



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.3964 of 2024

R.Muthusamy

.. Petitioner/ De facto Complainant

vs.

The Inspector of Police
Konganapuram Police Station
Salem District.

..Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to register FIR on complaint dated 30.5.2023 as per the order dated 03.10.2023 in CMP.No.2403 of 2023, passed by the learned District Munsif cum Judicial Magistrate, Edappady.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr. A.Gopinath
Government Advocate (Crl.Side)

ORDER

This petition was filed for a direction to the respondent police to act upon the order passed by the Court below in Crl.MP.No.2403 of 2023 dated 3.10.2023 and to register an FIR and proceed further with the investigation.



2. In the instant case, the learned Judicial Magistrate instead of passing an appropriate order under Section 156(3) Cr.PC., had directed the police to enquire the matter and if a cognizable offence is made out, to register an FIR as per the dictum of the Hon'ble Apex Court in **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in **2013 (6) CTC 353**.

3. The procedure that was adopted by the learned Magistrate is erroneous. This Court had an occasion to deal with a similar issue in CrI.OP.No.3955/2024, by order dated 01.3.2024 and the relevant portions are extracted hereunder:

4. Whenever the complainant furnishes information to the Station House Officer with respect to the commission of a cognizable offence, the Station House Officer is duty bound to register an FIR and proceed further with the investigation under Chapter XII of Cr.PC. If the Station House Officer does not act upon the complaint, Section 154(3) Cr.PC, provides for a mechanism wherein the complainant can approach the Superintendent of Police concerned and make a representation for a direction to investigate the case. If this complaint also does not evoke any response, the complainant can approach the Jurisdictional Magistrate Court and file an application under Section 156(3) of Cr.PC, for a direction to the Police to register the FIR.

*5. The entire law on this issue was discussed in detail by the Hon'ble Apex Court in **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in **2013 (6) CTC 353**. Except for carving out certain disputes like matrimonial disputes, money disputes, delay in lodging of complaint etc., the Hon'ble Apex Court categorically held that wherever the complaint makes out a cognizable offence, the Station House Officer is duty bound to register an FIR and proceed further with the investigation.*

6. The remedy that is provided under Section 156(3) Cr.PC is to enable the learned Magistrate to apply his mind and see if the complaint makes out a cognizable offence and in spite of the same, the Station House Officer had refused to register the FIR and if so, issue appropriate directions to register the FIR.

However, in many cases, this Court finds that the learned Magistrate is delegating



this enquiry to the police and asking the police to enquire as to whether any cognizable offence is made out. Such a procedure adopted by the learned Magistrate is erroneous and should not be continued henceforth.

*7.In the instant case, the learned Magistrate had committed this error in directing the police to conduct an enquiry and find if a cognizable offence is made out, in line with the judgment of the Hon'ble Apex Court in **Lalitha Kumari's** case. As a result of this direction, the police had conducted an enquiry and the complaint was closed and it was informed to the learned Metropolitan Magistrate-II, Egmore, Chennai.*

8.In the light of the above discussion, the order passed the learned Metropolitan Magistrate-II, Egmore, Chennai in Crl.MP.No.8952 of 2023, dated 24.3.2023, is hereby recalled. The learned Magistrate is directed to apply his mind and pass appropriate orders under Section 156(3) of Cr.PC, within a period of two weeks from the date of receipt of copy of this order. The closure report that was submitted by the police need not be acted upon by the learned Magistrate.

4.The above order will equally apply to this case also. Hence, the order passed by the learned District Munsif cum Judicial Magistrate, Edappadi in Crl.MP.No.2403 of 2023 order dated 3.10.2023, is hereby recalled. The learned Magistrate is directed to pass appropriate orders and apply his mind in line with Section 156(3) Cr.PC within a period of one week from the date of receipt of copy of this order. The closure report that was submitted by the police need not be acted upon by the learned Magistrate.

5.This criminal original petition is disposed of with the above directions.

29.02.2024

Index : Yes/No

Internet : Yes/No

<https://www.mhcoj.gov.in/judicial> Speaking Order/Non-Speaking Order



N. ANAND VENKATESH,. J.

kp

To

- 1.The Inspector of Police
Konganapuram Police Station
Salem District.
- 2.District Munsif cum Judicial Magistrate
Edappady.
3. The Public Prosecutor,
High Court of Madras,
Madras.

Crl.O.P No.3964 of 2024



WEB COPY



29.02.2024