



CRL OP(MD)No.7538 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04.01.2024

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THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL OP(MD)No.7538 of 2021
and
CrI.M.P(MD) No.3868 of 2021

Sabiina Begum

... Petitioner

Vs

1.The Inspector of Police,
Mudukulathur Police Station,
Ramanathapuram District.

2.Rajesh

3.Kumaravel

4.Balasubramanian

5.Valli

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the order in Cr.M.P.No.831 of 2021 in C.A.No.60 of 2021, dated 24.03.2021, on the file of the learned Judicial Magistrate, Mudukulathur and set aside the same.



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For Petitioner : Mrs.Seemi Syed Ammal

For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

The criminal original petition is filed challenging the docket order dated 17.03.2021 passed by the learned Judicial Magistrate, Mudukulathur, in CrI.M.P.No.831 of 2021 in C.A.No.60 of 2021.

2. It is seen from the order that the present petitioner had filed an application under Section 156(3) Cr.P.C and the learned Judicial Magistrate had returned the said petition stating the petitioner can file an application under Section 200 Cr.P.C.

3. Mrs.Seemi Syed Ammal, learned counsel appearing for the petitioner relied on the decision in *XYZ versus State of Madhya Pradesh & Ors.* reported in *2022 Live Law(SC) 676* and contended that whenever a criminal allegation is made and the victim is traumatized, the Courts should not further burden the complainant and should press upon the



police to investigate the case. She therefore, contended that the return made by the learned Judicial Magistrate has got to be set aside.

4. In the decision in ***XYZ Vs State of Madhya Pradesh & Ors.*** cited supra, the Hon'ble Supreme Court has given certain guidelines to the Judicial Magistrates as to how they should deal with a petition filed under Section 156(3)Cr.P.C. The relevant paragraph is extracted hereunder:

23.To make it clear and in respect of doubt raised by Mr Singhvi to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the learned Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot



be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190(1) (b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has exceeded his power as provided in sub-section (3) of Section 156.

5. It is pertinent to point out here that the above case pertains to sexual harassment in which the victim was traumatized and in such circumstances, the Hon'ble Supreme Court directed the Magistrate to send the matter for investigation to the police.

6. In the instant case, it is alleged that there is a dispute with regard to the ownership of a land between the petitioner and the private respondents. In such circumstances, the petitioner can always file an application under Section 200 Cr.P.C and in any event, the Magistrate



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could have converted the petition filed under Section 156(3) Cr.P.C into a complaint under Section 200 Cr.P.C and examine the witnesses in the Court. Since the petition itself is returned, the petitioner can represent the same to the concerned Magistrate and the learned Magistrate has the option of sending the case to police for investigation or examine the witnesses on the side of the complainant in the Court.

7. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

04.01.2024

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

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To

1.The Judicial Magistrate,
Mudukulathur.

2.The Inspector of Police,
Mudukulathur Police Station,
Ramanathapuram District.



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R.HEMALATHA,J.

cp

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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