



Crl.O.P.(MD)No.13328 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13328 of 2023

M.Veluthai

... Petitioner

Vs.

1. The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.

2. The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the closure report dated nil filed by the second respondent and set aside the same and consequently direct the 2nd Respondent to register the complaint in light of the order in Crl.M.P.No.5511 of 2023 dated 27.04.2023 passed by the learned Judicial Magistrate Court No.1, Srivaikundam under Section 156(3) of Cr.P.C.



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For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl.Side)

ORDER

This petition is filed seeking quashment of the closure report of the police and to direct the police to register FIR as per the orders passed in Crl.M.P.No.5511 of 2023 by the learned Judicial Magistrate-1, Srivaikundam, dated 27.04.2023.

2. The facts as per this petition are that the Petitioner is an Agricultural Coolie. On 12.12.2007, one J. Baskar Rao had executed a lease deed in favour of the petitioner's husband Mr.Mahalingam for the punja land in Survey Nos. 760/1, 760/2 to an extent of 13 1/2 Acres at Keshavallanaadu Village and in Survey Nos. 1125, 1126 and 1137 to an extent of 19 Acre at Vadakku Kaaruseri Village, Srivaikundam Taluk, Thoothukudi District. Subsequently, on 20.11.2012 sale agreement was executed in favour of petitioner's husband by the said Baskar Rao based on which the petitioner's husband paid the entire amount of Rs.

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7,00,000/- . However, even after receiving entire sale agreement amount of Rs. 7,00,000/- from the petitioner's husband, the said Baskar Rao failed to execute the sale deed in favour of the petitioner's husband so far. Therefore, the petitioner's husband filed a civil suit for specific performance in O.S.No 706 of 2023, before the Sub Court, Tiruchendur for execute the sale deed as per the condition laid down in the sale agreement. It is pending and the proposed accused also appeared before the Court.

3. From 2007 onwards the petitioner and their family members are having peaceful possession of the above said land and they cultivating agricultural plants for the past 16 years. With the intention to grab the said property from the petitioner, the said Baskar Rao along with other persons trespassed into the petitioner's agricultural land and threatened her with dire consequences. On 11.04.2023, the petitioner lodged a complaint before the first respondent police and again on 13.04.2023, the petitioner sent a complaint to the Superintendent of Police, Thoothukudi to take action against the said Baskar Rao. Since no enquiry was conducted the petitioner filed a petition before the learned Judicial



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Magistrate under Section 156(3) of Cr.P.C. in Crl.M.P.No.2032 of 2022 and same was disposed of with the directions to the respondent police to register FIR and for conducting investigation.

4. The second respondent has conducted the enquiry and finally a closure report dated Nil was filed stating that there was no complaint received by the respondent police from the petitioner and hence, no case could be registered as directed in Crl.M.P.No.5511 of 2023. Aggrieved by the same, the present petition is filed.

5. According to learned counsel for the petitioner, this Court can issue directions to further investigate as the police have not done the inquiry as per the ***Lalita Kumari v. Government of Uttar Pradesh and others***, reported in ***(2014) 2 SCC 1***. If the learned Magistrate refers the complaint to the concerned police under Section 156(3) of Cr.P.C., the police are expected to register FIR.

6. Normally, whenever the police filed a final report under Section 173 of Cr.P.C by closing the criminal case as mistake of fact or otherwise



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after the completion of investigation subsequent to the registration of FIR, a notice will be served to the defacto complainant and the defacto complainant on recording the notice of referred charge sheet can file a protest petition before the concerned court challenging the closure of investigation.

7. The question is whether on filing of a closure report by the police subsequent to the inquiry without registration of FIR, whether the police are required to serve the notice and if so, whether the protest petition can be filed before the Court.

8. On filing of a complaint, learned Magistrate Court is at liberty to take the complaint on file directly against accused after following due process. Magistrate Court can also refer the complaint to the police under Section 156(3) of Cr.P.C. and after registering of FIR, if police filed the final report then the complainant will have a right to file the protest petition.



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9. The Hon'ble Supreme Court in ***Madhu Bala v. Suresh Kumar***

& Ors. reported in ***(1997) 8 SCC 476*** held as under:-

"From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156(3) for investigation. Once such a direction is given under sub section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a police report in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be police report in view of the definition of complaint referred to earlier and since Section 156(1) has to culminate in a police report the complaint - as soon as an order under Section 156 (3) is passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First information Report (F I R). As under Section 156 (1) the police can only investigate a cognizable case it has to formally register a case on that report.

