



Crl.O.P.(MD)No.14329 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14329 of 2023

Vimaladevi

... Petitioner

Vs.

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

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

3. The Inspector of Police,
Karimedu Police Station,
Madurai District.

4. The Inspector of Police,
Sellur Police Station,
Madurai District.

5. Jeyapaul

6. Michael Raj

7. Ramesh

... Respondents

1/15



Crl.O.P.(MD)No.14329 of 2023

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the closure report dated 28.11.2022 and to set aside the same and consequently direct the 2nd Respondent to register the FIR in light of the order passed in Crl.MP.No.2032 of 2022 on the file of the J.M.-I, Madurai, dated 08.08.2022.

For Petitioner : Mrs.P.Jessi Jeeva Priya

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl.Side)
for R1 to R4

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.2032 of 2022 by the learned Judicial Magistrate-1, Madurai, dated 08.08.2022.

2. The facts as per this petition are that the property with the name as "Amala Complex" in R.S.No.149/5 to an extent of 4464 square feet and in R.S.No.149/6 to an extent of 4309 square feet belongs to the petitioner's mother-in-law by name R.Amalorepavam. She has executed a



Crl.O.P.(MD)No.14329 of 2023

settlement deed in favour of her son on 15.06.2016 in respect of the said property. The petitioner's husband in turn out of love and affection executed the sale deed 13.07.2020 in favour of petitioner. Since then, the petitioner has been in possession of the property. The fifth respondent is running a tea stall near the petitioner's property. The sixth respondent was a tenant with the petitioner's husband as per the rental agreement dated 21.02.2020. Respondents 5 and 7 are the brothers. The petitioner and her husband have decided to sell the property. The sixth respondent being a real estate broker has received a photocopy of the documents and brought the fifth respondent stating that he would purchase the property. During the course of discussions, it was revealed by the fifth respondent that he would purchase only the part of the property for a meager amount which was not acceptable to the petitioner and therefore, transaction was not progressed further.

3. The respondents 5 to 7 have been stopping and restricting the prospective purchasers from purchasing the property of the petitioner and therefore, the petitioner had filed a complaint before the Karimedu Police Station in CSR No.571/2020. The fifth respondent has submitted the sale



Crl.O.P.(MD)No.14329 of 2023

agreement dated 23.02.2020 as if the fifth respondent and the petitioner's husband has entered into a sale agreement forging the signature of the petitioner's husband and the sixth respondent has attested the same. The petitioner's husband had never executed such sale agreement and it was a forged document. The sixth respondent sublet the shop of the petitioner and hence, the petitioner made complaint dated 19.09.2021 before the third respondent for which CSR No.574 of 2021 was registered. Since the fifth respondent without vacating the property threatened the petitioner and her husband, the petitioner has made a complaint in CSR No.574 of 2021. Since no enquiry was conducted the petitioner filed a petition before the learned Judicial Magistrate under Section 156(3) of Cr.P.C. in Crl.M.P.No.2032 of 2022 and same was disposed of as under:-

"The complainant has filed the petition under Section 156(3) of Cr.P.C. seeking direction to register the FIR against the respondents. Affidavit and documents filed in support of the contention of the complaint.

Records perused. On perusal of records this court finds that the allegations against the respondents is that the first respondent have forged the signature of petitioner's husband namely VMI.Albertraj in sale agreement. 2nd



WEB COPY



Crl.O.P.(MD)No.14329 of 2023

respondent was signed in the said document as witness for which the third respondent aided the same. Hence preliminary enquiry is necessary to find out the commission of cognizable offence. Therefore this petition is forwarded to the respondent police. Central Crime Branch, Madurai City to conduct preliminary enquiry.

Hence, the Inspector of Police, Central Crime Branch, Madurai City is directed to conduct preliminary enquiry and in the result of the preliminary enquiry any cognizable offence is made out, register the FIR and follow the guidelines given by the Honourable Supreme Court in LALITHA KUMARI v. GOVERNMENT OF U.P AND OTHERS."

