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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2023

Delivered on : 20. 01.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.22627 of 2022

D.Vinoth Kannan ... Petitioner

Vs.

1.The Superintendent of Police,
O/o. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2.The Sub-Inspector of Police,
Land Grabbing Special Cell,
Virudhunagar. ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the respondents to comply with the order passed in Crl.M.P.No.111 of 2022, dated 09.09.2022 by the learned Special Judicial Magistrate for Land Grabbing Cases, Virudhunagar and consequently, direct the second respondent to register the First Information Report on the basis of the complaint, dated 19.07.2022 and investigate the case in accordance with law.

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For Petitioner : Mr.D.Shanmugaraja Sethupathi,

For Respondents : Mr.R.Sivakumar,
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders, to direct the respondents to comply with the order passed in Crl.M.P.No.111 of 2022, dated 09.09.2022 by the learned Special Judicial Magistrate for Land Grabbing Cases, Virudhunagar and consequently, direct the second respondent to register the First Information Report on the basis of the complaint, dated 19.07.2022 and investigate the case in accordance with law.

2. The case of the petitioner is that the petitioner is the complainant by alleging that one Jeganathan, who is the grand son (son's son) of Seenivasan, who is none other than the maternal grand father of the petitioner, was trying to encroach the dwelling house in Door No.3/45, Alamarathupatti, Vinobava Colony, Sivakasi and dumped some utensils and damaged furniture; that the petitioner, after returning from

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Mumbai, had requested the said Jeganathan to remove the utensils and damaged furniture from his house; that the said Jeganathan had refused to remove the same and threatened the petitioner with dire consequences and abused him with filthy language with the connivance of the Police officials and therefore, he was constrained to lodge a complaint before the Inspector of Police, Land Grabbing Special Cell, on 04.06.2022; that since no action was taken, the petitioner has sent representations/complaints to the higher authorities on 06.06.2022 and 05.07.2022 and that since there was no action, the petitioner was constrained to file a complaint under Section 156(3) Cr.P.C before the Special Judicial Magistrate Court, Land Grabbing Cases, Virudhunagar.

3. It is not in dispute that the learned Judicial Magistrate, on receipt of the complaint under Section 156(3) Cr.P.C, has passed an order dated 09.09.2022, directing the Officer In charge of the Police Station, Land Grabbing Special Cell, Virudhunagar, to peruse the complaint and other documents and in case, if the complaint discloses any cognizable offence, to register an FIR and submit a report on or before 10.10.2022.

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4. The second respondent, after conducting enquiry, has submitted a report before the jurisdictional Court on 26.10.2022, informing that the further proceedings were stopped as the dispute is of civil in nature; that no offence relating to Land Grabbing was committed and that the complaint does not disclose any cognizable offence. Aggrieved by the said report of the second respondent, the petitioner has come forward with the present petition.

5. The learned counsel for the petitioner would strongly contend that the second respondent has allegedly enquired some of the witnesses before filing the impugned report; that the investigation of the case could be commenced only after registering the FIR and that the procedure adopted by the second respondent in filing the report, without even registering the FIR, is illegal on the face of it and it is unknown to criminal procedure Code.

6. The learned counsel for the petitioner would further submit that the Hon'ble Supreme Court in catena of decisions has reiterated the legal position that if the Magistrate forwards or sends any complaint under

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Section 156(3) Cr.P.C, the Police Officials are duty bound to register the FIR and that whether the Magistrate has directed for registration of FIR or for any enquiry that does not make any differences and the Police has no other option but to register the FIR.

7. The learned counsel for the petitioner would further contend that in the present case, the learned Judicial Magistrate has passed the impugned order, specifically directing the Station House Officer to register the FIR and investigate the same and file a report, but, the second respondent without following the directions of the Court, has conducted enquiry even without registering the FIR and sent the negative report as if no cognizable offence was disclosed.

8. At the outset, it is pertinent to note that the learned Judicial Magistrate, in the case on hand, has not passed any order, directing the Station House Officer to register the FIR and the contention of the learned counsel for the petitioner in this regard is patently incorrect. The learned Judicial Magistrate, as already pointed out, has specifically directed the Station House Officer to peruse the complaint and other

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documents and to conduct an enquiry and in case, if the compliant disclose any cognizable offence, he has to register the FIR and then to submit a report. Since the learned Judicial Magistrate has not specifically directed the second respondent to register the FIR, the procedure adopted by the second respondent in conducting enquiry and submitting the report, cannot be found fault with.

9. Now turning to the other submission of the learned counsel for the petitioner, even though the learned Magistrate has forwarded the complaint under Section 156(3) Cr.P.C., to conduct enquiry/ investigation, the Station House Officer has no other go, but to register the FIR and then to proceed with the investigation.

