



WP(MD) No.5470 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **25.03.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

W.P.(MD) No.5470 of 2024

J.Mohammed Anis

... Petitioner

/vs./

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Alagarkovil Road,
K.Pudur,
Madurai.
- 2.The Assistant Commissioner of Police,
Office of the Assistant Commissioner of Police,
Tallakulam, Madurai.
- 3.The Inspector of Police,
Koodalpudur Police Station,
Madurai.
- 4.Senthilkumar

5.Ramiz Fathima

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 to 3 to take necessary and appropriate action against the Respondents 4 and 5 based on the Petitioner's representation dated 17.02.2024.



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For Petitioner : Mr.K.Safar Badhusha
For R-1 to R-3 : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)

ORDER

When the case came up for hearing on 07.03.2024, this Court passed the following order:

The learned counsel for the petitioner submits that the respondents 4 and 5 had mortgaged their house to the petitioner for Rs.4,00,000/-. He had entered into the mortgage deed executed by the respondents 4 and 5. In the same mortgaged property, he took possession of the property and was living in the upstairs portion. While so, his father suffered from COVID-19 and died. Therefore, the petitioner went to his native place at Bodinayakkanur. After restrictions were relaxed, the petitioner returned to the place, wherein he was staying in the premises that was the subject matter of the mortgage. On his return, to his shock, he found that the house broken and the belongings of the petitioner kept inside the locked house were removed and thrown on the open terrace. On his verification, he found that the mortgage deed was also missing. Therefore, he had lodged a complaint with the third respondent/the Inspector



of Police, Koodalpudur Police Station, Madurai, where the third respondent had registered the complaint and conducted an enquiry. In the enquiry, the respondents 4 and 5 agreed to pay the mortgage amount. He had paid only Rs.1,00,000/- and agreed to pay the balance amount. When the petitioner went again to the respondents 4 and 5, they threatened the petitioner. Therefore, he had given the complaint second time, for which the third respondent had not taken any action. Therefore, he was forced to file this Writ Petition seeking direction to register a case and investigate the same.

2. The learned Government Advocate (Crl.side), on instructions of the third respondent, would submit that the complaint of the petitioner was taken and an enquiry was conducted. In the enquiry, the respondents 4 and 5 agreed to pay the amount. The third respondent is ready to take appropriate action after conducting enquiry.

3. From the submission of the learned counsel for the petitioner and the learned Government Advocate (Crl.side), it is found that it is a case of house breaking. Therefore, the third respondent is duty bound to register a case.

4. Issue notice to the respondents 4 and 5 returnable by 22.03.2024. Private notice is also permitted.

Call on 22.03.2024 by 02.15 pm.,



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2. When the matter was taken up for hearing, the learned Government Advocate (Criminal Side) submits that the Investigation Officer had conducted preliminary enquiry. In the enquiry, it was found that what had been submitted by the Petitioner is not correct.

3. The learned Counsel for the Petitioner disputes the submission of the learned Government Advocate stating that in the earlier hearing, they had admitted certain facts which have been recorded by this Court. It is the case that in the absence of the Petitioner from his residence, the Respondents 4 and 5 are alleged to have broke open the door and took away the mortgage deed which was entered into between the Petitioner and the Respondents 4 and 5. The property which was mortgaged by the Respondents 4 and 5 with the Petitioner was used as a leased out premises by the Petitioner herein. While so, without repaying the amount and cancelling the mortgaged deed, the Respondents 4 and 5 are alleged to have broke open the door and took away the mortgaged deed property, which was the proof of the transaction between the Petitioner and the Respondents 4 and 5.



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4. Considering the facts mentioned by the Petitioner, it attracts the cognizable offence of house breaking. Therefore, the Respondents 1 to 3 are directed to register a case against the Respondents 4 and 5 and proceed with the investigation. If on proceeding with the investigation, the Respondents 1 to 3 are unable to find out them, they shall file appropriate final report before the Court concerned, after due notice on the de-facto Complainant, the Petitioner herein.

5. With the above direction, this Writ Petition is disposed of. No costs.

25.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Nsr



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SATHI KUMAR SUKUMARA KURUP, J.

Nsr

Order made in
W.P.(MD)No.5470 of 2024

Dated:
25.03.2024