



WEB COPY



Crl.O.P.No.14837 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.14837 of 2024

Vinithkumar

.... Petitioner

Versus

State Rep. by
The Inspector of Police (Crime),
B-2, Esplanade Police Station,
Chennai - 600 001.

.... Respondent

Prayer: The Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order passed by the learned Principal District and Sessions Judge at Chennai, in Crl.R.C.No.126 of 2023, dated 11.10.2023 and direct the respondent to register an F.I.R. on the basis of the petitioner's complaint dated 20.01.2022.

For Petitioners : Mr.J.B.Solomon Peter Kamal Doss

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



Crl.O.P.No.14837 of 2024

ORDER

WEB COPY

The petition filed challenging the dismissal of the complaint filed under Section 156 (3) of Cr.P.C. by the Judicial Magistrate and the same being confirmed by the I Additional Sessions Judge, in Revision Petition in Cr.R.C.No.126 of 2023.

2. The grievance of the petitioner is that on 10.12.2021, he booked a parcel with the KPN Speed Parcel Service Pvt. Ltd., from Broadway. The parcel contains Bathroom Fittings and Accessories worth Rs.66,198/-. The parcel was made for one Illiyas at Kambam, but, the said parcel was not delivered to him. On enquiry, the petitioner found that KPN Speed Parcel Service Pvt. Ltd., had not delivered the parcel to Illiyas at Kambam. When a complaint given to the Esplanade Police Station, they issued C.S.R.No.29 of 2022, dated 24.01.2022, but, not enquired the complaint despite the fact that the entrustment of fittings admitted by the KPN Speed Parcel Service Pvt. Ltd.. Hence, the petition was filed under Section 156(3) of Cr.P.C. before the Metropolitan Magistrate, George Town. However, the said petition in Crl.M.P.No.2252 of 2023, was dismissed by



Crl.O.P.No.14837 of 2024

the VII Metropolitan Magistrate, George Town, stating that the petitioner has to workout his remedy against KPN Speed Parcel Service Pvt. Ltd. only for a deficiency of service and not for a criminal action. Aggrieved by that, the petitioner has filed the revision before the Sessions Court, the Sessions Court also dismissed the revision petition holding that at the most the transaction of complaint may be a case of deficiency of service, for which, the remedy for the petitioner lies either before the Civil Court or before the Consumer Redressal Forum.

3. The learned Government Advocate (Crl.Side) submits that based on the complaint registered under C.S.R.No.29 of 2022, the Esplanade Police conducted the investigation and found that the parcel entrusted at Broadway, was sent to the yard, which was under the in-charge of one Jothi, Employee of KPN Speed Parcel Service Pvt. Ltd. The said Jothi promised to handover the parcel within two days. Therefore, the complainant has given a letter that he will collect the material from Jothi, and hence, the complaint was closed.



Crl.O.P.No.14837 of 2024

4. From the statement of the learned Government Advocate (Crl.Side), it is a clear case that the parcel entrusted with the KPN Speed Parcel Service not delivered to the consignee. Further, the enquiry conducted by the first respondent, the possession of the parcel with the employee of KPN Speed Parcel Service also been proved. While so, instead of registering a complaint for the offence under Section 406 of I.P.C, the Police closed the complaint, which has forced the petitioner to approach higher Officials and then Judicial Magistrate. Unfortunately, in this case, the Judicial Magistrate has considered this as a deficiency of service rather than the criminal breach of trust even before enquiry for investigation. The Sessions Judge before whom the revision is filed, has also gone a step ahead and given an alternate remedy to the petitioner herein when there is a commission of cognizable offence clearly disclosed in the complaint. Therefore, this Court finds that the reasoning given by the VII Metropolitan Magistrate, George Town, and the I Additional Sessions Judge, Chennai, are erroneous and hence, the same are set aside. The VII Metropolitan Magistrate, George Town, Chennai, is directed to take the complaint on file and proceed in accordance with law.



Crl.O.P.No.14837 of 2024

WEB COPY

With the above directions, this Criminal Original Petition is disposed of.

29.07.2024

asi

To

1. The I Additional Sessions Judge, Chennai.
2. The VII Metropolitan Magistrate, George Town, Chennai.
3. The Inspector of Police (Crime),
B-2, Esplanade Police Station,
Chennai - 600 001.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.14837 of 2024

DR.G. JAYACHANDRAN, J.

asi

Crl.O.P.No.14837 of 2024

29.07.2024