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Writ Petition (MD)No.17223 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.17223 of 2020

V.Sathish Kumar

... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil.

2.State through rep by
The Inspector of Police,
District Crime Branch,
Nagercoil.

3.C.Cylas

4.A.Rabi Mohan

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the first and second respondents to take appropriate action against the respondents 3 and 4 by considering the petitioner's representation dated 29.11.2019.

For Petitioner	: Mr.Niranjana S.Kumar
For Respondents 1 to 4	: Mr.R.M.Anbunithi Additional Public Prosecutor
For 3 rd Respondent	: Mr.B.Brijesh Kishore
For 4 th Respondent	: Mr.C.Jegamathan



ORDER

The petitioner has filed this writ petition in a nature of Writ of Mandamus, directing the first and second respondents to take appropriate action against the respondents 3 and 4 by considering the petitioner's representation dated 29.11.2019.

2.The petitioner's contention is that the third respondent herein is an unknown person to him and falsely stated that the petitioner has received Rs.38,00,000/- in various accounts in the year 2017 from the third respondent and the petitioner has given a cheque bearing No.023393 for the amount of Rs.38,00,000/-. Subsequently, the third respondent filed a suit in O.S.No.9 of 2018 with false averments for the relief of recovery of money on the file of the Principal District Court, Kaniyakumari. The petitioner also appeared before the Principal District Court, Kaniyakumari and the case is still pending. The third respondent falsely stated that the petitioner is an known person and he received lakhs and lakhs of money at many occasions and for that, he had given filled bank cheques containing 150 numbers. The third and fourth respondents illegally conspired with each other and forged the petitioner's signature in the cheque bearing No.023393 and the same was produced before the Axis bank for collection. The bank authorities verified



the cheque and returned the cheque for the reasons stated that the signature differed. The petitioner has not received any single amount from the third respondent. The respondents 3 and 4 with malafide intention filed a suit against the petitioner. In such circumstances, the petitioner sent a detailed representation to the District Superintendent of Police on 29.11.2019 to take appropriate action against the respondents 3 and 4. Thereafter, the second respondent summoned the petitioner and he also appeared. At the same time, the second respondent stated that he shall take appropriate action against the respondents 3 and 4, but till date no action was taken against the respondents 3 and 4. Hence, the petitioner has filed this writ petition.

3.The second respondent also filed counter stating that on receipt of complaint given by the petitioner, the respondent police summoned both the parties. The fourth respondent in spite of summons failed to turn up for enquiry and it came to know that the third respondent filed a suit in O.S.No. 9 of 2018 before the Principal District Court, Kaniyakumari. Already a competent civil court was seized of the matter and the suit is ripe for trial. The fourth respondent has given a statement stating that in respect of civil claim he has already filed a civil suit against the petitioner herein and in respect of the dispute, he has falsely named in the complaint. Thereafter,



the respondent police found dispute between them is related to civil in nature and hence, the respondent advised both the parties to seek their remedy through concerned civil Court and dropped the further action and closed the petition enquiry.

4.The fourth respondent has filed a counter alleging that already the petitioner has given a complaint before the Thiruvattar Police Station, Kanyakumari District with the very same set of allegations on 23.01.2018 wherein he alleged that he had some cheque leaves in his hand on 02.12.2018, which have been misplaced and the said cheques are misused by the third respondent, who filled the same with a sum of Rs.38,00,000/-. Similarly, one Pythalues and Harihara Chandra also misused the cheques and issued a legal notice to the petitioner for which, they gave a reply notice to them alleging that all those cheques were misused by him. In such circumstances, on earlier occasion, he gave a complaint before the Inspector of Police, Thiruvattar police Station on 23.01.2018 and no action was taken. Hence, he filed CrI.O.P.(MD)No.1979 of 2018 before this Court seeking for relief of a direction to the second respondent to register the case based on the complaint dated 27.01.2018. In the petition, this Court directed the second respondent to expedite the process. If the enquiry reveals any



