand back the petition for fresh consideration.



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Accordingly, the order passed in Cr.M.P.No.668 of 2021 dated 10.02.2021, by the learned Principal District Munsif cum Judicial Magistrate is set aside and the case is remand back to the learned Principal District Munsif cum Judicial Magistrate for fresh consideration. The learned Principal District Munsif cum Judicial Magistrate also directed to pass orders within a period of four months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

21.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

- 1.The Principal District Munsif cum Judicial Magistrate, Karaikudi.
- 2.The Inspector of Police,
Karaikudi South Police Station,
Karaikudi,
Sivagangai District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL, J.

Mrn

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