



W.P(MD)No.19860 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.19860 of 2024

Mohaideen Fitchai @ Bakkir

...Petitioner

Vs.

1.The Superintendent of Police,
Tenkasi District,
Tenkasi.

2.The Inspector of Police,
Puliyarai Police Station,
Tenkasi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to take action on the petitioner's complaint dated 24.07.2024 and investigate the same by following the procedure within a time limit stipulated by this Court.

For Petitioner : Mr.A.Sheik Nasurdeen

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

The Writ Petition has been filed, invoking Article 226 of the Constitution of India, seeking orders to direct the second respondent to take action on the petitioner's complaint dated 24.07.2024 and investigate the same by following the procedure within a time limit stipulated by this Court.

2. Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the admission stage itself.

3. The learned Additional Public Prosecutor appearing for the respondents would submit that on the basis of the complaint given by the writ petitioner, enquiry was conducted in current paper and the same was ordered to be closed.

4. It is clearly evident that the writ petitioner has indirectly sought for direction to register an FIR, which cannot legally be entertained.



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5. The Hon'ble Supreme Court in the case of ***Sakiri Vasu Vs. State of U.P. and others*** reported in ***AIR 2008 SC 907*** has specifically observed that the High Court should not encourage the practice of filing a writ petition or a petition under Section 482 Cr.P.C. to register an FIR and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers and if that is of no avail, by approaching the concerned Magistrate under Section 156(3) and the relevant passages are extracted hereunder:-

“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.



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25. *We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).*

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions*



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or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”



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6. At this juncture, the learned counsel appearing for the writ petitioner would submit that the writ petitioner may be given liberty to approach the competent authority.

7. In the result, the Writ Petition stands dismissed as not maintainable. The writ petitioner is at liberty to take appropriate proceedings in the manner known to law. No costs.

20.08.2024

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

To

- 1.The Superintendent of Police,
Tenkasi District,
Tenkasi.
- 2.The Inspector of Police,
Puliyarai Police Station,
Tenkasi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

csm

Order made in
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