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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Crl.O.P(MD)No.15159 of 2023

T.Deepthi

... Petitioner

Vs

1. The Superintendent of Police,
Kanyakumari District.

2. The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.

3.Aruldoss

4.Rosely

5.Rajkumar

6.Wins

... Respondents

**(*R3 to R6 impleaded by this Court
in Crl.M.P(MD)No.13855/2023 in
Crl.O.P(MD)No.15159/2023, dated 21.11.2024)**

PRAYER: Criminal Original petitions have been filed under Sections 439
(1) (b) of the Code of Criminal Procedure, to set aside the order passed by



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the learned Judicial Magistrate No.II, Padmanabhapuram in C.M.P No. 6889 of 2021 dated 30.03.2022 and the report filed by the second respondent dated 20.06.2023 based on the order passed in C.M.PNo.6889 of 2021, dated 30.03.2022 and consequently direct the second respondent to register a case on the complaint of the petitioner dated 21.06.2021.

***(*prayer amended as per order of this Court made in
in Crl.M.P(MD)No.12901/2023 in
Crl.O.P(MD)No.15159/2023, dated 19.10.2023)***

For Petitioner : Mr.Sivakumar.S,

For R1 & R2 :Mr.A.Albert James
Government Advocate (Crl.Side)

For R3 to R6 : Mr.C.Susi Kumar
For M/s.Subash Law office

ORDER

This criminal original petition has been filed challenging the order passed by the learned Judicial Magistrate No.II, Padmanabhapuram in C.M.P.No.6889 of 2021, dated 30.03.2022 and the consequent report filed by the second respondent, dated 20.06.2023 and for consequential direction to the second respondent to register a complaint on



the complaint given by the petitioner on 21.06.2021.

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2.Heard the learned Counsel appearing on either side.

3.The petitioner gave a complaint against her husband and in-laws to the effect that she was treated with cruelty and there was a demand for dowry and according to the petitioner, the allegations that were made in the complaint constituted a cognizable offence under Sections 498A, 406 and Section 4 of TNPHW Act. The complaint given by the petitioner was not acted upon by the respondent police. Hence the petitioner filed a petition under Section 156(3) Cr.P.C before the learned Judicial Magistrate No.II, Padmanabhapuram.

4.The learned Judicial Magistrate No.II, Padmanabhapuram, passed an order, dated 30.03.2022, directing the police to conduct a preliminary enquiry and submit a report. Accordingly, the police conducted a detailed enquiry and submitted a report stating that there is no ground to register an FIR in this case. Aggrieved by the same, the present petition has been filed before this Court.



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5. In the considered view of this Court, the process that was adopted by the learned Judicial Magistrate is unsustainable. The learned Judicial Magistrate is expected to carefully go through the allegations made in the complaint and ensure that the petitioner had earlier approached the police and no action was taken and thereafter, should have directed the police to register an FIR and proceed further with the investigation. The learned Judicial Magistrate did not properly understand the scope of the judgment of the Hon'ble Supreme Court in the case of ***Lalitha Kumari Vs. Government of Uttar Pradesh*** reported in **2013 (6) CTC 353**. The learned Judicial Magistrate seems to have misunderstood the judgment to the effect that in every matrimonial dispute, even a Magistrate should first order for a preliminary enquiry and only thereafter, based on the report, an FIR should be directed to be registered. The directions issued by the Apex Court with respect to conducting preliminary enquiry, was specifically directed only to the police and not to the Judicial Magistrates. The Apex Court carved out certain cases where such preliminary enquiry can be conducted by the police. That does not mean that the learned Magistrates while exercising jurisdiction under Section 156(3) Cr.P.C must also order for a preliminary enquiry and get the report and only thereafter, should issue directions for investigation. This is clearly a wrong reading of the judgment of the Apex



Court.

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6. In the light of the above discussion, the procedure that was followed by the learned Judicial Magistrate No.II, Padmanabhapuram, is illegal and it requires the interference of this Court. As a consequence, the report filed by the police dated 20.06.2023 must also fall to the ground. Accordingly, the order passed in C.M.P.No.6889 of 2021, dated 30.03.2022 is set aside and the report submitted by the second respondent, dated 20.06.2023 is also set aside.

7. The matter is remanded back to the file of the learned Judicial Magistrate No.II, Padmanabhapuram. The learned Judicial Magistrate No.II, Padmanabhapuram, shall ensure if the complaint makes out a cognizable offence and if so, direct the police to register an FIR. When the police registers the FIR and proceed further with the investigation, they must not unnecessarily add all the in-laws as accused. To start with, it will suffice to add the husband as an accused and if there are very serious allegations against any other accused, their names can also be added. As and when any materials are collected against any other accused persons, their names should be added by filing an alteration report. The learned



Judicial Magistrate No.II, Padmanabhapuram shall pass orders, within a period of four weeks, from the date of receipt of a copy of this order. If ultimately, the FIR is registered, the investigation shall be completed by the respondent police as expeditiously as possible.

8.In the result, this criminal original petition is allowed with the above direction.

21.11.2024
(1/2)

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

To

1.The Judicial Magistrate No.II, Padmanabhapuram.

2.The Superintendent of Police,
Kanyakumari District.

3. The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.

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



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N.ANAND VENKATESH, J.

LR

Crl.O.P(MD)No.15159 of 2023

21.11.2024

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