



CRL.O.P.(MD)No.13541 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.07.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

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Santhi

... Petitioner

Vs

1.The Commissioner of Police,
Madurai City,
Madurai District.

2.The Inspector of Police
City Crime Branch,
Madurai City,
Madurai District.

3.The Inspector of Police (Crime),
Avaniyapuram Police Station,
Madurai District.

4.Jegatheesan

5.Vijayaboobathi

6.Selvi

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the second Respondent Police to register the case based on the order passed in Cr.MP.No.2680 of 2022 dated 03.03.2023 on the file of learned Judicial Magistrate No.VI, Madurai.



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For Petitioner : Mr.A.R.Kannappan

For R-1 to R-3 : Mr.B.Thanga Aravindh
Government Advocate (Crl. side)

ORDER

This petition is filed seeking for a direction to respondent Police to implement orders passed by the learned Magistrate No.IV, Madurai in Cr.MP.No.2680 of 2022, dated 03.03.2023, under Section 156 (3) of Cr.P.C.

2. It is submitted by learned counsel for the petitioner that the petitioner has filed a complaint before the third respondent Police on 21.01.2022 making allegations against the unofficial respondent and the Police have registered the same as C.S.R.No.96 of 2022. As the issue was not resolved, the petitioner has approached the Deputy Commissioner of Police, Madurai City and filed a complaint, who, in turn, has forwarded the complaint to the third respondent / Police. Even after receipt of the said complaint through the Deputy Commissioner of Police, Madurai City, the third respondent has not taken any action and failed to register the case against the accused. The petitioner has again sent a complaint to the first respondent, the Commissioner of Police, Madurai City and also the third respondent through the Registered Post on 21.01.2022 though both of them have acknowledged the complaints, but case has not been registered.



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3. Finally, the petitioner has approached the Judicial Magistrate Court No.VI, Madurai and filed a complaint under 200 Cr.P.C. r/w 156 (3) of Cr.P.C. alleging that the accused have committed the offence punishable under Sections 406, 420 and 468 of I.P.C. The same was registered as Cr.M.P.N0.2680 of 2022 dated 03.03.2023 and learned Magistrate has passed orders as under:-

*“Taken up today. Records perused.
As per the report of Inspector of Police,
Avaniyapuram (Crime) P.S., this complaint is
forwarded to Madurai City CCB, Unit II and
SHO of Unit II CCB is directed to register the
case as per complaint and investigate.”*

4. The said complaint was accordingly forwarded to the Madurai City, CCB Branch to SHO directing him to register the case and the matter was adjourned from 03.03.2023 to several occasions. However, the respondent Police neither obeyed the order nor registered the case. Therefore, sought for suitable directions.

5. Learned Government Advocate (Criminal Side) has requested short time so that he the respondents police will comply the directions of the



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6. It is the duty of the police to register FIR under Section 154 of Cr.P.C. on the basis of a complaint if cognizable offence is allegedly committed. If the police fails to register FIR then the person aggrieved can approach the higher police officials and in spite of it if FIR is not registered, a complaint under Section 200 of Cr.P.C. has to be filed requesting to give directions under 156 (3) of Cr.P.C., to the respondents police to register the case.

7. The Hon'ble Supreme Court in the case of ***Ramesh Kumari v. State (NCT of Delhi) and Ors.***, reported in (2006) 2 SCC 677 held as follows:-

"3. Mr Vikas Singh, the learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found that no genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt



petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer.

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no more res integra. The point of law has been set at rest by this Court in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under: (SCC pp. 354-55)

“31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case,

<https://www.mhc.tn.gov.in/judis> an officer in charge of a police station refuses to exercise the



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jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression '*information*' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, '*reasonable complaint*' and '*credible information*' are used. Evidently, the non-qualification of the word '*information*' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, '*reasonableness*' or '*credibility*' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word '*information*' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that '*every complaint or information*' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872)



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which thereafter read that ‘every complaint’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘complaint’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘information’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.”

(emphasis in original)

Finally, this Court in para 33 said: (SCC p. 355)

“33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.”

5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence. ."

8. Basing on the directions of this Court in Crl.O.P.Nos.19197 of 2016 etc. and batch in ***Sugesan Transport Pvt. Ltd. Chennai & 6 others v. The Assistant Commissioner of Police, Adyar PS, Chennai & Ors.***, the following directions have issued:-



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i. A petition under Section 482, Cr.P.C. for a direction to register an FIR on the complaint of the petitioner circumventing the time table prescribed by the Supreme Court in Lalita Kumari-IV and V is not maintainable.