10. No doubt, such was the position prevailing prior to the judgment of the Constitution Bench in ***Lalita Kumari Vs. Government of Uttar Pradesh and Others*** reported in ***(2014) 2 SCC 1.***

11. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court, in the case of ***Madhu Bala Vs. Suresh***

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Kumar and others reported in ***(1997) 8 SCC 476***, has specifically observed that even in the absence of a direction to register the case by the Magistrate, the Police is bound to formally register a case and then investigate into the same and the relevant passage is extracted hereunder :

> *"10.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 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 a 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, do 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*

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the police station treating the complaint as the First Information Report and investigate into the same."

12. Section 154 (1) Cr.P.C, contemplates that any information relating to the commission of a cognizable offence, is given orally, such information is to be reduced in writing and after getting the signature of that person, the matter shall be entered in a book to be kept by that Officer. If a person is aggrieved by refusal on filing a complaint by the Officer in charge of the Station, then in such a case, the said person has to send such information in writing to the Superintendent of Police concerned. If still no action is taken, then the said person can approach the Magistrate under Section 156(3) Cr.P.C. If a complaint is received by the Police Officer from the complainant directly or from the Court under Section 156(3) Cr.P.C, attracting any cognizable offence the concerned Police Officer, is duty bound to register an FIR and then to investigate the same. But the Constitution Bench of the Hon'ble Apex Court in ***Lalita Kumari's*** case, has conferred some extra rights on the Police, which is not contemplated by Cr.P.C, for conducing primary enquiry in cases where the police is not able to find out whether the complaint discloses any cognizable offence or not.

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13. No doubt, the Hon'ble Supreme Court has specifically clarified that the registration of FIR is mandatory under Section 154 Cr.P.C, if the information discloses commission of a cognizable offence and in that situation, no preliminary enquiry is permissible.

14. The Hon'ble Apex Court has held that if the information received does not disclose a cognizable offence, but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. It is necessary to refer the directions issued by the Hon'ble Supreme Court in ***Lalita Kumari's*** case, hereunder for better appreciation :

> *120. In view of the aforesaid discussion, we hold:*
>
> *120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
>
> *120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a*

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preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4.The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

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(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7.While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

15. The learned counsel for the petitioner would contend that the above directions issued by the Hon'ble Supreme Court are applicable only in the cases of complaint received by the Police under Section 154 Cr.P.C and not when the complaint is forwarded by the Judicial Magistrate under Section 156(3) Cr.P.C.

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16. Section 156(3) Cr.P.C says that any Magistrate empowered under Section 190 Cr.P.C, may order such enquiry as above mentioned.

17. No doubt, the above provision is very briefly worded. But the Hon'ble Apex Court in catena of decisions has specifically observed that Section 156(3) Cr.P.C., is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation. To put it in short, Section 156(3) Cr.P.C is very wide and it would include all such incidental powers as are necessary for ensuring a proper investigation.

18. As already pointed out, in the case on hand, the learned Magistrate has not given a finding/observation that the complaint of the petitioner discloses commission of a cognizable offence. But, on the other hand, the learned Magistrate directed the Station House Officer to conduct an enquiry and to register an FIR, if the complaint and enquiry discloses commission of a cognizable offence. Since the learned

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Magistrate has not taken a decision as to whether any cognizable offence is disclosed or not and the complaint was forwarded directing the Police Official to find out whether any cognizable offence is disclosed or not, after conducting enquiry, it can easily be inferred/observed that the Station House Officer has to act under Section 154 r/w 156(i) Cr.P.C.

19. The learned counsel for the petitioner has relied on another judgment of the Hon'ble Supreme Court in ***Hemant Ashwant Dhage Vs. State of Maharashtra and others*** reported in ***(2016) 6 Supreme Court Cases 273***, wherein the Division Bench of the Hon'ble Apex Court has referred its earlier decision in ***Mohamed Yousuf Vs. Afaq Jahan*** reported in ***2006 (1) SCC 627***, wherein the Hon'ble Apex Court has pointed out that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R.

20. As already pointed out, the ***Mohamed Yousuf's*** case was decided prior to the judgment in ***Lalita Kumari's*** Case.

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21. In view of the above, the procedure adopted by the second respondent cannot be found fault with and hence, this court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

22. In the result, the Criminal Original Petition is dismissed. However, the petitioner is at liberty to file a private complaint before the jurisdictional Court, if so advised.

20.01.2023

NCC : Yes / No
Index : Yes / No
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To

1.The Special Judicial Magistrate
for Land Grabbing Cases, Virudhunagar.

2.The Superintendent of Police,
O/o. The Superintendent of Police,
Virudhunagar District, Virudhunagar.

3.The Sub-Inspector of Police,
Land Grabbing Special Cell,
Virudhunagar.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
Crl.O.P.(MD)No.22627 of 2022

Dated: 20.01.2023

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