4. The second respondent has conducted the enquiry and filed closure report dated 28.11.2022 stating that no prima facie case is made out. 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



Crl.O.P.(MD)No.14329 of 2023

inquiry as per the ***Lalita Kumari v. Government of Uttar Pradesh and others***, reported in ***(2014) 2 SCC 1***. Hence, sought for setting aside the closure report. Learned Additional Public Prosecutor submitted that the procedure adopted by the respondent police in closing the complaint is proper. Learned Magistrate refers the complaint filed to police under Section 156(3) of Cr.P.C., the police are expected to register a case in case, then complete the investigation and after the investigation if it is found that there is no case against the proposed accused, police may close the case by filing report under Section 173 of Cr.P.C.

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 after the completion of investigation subsequent to the registration of FIR, a referred charge sheet notice will be served on the defacto complainant and the defacto complainant is at liberty to file a protest petition before the learned Magistrate challenging the closure of investigation. The question is whether on filing of a closure report by the police subsequent to the inquiry without registration of FIR is proper and what is the remedy available for the defacto complainant to challenge the



CrI.O.P.(MD)No.14329 of 2023

same. On filing of a complaint, learned Magistrate is at liberty to refer the complaint to the police under Section 156(3) of Cr.P.C.

7. 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 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 magistrate 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



CrI.O.P.(MD)No.14329 of 2023

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, even if Magistrate does not pass a direction to 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."

8. 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. after recording the reasons. While referring the matter



Crl.O.P.(MD)No.14329 of 2023

to the police under Section 156(3) of Cr.P.C. the Magistrate will be acting under Section 190 of Cr.P.C. 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. 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 after the investigation that no offence is taken place, they are at liberty to file final report by closing the FIR. If there is material exists police are expected to file charge sheet under Section 173 of Cr.P.C.

9. In the case on hand, the respondent police on misapplication of procedure as directed under ***Lalita Kumari*** (supra) has registered CSR instead of registering FIR. In case if any complaint filed by any person in respect of matrimonial offences or other similar offences as mentioned in



CrI.O.P.(MD)No.14329 of 2023

Lalita Kumari (supra), the police can conduct preliminary enquiry.

However, 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 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 satisfies that there is *prima facie* material to hold that 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 but to register FIR and proceed with investigation.

10. 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 registered CSR and finally closed the same stating that there is no cognizable offence. The procedure followed by police is incorrect. Further even as per the merits of the complaint, according to the petitioner, the proposed accused has committed forgery and created an agreement sale.



Crl.O.P.(MD)No.14329 of 2023

WEB COPY

11. Considering the discussions above, filing of a closure report by the respondent police in respect of a complaint referred to by learned Magistrate under Section 156(3) of Cr.P.C. is illegal and is 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 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 satisfied that cognizable offence has already been committed. Therefore, the police should have registered the FIR and started investigation.

12. 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 while referring the complaint the essence of that is to register FIR. In case if there is no case against the proposed accused then the



Crl.O.P.(MD)No.14329 of 2023

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. The police without registering FIR cannot conduct enquiry and conclude that there is no case against the proposed accused.

13. In view of the above, this petition stands allowed and the closure report of the police dated 28.11.2022 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.MP.No.2032 of 2022 on the file of the Judicial Magistrate Court No.I, Madurai and commence the investigation and file the report before the Court as directed by learned Magistrate.

25.09.2023

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



WEB COPY



Crl.O.P.(MD)No.14329 of 2023

To

1. The Commissioner of Police,
District Police Office,
Madurai District.
2. The Inspector of Police,
Central Crime Branch,
Madurai City.
3. The Inspector of Police,
Karimedu Police Station,
Madurai District.
4. The Inspector of Police,
Sellur Police Station,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.14329 of 2023

DR.D.NAGARJUN,J

PKN

Crl.O.P.(MD)No.14329 of 2023

Dated: 25.09.2023