ii. This Court directs all the Station House Officers in the State of Tamil Nadu and Union Territory of Puducherry to receive any complaint relating to the commission of cognizable offence by a common man and if the Station House Officer wants to conduct a preliminary enquiry, he shall immediately issue a CSR receipt (in case of Tamil Nadu) or issue a separate receipt (in case of Union Territory of Puducherry) to the complainant and after making the necessary entries in the Station General Diary, as directed by the Supreme Court in Lalita Kumari-IV and V, conduct preliminary enquiry. In Lalita Kumari-IV, the Supreme Court has directed that after conducting preliminary enquiry, if the police come to the conclusion that no FIR need be registered, a duty is cast upon the police to furnish a copy of the closure report to the complainant. After getting the closure report, it is open to the complainant to file a petition under Section 156(3) Cr.P.C. or private complaint under Section 190 read with Section 200 Cr.P.C. disclosing the facts and persuading the Magistrate to take cognizance of the offence. Such a petition/private complaint should disclose the closure report of the police. After taking cognizance of the offence, the Magistrate can also

<https://www.mhc.tn.gov.in/judis> order police investigation under Section 202, Cr.P.C. to a limited extent.



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The closure report cannot be subject to judicial review under Section 482, Cr.P.C.

iii. If the Station House Officer refuses to receive the complaint, the complainant shall send the complaint together with a covering letter to the Superintendent of Police/Deputy Commissioner of Police by Registered Post with Acknowledgment Due under Section 154(3), Cr.P.C.

iv. If there is inaction on the part of the Station House Officer and the Superintendent of Police, the complainant is at liberty to move the jurisdictional Magistrate under Section 156(3) Cr.P.C.

v. The complaint shall be given to the Magistrate either in Tamil or in English in the form of a representation in first person addressed directly to the Magistrate.

vi. The complaint shall be accompanied by an affidavit as mandated by the Supreme Court in Priyanka Srivastava.

vii. On receipt of the complaint, the Magistrate shall pass orders thereon within 15 days, either issuing directions or dismissing the petition.

viii. If the Magistrate decides to order police investigation, he should pass a judicial order to that effect in the record sheet.

ix. A copy of the order, together with original complaint and copy of the affidavit, shall be forwarded by the Magistrate to the jurisdictional police officer for investigation.



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x. If the police officer does not register FIR within a period of one week from the date of receipt of the Magistrate's order, the Magistrate shall initiate prosecution against him under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.

xi. If no FIR is registered by the police within one week from the date of receipt of a copy of the order of the Magistrate under Section 156(3), Cr.P.C., the complainant can approach this Court under Section 482, Cr.P.C.

xii. If the police fail to complete the preliminary enquiry within six weeks as mandated by the Supreme Court in Lalita Kumari-V, the complainant can approach this Court under Article 144 read with Section 482, Cr.P.C.

xiii. The aforesaid petition under Article 144 read with Section 482, Cr.P.C. must be accompanied by an affidavit sworn to by the complainant with satisfactory materials to show that the police have not completed the preliminary enquiry within six weeks, as mandated by the Supreme Court in Lalita Kumari-V. In such a petition, this Court will not read the complaint, but, issue directions to the police to register an FIR on the complaint for the very failure

<https://www.mhc.tn.gov.in/judis> of the police to follow the mandates of Lalita Kumari-IV and V.



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The Registry of this Court shall not number the petition filed under Section 482, Cr.P.C. seeking a direction to register an FIR unless it is accompanied by an affidavit containing the above details.

xiv. In suitable cases, this Court shall also direct disciplinary action to be taken against the police officer for the violation of the mandates of Lalita Kumari - IV and V.

xv. If the police officer fails to register the FIR pursuant to the directions of this Court, he will be liable for contempt of Court, besides facing disciplinary action.

xvi. The aggrieved party can also approach the local Legal Services Authority and the Authority shall take immediate steps to ensure that an FIR is registered or CSR receipt issued to the complainant.

xvii. Every police station shall have a board giving the name and telephone number of the local Legal Services Authority.

A copy of the aforesaid order was directed to be circulated to all the Commissioner of Police, State of Tamil Nadu and Deputy General of Police, State of Tamil Nadu, for suitable directions to the Police, so that, these kind of petitions will not be again and again be filed before this Court. Basing on the above, the police have been given directions by the Superintendent of Police to follow the direction in letter and spirit. Direction No.10 of this Court is the police are required to register FIR within one week from the date of receipt of



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the Magistrate's order and it is directed in case, if the FIR not registered the aggrieved person can approach this Court under Section 482 of Cr.P.C. and it is also stated if any one of the directions is violated and the FIR not registered, then the concerned police officer is liable for contempt of Court and disciplinary action.

9. In this case, though learned Magistrate directed the police to register case, police have failed to comply with the directions. Therefore, the respondents police are directed to register the FIR basing on the direction of the learned Magistrate forthwith, in case if FIR has not registered already.

31.07.2023

NCC:yes/no
Index:yes/no
Internet:yes/no

tsg/pkn
To

- 1.The Commissioner of Police,
Madurai City,
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- 2.The Inspector of Police
City Crime Branch,
Madurai City,
Madurai District.
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN, J.

tsg

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