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Crl.O.P.No.17003 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.17003 of 2024

Senthilkumar

... Petitioner

Vs.

1.The Superintendent of Police,
Namakkal District.

2.The Deputy Superintendent of Police,
District Crime Branch,
Namakkal District.

3.The Inspector of Police,
District Crime Branch,
Namakkal

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to transfer the investigation of Crime No.5 of 2024 from the file of the 3rd respondent to CBCID or any other independent investigating agency under the supervision of the 1st respondent and complete the investigation and file final report within a stipulated period.

For Petitioner : Mr.Sheik Ismail

For Respondents : Mr.S.Udayakumar
Government Advocate (Crl.Side)



CrI.O.P.No.17003 of 2024

ORDER

WEB COPY This Criminal Original Petition is filed to transfer the investigation in Crime No.5 of 2024 from the 3rd respondent to CBCID or any other independent agency under the supervision of Superintendent of Police, Namakkal.

2. The grievance of the petitioner is that himself and Ramasamy are business partner. A blank cheque given to Ramasamy in the course of business transaction on trust been fraudulently encashed by the wife of Ramasamy, after the demise of said Ramasamy. His complaint, which was registered on the direction of the Judicial Magistrate in exercise of power under Section 156(3) Cr.P.C., has not been properly investigated by the 3rd respondent. Hence the same has to be transferred to some other agency.

3. The learned Government Advocate (CrI.Side) appearing for the respondent police states that the complaint been investigated and found that it has been given belatedly six months after encashment of the cheque. Though the money was withdrawn by Pappathy after demise of



CrI.O.P.No.17003 of 2024

Ramasamy, the Karur Vysya bank, which has honoured the cheque, was not intimated about the death of Ramasamy and therefore, the cheque was cleared on presentation. Hence the complaint been closed as 'Mistake of Facts' and RCS notice was given to the complainant.

4. The learned counsel appearing for the petitioner submits that the respondent police did not act upon his complaint which was given to them as early as 06.06.2024. Thereafter, he approached the senior police officials and then resorted to the procedure contemplated under Section 156(3) Cr.P.C., and as per the guidelines of the Hon'ble Supreme Court in Lalithakumari case. While so, closure of the complaint after filing this petition for transfer of investigation is malafide and need to be interfered.

5. This Court, on perusing the closure report, is of the view that the respondent police has concluded that there is no element of commission of cognizable offence, since the cheque was issued by the defacto complainant to Ramasamy and the same has been encashed. The bank has honoured the cheque not knowing that Ramasamy is dead. Whether the said conclusion of the Investigating Officer is in tune with



Crl.O.P.No.17003 of 2024

the law or not can be tested by the defacto complainant by filing a protest petition before the Judicial Magistrate.

6. This Court restrain itself from making any comment about the RCS report. It is open to the defacto complainant to file a protest petition on the RCS and proceed in accordance with law. Transfer of investigation in this case is not required, since it is open and shut case based on the records collected during the investigation by the 2nd respondent police. It is the Judicial Magistrate to decide whether there is any commission of cognizable offence or not based on the material collected along with RCS report. If the Magistrate is of the view that there is a commission of any cognizable offence, the Magistrate shall proceed in accordance with law as contemplated under the Code.

7. With this observation, this Criminal Original Petition is disposed of.

22.07.2024

Index : Yes/No
Neutral Citation : Yes/No
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CrI.O.P.No.17003 of 2024

To

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1.The Superintendent of Police,
Namakkal District.

2.The Deputy Superintendent of Police,
District Crime Branch, Namakkal District.

3.The Inspector of Police,
District Crime Branch, Namakkal

4.The Public Prosecutor,
High Court of Madras,
Chennai.



CrI.O.P.No.17003 of 2024

Dr.G.JAYACHANDRAN,J.

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CrI.O.P.No.17003 of 2024

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