

Crl.O.P.(MD) No.6779 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD). No.6779 of 2020

and

Crl.M.P.(MD).Nos.3386 and 3387 of 2020

P.Kavitha

... Petitioner/Accused No.1

Vs.

R.Sivaraman

... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.678 of 2019 on the file of the Learned Chief Judicial Magistrate, Thanjavur at Kumbakonam and quash the same as against the Petitioner herein.

For Petitioner : Mr.R.Anand
for Mr.K.Veilmuthu

For Respondent : Mr.G.Kannan
for Mr.K.M.Karunakaran



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ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.678 of 2019 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2.The petitioner is the Inspector of Police, Thirupananthal Police Station. The learned Chief Judicial Magistrate, Kumbakonam took cognizance against the petitioner under Section 166 A in C.C.No.678 of 2019, for non-compliance of the direction issued by the learned Judicial Magistrate, in Cr.M.P.No.2630 of 2019 under Section 156(3) of Cr.P.C., to take action on the basis of the complaint given by the respondent upon entertaining his private complaint.

3.The respondent belongs to mattiyur Village, Thirupananthal, Thiruvudaimaruthur Taluk and he is the secretary of Government aided School. On 22.06.2019, due to the dispute relating to the management of the school, A2 and A3 are said to have abused the respondent with filthy language and also threatened him. Hence, the respondent made a



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complaint before the Thirupananthal police station on the same day through online for taking action against the above said persons, but no action was taken against them, hence he had filed a petition in Cr.M.P.No.2630 of 2019 before the Learned Judicial Magistrate No.1, Kumbakonam, U/s.156(3) Cr.P.C., and the same was ordered.

4.The said order dated 12.07.2019, was communicated to the Thirupananthal Police Station for appropriate action in D.O.No.806 of 2019 dated 16.07.2019. Subsequently, on 26.08.2019, due to bifurcation, of the Court the said Cr.M.P.No.2630 of 2019 was transferred from learned Judicial Magistrate No.1, Kumbakonam, to the newly formed the learned Judicial Magistrate, Thiruvudaimaruthur There was no action on the basis of the order of the learned Judicial Magistrate in Cr.M.P.No. 2630 of 2019 and hence, the respondent filed Cr.M.P.No.307 of 2019 to take action against the petitioner. No order was passed. Therefore, the respondent filed a complaint under Section 156(3) of Cr.P.C., before the learned Chief Judicial Magistrate, Kumbakonam in Cr.M.P.No.1800 of 2019, to take action against the petitioner. The learned Chief Judicial Magistrate, following the private complaint procedure, took cognizance against the petitioner under Section 21, 44 of the Tamil Nadu District



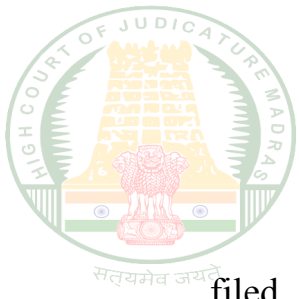
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Police Act. Challenging the same, the petitioner has filed this quash petition to quash the said proceedings in C.C.No.678 of 2019.

5.The learned counsel for the petitioner would submit that, the learned Chief Judicial Magistrate has committed error in taking the cognizance against the petitioner under Section 21 and 44 of the District Police Act, without following the procedure stated under Sections 352 of Cr.P.C. According to the learned counsel appearing for the petitioner, neither procedure stated under Section 352 of Cr.P.C., nor the procedure under the Tamilnadu District Police Act, have been followed by the learned Chief Judicial Magistrate, before taking the cognizance. The respondent has already filed Cr.M.P.No.307 of 2019 before the learned Judicial Magistrate, Tiruvudaimaruthur and the same was dismissed. Therefore, in the said circumstances, filing the petition before the Chief Judicial Magistrate is not maintainable as per law. Therefore, he seeks to quash the case.

6.The learned counsel for the respondent would submit that no action was taken on the petition in Cr.M.P.No.307 of 2019 filed by him before the learned Judicial Magistrate, Thiruvudaimaruthur, and hence, he



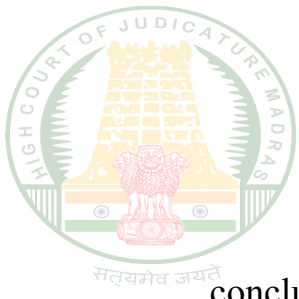
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filed the petition before the learned Chief Judicial Magistrate, Kumbakonam to take action under Section 21 and 44 of the District Police Act, with different cause of action. Therefore, there is no ground to entertain this quash petition. He also submitted that the judgment of this Court relied by the learned counsel for the petitioner reported in 2015 4 MLJ (Crl) 135 is not applicable to the present case.

7.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on merits.

8. Every learned Judicial Magistrate has no power to take the cognizance against the police officer for not obeying either the order or direction passed by him. He has power only to record a finding of non-compliance upon hearing the police officers and thereafter, should refer the matter to the learned Chief Judicial Magistrate to take necessary action either under IPC or relevant provision of the District Police Act. Therefore, in this case, it is admitted by both the parties Cr.M.P.No.307 of 2019 filed to take action against the petitioner was dismissed. The learned counsel for the *defacto* complainant fairly submitted that the

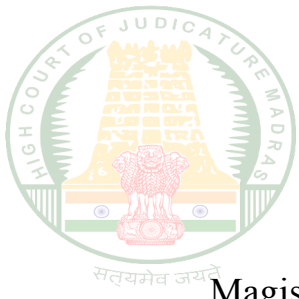


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conclusion was not brought to the knowledge of his client and hence, he was forced to file the petition before the learned Chief Judicial Magistrate, Thanjavur, at Kumbakonam. In the said factual circumstances, this Court is inclined to allow this quash petition on the ground that the learned Chief Judicial Magistrate has not followed the procedure stated in the code of procedure as well as Tamil Nadu District Police Act, in entertaining the complaint of the respondent and erroneously taken the cognizance against the petitioner in the impugned C.C.No.678 of 2019.

9. But, this Court is not inclined to allow the respondent to go remediless. He has rightly filed the application in Cr.M.P.No.307 of 2019 on the file of the learned judicial Magistrate, Thiruvudaimaruthur and without waiting for the final decision, he has filed the application before the learned chief Judicial Magistrate on wrong advice. Now, the Cr.M.P.No.307 of 2019 is said to have been dismissed. Therefore, he is at liberty to challenge the same and proceed further in accordance with law. The learned counsel for the petitioner would submit that the dismissal of the Cr.M.P., was not brought to the knowledge of the petitioner. This Court called the report from the learned Judicial



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Magistrate, Thiruvidadaimaruthur and ascertained the result of the Cr.M.P.No.307 of 2019, the same has been dismissed. Therefore, this Court grants liberty to the petitioner to challenge the same in the manner known to law and continue the proceedings in accordance with law. This Court has not decided this matter on merits and the both parties are at liberty to raise their respective factual and legal issues before appropriate forum. The learned presiding officer of the forum, is hereby directed to decide the issue independently without influenced by the observations made in this order.

10. Accordingly, this criminal original petition is allowed and the proceeding in C.C.No.678 of 2019 on the file of the learned Chief Judicial Magistrate, Thanjavur, at Kumbakonam, is hereby quashed. It is open to the respondent to agitate the issue before the learned Judicial Magistrate in accordance with law. Consequently, the connected criminal miscellaneous petitions are closed.

16.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.



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