



CrI.O.P.(MD)No.15955 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **13.03.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

CrI.O.P.(MD) No.15955 of 2020

Chandrakala

... Petitioner / Complainant

Vs.

1.Sathasivan

2.Arun

3. The Sub Inspector of Police,

Nithiraivilai Police Station,

Samathuvapuram,

Kanchamparai Post,

Kanyakumari District.

4.The Deputy Superintendent of Police,

Kulachal, Kanyakumari District.

... Respondents / Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the order dated 16.09.2020, passed in Cr.M.P.No.2792 of 2019 and to set aside the same and further direct the Judicial Magistrate No.II, Kulithurai to consider the complaint of the petitioner, dated 30.07.2019 filed in Cr.M.P.No.2792 of 2019 and to proceed with the same in accordance with law.



WEB COPY



Crl.O.P.(MD)No.15955 of 2020

For Petitioner : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.M.Sakthikumar
Government Advocate (Crl.Side) for R3&R4

: Mr.S.C.Herold Singh for R1&R2

ORDER

This petition is filed to set aside the order, passed in Cr.M.P.No. 2792 of 2019 and direct the Judicial Magistrate No.II, Kulithurai, to consider the complaint of the petitioner, dated 30.07.2019 filed in Cr.M.P.No.2792 of 2019.

2. On the side of the petitioner, it is stated that there was a land dispute between the petitioner and the defacto complainant and that there was a quarrel between both of them, on 30.06.2019, at about 07.00 a.m, the respondents 1 and 2 trespassed into the property of the petitioner and they tried to erect boundary stones. Since the private respondents are working in the police department, a false case was foisted against the petitioner, whereas, the complaint filed by the petitioner was closed as “mistake of fact”. The petitioner was admitted in the Hospital and the petitioner also took treatment, due to the assault committed by the private



respondents and that a complaint was filed under Section 156(3) of Cr.P.C. before the Judicial Magistrate and that the respondents 3 and 4 also filed referred charge sheet and that even after the objection raised by the petitioner, the Judicial Magistrate recorded the final report and prayed the order of the Judicial Magistrate to be set aside and for a direction to proceed with the case in Cr.M.P.No.2792 of 2019.

3. On the side of the prosecution, it is stated that on the complaint given by one Sadhasivan, a case in Crime No.137 of 2019 was registered on 12.30 hours, under Sections 341, 294(b), 324, 379 (N.P) and 506(ii) of I.P.C. After the registration of the case, the third respondent filed an alteration report before the Judicial Magistrate under Sections 341, 294(b), 324 and 506(ii) of I.P.C. On the same day, at about 17.15 hours, the investigation officer arrested the first accused, by name, Stephen S/o. Thankappan. The petitioner was arrayed as second accused. As a counter blast to that complaint, the petitioner preferred a petition against the first and second respondents herein, on 30.06.2019, at about 12.45 hours and the petition was registered as C.S.R.No.249 of 2019. After enquiry, the third respondent referred the case as false and that petition was closed.



WEB COPY

4. In Crime No.137 of 2019, after the completion of the investigation, a final report was filed before the Judicial Magistrate No.II, Kuzhithurai, on 23.07.2019 and the same was taken on file as C.C.No.339 of 2019.

5. In the above circumstances, the petitioner filed a petition under Section 156(3) Cr.P.C, and that petition was taken on file as Cr.M.P.No. 2792 of 2019 and the Judicial Magistrate No.II, Kuzhithurai, directed the police to conduct enquiry and to submit report. Based on that order, enquiry was conducted and the Inspector of police has submitted a report. After perusing the entire materials, the Judicial Magistrate passed the impugned order, dated 16.09.2020. There is no necessity for the Judicial Magistrate to take cognizance of an offence, merely because, the case was referred by the Judicial Magistrate, under Section 156 (3) of Cr.P.C.

6. On the side of the private respondents, it is stated that only after the arrest of the first accused, a false case was filed by the petitioner and the petition was taken on file as C.S.R.No.249 of 2019. After the C.S.R



petition was closed as “mistake of fact”, the petitioner filed a complaint before the Judicial Magistrate under section 156(3) of Cr.P.C. The Judicial Magistrate call for a report from the investigation agency. The third respondent has filed a report stating that the complaint filed by the petitioner is a false one and the same was recorded by the Judicial Magistrate and the petition under Section 156(3) of Cr.P.C was dismissed. The order of the Judicial Magistrate is genuine and that there is nothing sufficient enough to interfere in the orders of the Judicial Magistrate.

7. It is further stated that the private respondents sustained injuries and they were admitted in the Hospital. The investigation was done in the proper manner and a charge sheet was filed against the petitioner and another accused. Only as a counter blast, the petitioner tried to register a case against the respondents 1 and 2.

8. It is seen that there is some quarrel between the petitioner and the respondents 1 and 2, on 30.06.2019. The case of the petitioner is that both the parties quarrel with each other and that the police registered a case against one of the parties and refused to register a case against the



CrI.O.P.(MD)No.15955 of 2020

other party and that the Police Standing Order – 588-A was violated.

WEB COPY

9. A perusal of Section 588-A of Police Standing Order reveals that when a case and a counter case was filed, the police can file a charge against the aggressor or the police can file cases against both the parties. There is no violation under Section 588-A (1) of P.S.O.

10. The petition filed by the petitioner is only under Section 156(3) of Cr.P.C and not under Section 200 of Cr.P.C. When a petition under Section 156(3) of Cr.P.C is dismissed by the trial Court, the petitioner is at liberty to file a petition under Section 200 of Cr.P.C. Instead of filing a petition under Section 200 of Cr.P.C, the petitioner has approached this Court. When the investigation was already over, there is no use in referring the matter again to the police under Section 156(3) of Cr.P.C.

11. Hence, this Petition is disposed of with liberty to the petitioner to file a private complaint under Section 200 of Cr.P.C.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

13.03.2023



WEB COPY

To



CrI.O.P.(MD)No.15955 of 2020

1. The Judicial Magistrate No.II,
Kulithurai.
2. The Sub Inspector of Police,
Nithiraivilai Police Station,
Samathuvapuram,
Kanchamparai Post,
Kanyakumari District.
- 3.The Deputy Superintendent of Police,
Kulachal, Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.15955 of 2020

R.THARANI. J.

Ls

Crl.O.P.(MD)No.15955 of 2020

13.03.2023