cognizable offences, then he has to register a case and proceed in accordance with law. In case the enquiry reveals only a civil dispute or non cognizable offence, then the second respondent shall direct the parties to approach the concerned Court and get appropriate remedy and with the above observation, this Criminal Original Petition is disposed of. The above said vital facts were not brought to the notice of this Court. Hence, this writ petition is not maintainable. Further as far as the complaint against the third respondent is concerned, he has presented the cheque and the same was dishonored and he filed the suit in O.S.No.9 of 2018 as against the petitioner and the suit is still pending.

5.The learned counsel appearing for the petitioner would contend that they sent a representation before the first respondent dated 29.11.2019. But the same has not been considered by the first respondent. But summons was sent to the petitioner on 14.12.2019 and thereafter, they filed three different closure reports. On behalf of the petitioner, the first respondent filed written arguments and the same was also perused by this Court. He reiterated the facts of the affidavit in the written arguments. At the time of admission of the writ petition, the respondents 1 and 2 have produced a closure report vide proceedings Ref.No.C.No.14/P/SP-



KKI /Camp/2020/DSP/DCB/45/2020 and reported before this Court that the complaint has been investigated and closed. After elaborate arguments, this Court directed the respondents 1 and 2 to produce the summon issued under Section 41A of Cr.P.C., and posted the matter on 10.12.2020. This is nothing but abuse of process of law. After producing closure report before this Court, the respondent Police had issued summons and directed the petitioner to appear for enquiry. The action of the respondent Police is nothing but a clear abuse of process of law.

6.The learned counsel appearing for the second respondent would contend that already representation of the petitioner was considered and the same was closed as civil in nature. The petitioner has to approach the civil Court for appropriate direction.

7.The learned counsel appearing for the fourth respondent would contend that already civil suit is pending and already the same petitioner filed the petition in CrI.O.P.(MD)No.1979 of 2018 and got direction from this Court and the same was suppressed by him. As per Division Bench of this Court, the petitioner has to file an application before concerned Magistrate under Section 156(3) of Cr.P.C., without exercising a remedy, he



cannot file this petition and hence, this petition is liable to be dismissed.

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8.This Court heard on both sides and perused the materials available on record.

9.On perusal of the records, it is observed that already civil suit is pending between the parties for the same cheque leaves. The representation of the petitioner was already considered by the second respondent and the same was closed as civil in nature.

10.The learned counsel appearing for the petitioner brought to the knowledge of this Court that there are three different closure reports for the single petition.

11.But the learned counsel appearing for the second respondent brought to the knowledge of this Court that the petitioner gave several representations and based on that, several closure reports were filed by the second respondent. The petitioner gave several representations before the Police and Police also closed those representations on various dates. While so, the petitioner ought to have approached the jurisdictional Magistrate



under Section 156(3) of Cr.P.C., for seeking appropriate remedy. In the above circumstances, this petitioner without availing the remedy under Section 156(3) of Cr.P.C., has straight away filed this petition. As per judgment of the Hon'ble Division Bench in the case of CrI.O.P.(MD)No. 13681 of 2018 dated 20.05.2018. The petitioner has to approach the jurisdictional Magistrate under Section 156(3) of Cr.P.C., and cannot approach this Court without exhausting the remedy before the Magistrate Court.

12.However the learned counsel appearing for the petitioner has brought to the knowledge of this Court that the alleged date of closure report is 17.10.2019 and thereafter, the respondent issued summons on 11.12.2020. Though the summons was issued after the closure report, it is for the petitioner to approach the trial Court at that time, he can raise all the contentions raised before this Court with regard to summons. It is for the trial Court to decide on merits if any application filed by the petitioner in this regard.



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13. With the above observation, this petition is disposed of. No Costs.

18.07.2023

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

To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil.
2. The Inspector of Police,
District Crime Branch,
Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

Mrn

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