



CrI.O.P.(MD)No.10040 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.07.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrI.O.P.(MD)No.10040 of 2024

Mathiyas

... Petitioner

versus

1. The Superintendent of Police,
Kanyakumari District.
2. The Inspector of Police,
District Crime Branch,
Kanyakumari District.
3. Abraham Robert Selvan
4. Jaison
5. Robinson
6. Thangaraj
7. Balaji
8. Buela
9. Sitharanjan Doss
10. Valan Pelarmin
11. Rooban Austin



CrI.O.P.(MD)No.10040 of 2024

12. Joyal Chelladurai

13. Dobin

14. Delbin

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the Inspector of Police, District Crime Branch, Kanyakumari District, to register an FIR on the petitioner's complaint dated 06.02.2024 forthwith in pursuance to the order passed by the learned Judicial Magistrate No.I, Nagercoil, in Cr.M.P.N0.3198 of 2024 dated 16.05.2024.

For Petitioner : Mr.R.Anand
For R1 and R2 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

ORDER

The petitioner has approached this Court seeking a direction to the 2nd respondent Police to register his complaint dated 06.02.2024, which was forwarded by the learned Judicial Magistrate No.I, Nagercoil, under Section 156(3) Cr.P.C.

2. The learned counsel for the petitioner submits that the petitioner is the President of a Society, which is called as CREED, which has been established for looking into the welfare of downtrodden people and their



CrI.O.P.(MD)No.10040 of 2024

education and for the development of the said Society, a property to an extent of 1 acre 97 cents has been purchased and the same is in occupation of the petitioner. He further submits that the 14th respondent herein, who is an Advocate, has formed a Syndicate and with the help of other accused persons, he has created a forged document as if they are the persons authorized to deal with the said property. In this regard, the petitioner has lodged a complaint before the respondent Police. Since the Deputy Superintendent of Police is a close friend of the said Advocate, the respondent Police has not acted upon on the petitioner's complaint. Therefore, the petitioner, after invoking the available remedy under Section 154(3) Cr.P.C. before the Superintendent of Police, has filed a complaint before the learned Judicial Magistrate No.I, Nagercoil, under Section 156(3) Cr.P.C. The learned Magistrate, by order 16.05.2024 in Cr.M.P.No.3198 of 2024, has also forwarded the complaint for investigation. However, the respondent Police has not registered a case so far. Therefore, the petitioner is before this Court.

3. The learned Additional Public Prosecutor submits that the learned Judicial Magistrate No.I, Nagercoil, referred the complaint of the



Crl.O.P.(MD)No.10040 of 2024

petitioner under Section 156(3) Cr.P.c. with a direction to the respondent Police to conduct a preliminary investigation and find out as to whether any offence has been made out or not, to register a case. Accordingly, they have conducted a preliminary enquiry and found that the allegations made by the petitioner are baseless and therefore, they have submitted a report on 28.06.2024.

4. In response to the submission of the learned Additional Public Prosecutor, the learned counsel for the petitioner, by relying upon a Judgment of the Hon'ble Supreme Court in ***Dilawar Singh vs. State of New Delhi***, reported in (2007) 12 SCC 641, submits that once the Magistrate has referred the complaint under Section 156(3) Cr.P.C., it is not open to the respondent Police to close the complaint without registering an FIR. He has also relied upon the relevant paragraph of the above said Judgment, which is extracted as under:

“18.

7.

8.

9.

10.



Crl.O.P.(MD)No.10040 of 2024

11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

5. This Court considered the rival submissions made and also perused the materials placed on record.



CrI.O.P.(MD)No.10040 of 2024

6. The petitioner, in fact, has made serious allegations as against an Advocate. The petitioner claims that he lodged a complaint which was not attended by the respondent Police and therefore, he preferred a complaint before the learned Judicial Magistrate No.I, Nagercoil, under Section 156(3) Cr.P.C. The learned Judicial Magistrate, after satisfying with the contents of the complaint, referred the same to the respondent Police for an enquiry, by order dated 16.05.2024 in Cr.M.P.N0.3198 of 2024.

7. The learned Additional Public Prosecutor claims that as per the direction of the learned Judicial Magistrate No.I, Nagercoil, the complaint of the petitioner was duly enquired by the respondent Police and in the preliminary enquiry, they found that no material and no cognizable offence is made out in the complaint and therefore, they have submitted a report before the concerned Judicial Magistrate. Now, it is the learned Judicial Magistrate, who has to take a call on the petitioner's complaint.

8. The learned counsel for the petitioner, by relying upon the



Crl.O.P.(MD)No.10040 of 2024

Judgment of the Hon'ble Supreme Court as cited supra, submits that once the complaint has been forwarded under Section 156(3) Cr.P.C. the police is not having any role to play other than to register a case.

9. A case can be registered under Section 154 Cr.P.C. only if a cognizance offence is made out. The police is having power to conduct the investigation only after registering the complaint under Section 154(3) Cr.P.C. Therefore, the Hon'ble Supreme Court, in the Judgment as cited supra, has directed the Investigating Agency to find out the truth in the complaint by registering an FIR. But, the said proposition has now been changed by the Hon'ble Supreme Court in ***Lalitha Kumari's case***, wherein, the Hon'ble Supreme Court, in certain cases, has permitted the Investigating Agency to conduct preliminary enquiry without registering the case.

10. In this case, the respondent Police claims that they have conducted a preliminary enquiry and found that no cognizable offence is made out on the petitioner's complaint and therefore, they have submitted a report before the concerned Judicial Magistrate. Therefore, this Court



Crl.O.P.(MD)No.10040 of 2024

does not find any fault with the respondent Police in conducting the preliminary enquiry without registering a case. Now, the respondent Police claims that they have completed the enquiry and also submitted a report before the concerned Judicial Magistrate. It is the learned Judicial Magistrate, who has to take a call on the report either by ordering for further investigation or by granting permission to the petitioner/complainant to file a private complaint.

11. The respondent Police is directed to furnish a copy of the report to the petitioner, enabling him to work out his remedy before the concerned Judicial Magistrate and not by way of protest petition. If the petitioner wants to establish his case, he can file a private complaint before the concerned Judicial Magistrate.

12. With the above direction, this Criminal Original Petition is closed.

08.07.2024

Index : Yes / No.
Internet: Yes / No.

8/11



CrI.O.P.(MD)No.10040 of 2024

NCC : Yes/No.
ogy



Crl.O.P.(MD)No.10040 of 2024

WEB COPY

To

1. The Superintendent of Police,
Kanyakumari District.
2. The Inspector of Police,
District Crime Branch,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.10040 of 2024

B.PUGALENDHI, J.

ogy

Crl.O.P.(MD)No.10040 of 2024

08.07.2024