The mode and manner of registration of such cases



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are laid down in the Rules framed by the different State Governments under the Indian Police Act, 1861. As in the instant case we are concerned with Punjab Police Rules, 1934 (Which are applicable to Punjab, Haryana, Himachal Pradesh and Delhi) framed under the said Act we may now refer to the relevant provisions of those Rules. Chapter XXIV of the said Rules lays down the procedure an officer-in-charge of a Police Station has to follow on receipt of information of commission of crime. Under Rules 24.1 appearing in the Chapter every information covered by Section 154 of the Code must be entered in the First information Report Register and substance thereof in the daily diary. Rule 24.5 says that the First information Report Register shall be a printer book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. It further requires that the cases shall bear an annual serial number in each police station for each calendar year. The other requirements of the said Rules need not be detailed as they have no relevance to the point at issue.

From the foregoing discussion it is evident that whenever a magistrates directs an investigation on a 'complaint' the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) legally unsustainable. Indeed, eve if Magistrate does not pass a direction to



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register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to Investigate into a cognizable 'case' and the Rules framed under the Indian Police Act, 1861 it (the Police) is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be to register a case at the police station treating the complaint as the First Information Report and investigate into the same."

10. Whenever the complaint is filed before the learned Magistrate under Section 156(3) of Cr.P.C in case if the Magistrate is of the opinion that there is material to hold that the cognizable offence has taken place, the Magistrate is required to refer the same to the police under Section 156(2) of Cr.P.C. for investigation. While referring the matter to the police under Section 156(3) of Cr.P.C. the Magistrate will be acting under Section 190 of Cr.P.C.



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11. So far as the police are concerned, it is as if a complaint is filed by any person in respect of cognizable offence where the police are required to register FIR under Section 154 of Cr.P.C. Under Section 156(1) of Cr.P.C., the police are empowered to conduct investigation in respect of the cognizable offence in respect of which the FIR is registered under Section 156(4) of Cr.P.C.

12. Therefore, on account of the reference of the complaint under Section 156(3) of Cr.P.C. by learned Magistrate and satisfying that there is a cognizable offence, the respondent police required to register the FIR. In case if the police are of the opinion that no offence is taken place during the course of investigation, they are liberty to file final report by filing final report under Section 173 of Cr.P.C. In case if any material exists, they are expected to file charge sheet under Section 173 of Cr.P.C.

13. In the case on hand, the respondent police on misapplication of procedure has not registered FIR. Once the complaint is referred to by the Court under Section 156(3) of Cr.P.C. the police have no role to register the same as CSR, it has to be registered only as FIR and start



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investigation. It is for the Magistrate to decide whether to refer the complaint to the police or not. Learned Magistrate is expected to refer the complaint under Section 156(3) of Cr.P.C. only in case if he satisfied that there is *prima facie* material to hold the cognizable offence is committed. Once a complaint is referred by the Magistrate, the police have no discretion to register CSR or for conducting preliminary enquiry except to file FIR and proceed with investigation.

14. In the case on hand, the petitioner filed a complaint under Section 156(3) of Cr.P.C. and the same was referred to police. The police instead of registering FIR has closed the same stating that there is no cognizable offence made out. The procedure followed by police is incorrect.

15. Considering the discussions above, filing of a closure report by the respondent police after the complaint referred to by learned Magistrate under Section 156(3) of Cr.P.C. is illegally not permissible. Once the Magistrate refers the complaint to the police under Section 156(3) of Cr.P.C. the police have no option except to register FIR and



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investigate the case. Once the complaint has been referred by learned Magistrate to police under 156(3) of Cr.P.C. it means that the learned Magistrate has *prima facie* satisfied that the cognizance has already been committed. Therefore, the police should have registered the FIR and started investigation.

16. In case if a person directly files complaint before the police at that point of time police will have a discretion either to register FIR or to register the same as CSR and conduct preliminary enquiry. Since it is the complaint forwarded by learned Magistrate, the police should have registered FIR. Further, whatsoever language being employed by learned Magistrate the essence of that is to register FIR. In case if there is no case against the proposed accused then the police are at liberty to file a final report by serving copy of the same to the defacto complainant who can agitate the same by way of filing protest petition. In case if the police without registering FIR conducts enquiry and concludes the case, then there is no case for the defacto complainant.



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17. In view of the above, the closure report of the police dated

Nil is set aside and the respondents police are directed to register FIR on the basis of complaint forwarded by learned Magistrate under Section 156(3) of Cr.P.C. in Crl.M.P.No.5511 of 2023 on the file of the Judicial Magistrate Court No.I, Srivaikundam and commence the investigation and file the report before the Court as directed by learned Magistrate.

29.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.
2. The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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