



CRL.R.C.(MD).No.858 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.09.2024

Delivered on : 27.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.858 of 2024

Kiruthiga

: Petitioner

Vs.

1.Udhayasankar

2.Mathisekar

3.Geetharani

4.Rajkumar

5.Sathiya

6.State rep.by the Inspector of Police,
All Women Police Station,
Thiruvaiyaru, Thanajvur District.

: Respondents

PRAYER: Criminal Revision Petition has been filed under Sections 438 and 442 of BNSS, to call for the records relating to the order passed in CrI.M.P.No.1301 of 2024 on the file of the Judicial Magistrate Court, Thiruvaiyaru, dated 10.05.2024 and set aside the same.

For Petitioner : Mr.A.Arun Prasad

For R6 : Mr.K.Sanjai Gandhi,
Government Advocate (Criminal Side)



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ORDER

The Criminal Revision Case is directed against the order passed in CrI.M.P.No.1301 of 2024, dated 10.05.2024 on the file of the Judicial Magistrate Court, Thiruvaiyaru, dismissing the petition filed under Section 156(3) of Cr.P.C.

2. The revision petitioner, by alleging that though the complaint came to be lodged with the jurisdictional police and with the District Superintendent of Police, there was no action, has filed a lengthy petition under Section 156(3) of Cr.P.C., seeking orders, directing the respondent police to register an FIR against the proposed accused and to proceed with the investigation.

3. The learned Judicial Magistrate, by referring to the some of the averments raised in the petition under Section 156(3) of Cr.P.C., and by referring to the some of the decisions, by holding that since there existed family disputes between the parties, the petition filed under Section 156(3) Cr.P.C., is not maintainable, dismissed the petition.

4. On considering the impugned order, this Court is constrained to observe that it is very shocking to notice, the way in which, the learned



Magistrate had dealt with the petition under Section 156(3) Cr.P.C and passed the impugned order. The learned Magistrate, by referring to the judgment of the Hon'ble Supreme Court in ***Lalita Kumari Vs. State of Uttar Pradesh and others***, has observed that since the petitioner has sought for registration of FIR, she is not entitled to get the said relief.

5. At this juncture, it is necessary to refer the directions issued by the Hon'ble Supreme Court in ***Lalita Kumari Vs. State of Uttar Pradesh and others*** reported in 2014 2 SCC 1.

120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.



120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether



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resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

6. A cursory perusal of the petition filed under Section 156(3) Cr.P.C., would reveal that she has raised so many serious allegations against the proposed accused and more importantly, against her husband and her father-in-law.

7. No doubt, when a Magistrate is considering the petition under Section 156(3) Cr.P.C, it is not necessary to have an elaborate enquiry with regard to the allegations levelled in the petition. The Hon'ble Supreme Court in the case of ***Priyanka Srivastava and another Vs. State Of Uttar Pradesh and others*** reported in ***2015 6 SCC 287***, while directing the learned Magistrates to receive an affidavit in support of the petition filed under Section 156(3) Cr.P.C., also directed the learned Magistrates, in appropriate cases, to verify the truth and also can verify the veracity of the allegations.

8. In the present case, the learned Magistrate has nowhere whispered that he had tested the veracity of the allegations levelled in the petition filed under Section 156(3) Cr.P.C.



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9. It is not the case of the concerned Court that the petitioner has not filed any affidavit as mandated by the Hon'ble Supreme Court in **Priyanka Srivastava'** case above referred. Even assuming for argument sake that the petitioner has not filed any such affidavit, the learned Magistrate before passing any order should have called for an affidavit from the petitioner so as to make her accountable for the allegations levelled by her.

10. Considering the above and also the way in which, the impugned order came to be passed, this Court has no hesitation to hold that the impugned order cannot be legally sustained and as such, the same is liable to be set aside.

11. As rightly contended by the learned counsel for the petitioner, the Hon'ble Supreme Court has included the matrimonial disputes/family disputes, for which, preliminary enquiry is to be conducted. But the learned Magistrate, without properly understanding the directions issued by the Hon'ble Supreme Court in **Lalita Kumari's** case, by giving irrelevant reasons rejected the petitioner's claim.



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12. In the result, the Criminal Revision is allowed and the impugned order passed by the learned Judicial Magistrate, Thiruvaiyaru, dated 10.05.2024 in CrI.M.P.No.1301 of 2024 is set aside. The learned Magistrate, Thiruvaiyaru is directed to forward the petition filed under Section 156(3) Cr.P.C to the All Women Police Station, Thiruvaiyaru and the concerned Police is directed to conduct preliminary enquiry as directed by the Hon'ble Supreme Court in **Lalita Kumari's** case above referred and if preliminary enquiry discloses commission of cognizable offence, register an FIR and proceed with the investigation and in case, if the enquiry does not disclose any cognizable offence, submit a report before the jurisdictional Court.

27.09.2024

NCC : Yes /No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Inspector of Police,
All Women Police Station,
Thiruvaiyaru, Thanajvur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR, J.

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Pre-delivery order made in
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