



Crl.O.P.(MD)No.21081 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.21081 of 2023

Manimaran

... Petitioner

Vs.

1.The Inspector of Police
Manamadurai Police Station
Manamadurai.

2.The Superintendent of Police
Sivagangai.

3.N.Sivakumar

4.P.Gopalakrishnan

5.Chithra

6.Murali

7.Mukkaiya

8.Manikkam

... Respondents

(R3 to R8 are impleaded as respondents
as per order of the Court dated 14.12.2023
in Crl.M.P.(MD) No.17707 of 2023)

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside a closure report filed by the first respondent vide I.D.No.969 of 2023 dated 21.06.2023 and consequently, direct to register FIR with proper investigation as per law based on the direction of the Judicial Magistrate Court, Manamadurai in Cr.M.P.No.



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2592 of 2023 dated 16.06.2023 within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.A.Albert James
Government Advocate (Crl.Side)
for R1 and R2
Mr.N.Sathish Babu for R3 & R4
Mr.K.Dinesh for R5 & R6
Mr.N.S.Karthikeyan for R7 & R8

ORDER

This petition has been filed challenging the closure report filed by the first respondent dated 21.06.2023 and for a consequential direction to the respondent police to register the FIR pursuant to the direction issued by the learned Judicial Magistrate, Manamadurai in Crl.M.P.No.2592 of 2023, dated 16.06.2023.

2.Heard the learned counsel for the petitioner, the learned Government Advocate appearing on behalf of respondents 1 and 2, learned counsel appearing on behalf of respondents 3 and 4, learned counsel appearing on behalf of respondents 5 and 6 and the learned counsel appearing on behalf of respondents 7 and 8.



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3.The petitioner gave a complaint to the respondent police to the effect that he is the owner of a tipper lorry and that he had obtained loan for the said vehicle from a private financial bank. The vehicle was also hypothicated to the said finance company. The first respondent registered an FIR in Crime No.493 of 2021 dated 29.09.2021 for offence under the Mines and Minerals (Development and Regulation) Act, 1957 and under Section 379 of IPC. The vehicle was seized by the first respondent and the police took custody of the same. The petitioner filed an application seeking for return of the vehicle before the Principal District and Sessions Judge, Sivagangai, in Crl.M.P.No.3073 of 2022. This petition was allowed by an order dated 06.08.2022 by imposing certain conditions.

4.The finance company filed an application for return of property of the same vehicle in Crl.M.P.No.1467 of 2022 which was dismissed on 06.08.2022. While so, it is alleged that the chassis number of the vehicle belonging to the petitioner was manipulated and the vehicle belonging to the petitioner was illegally transferred to a person



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called Sivakumar with the help of the officials of the Regional Transport Office, Madurai. The petitioner was having the custody of the vehicle.

5.The complaint that was given by the petitioner in this regard was not acted upon and therefore, the petitioner filed an application before the learned Judicial Magistrate, Manamadurai in Crl.M.P.No.3073 of 2022 for a direction to the respondent police to register an FIR. An order was passed by the learned Judicial Magistrate to the effect that the police must conduct a preliminary enquiry in order to find if cognizable offence is made out and submit a report. Accordingly, the respondent police conducted a preliminary enquiry and filed a closure report. The same has been put to challenge in the present petition.

6.In the considered view of this Court, the order passed by the learned Judicial Magistrate, Manamadurai, is unsustainable. When the learned Judicial Magistrate deals with an application under Section 156(3) of Cr.P.C., the Magistrate has to see if a reading of the petition along with the materials placed makes out a cognizable offence. If such a



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cognizable offence is made out, the Magistrate has to direct for registration of FIR by the police and for conducting the investigation.

The Magistrate cannot order the police to conduct a preliminary enquiry and submit a report. Such directions given by the Magistrate is not within the scope of Section 156(3) of Cr.P.C. If the Magistrate finds that no cognizable offence is made out based on the allegations made in the FIR and the materials that are relied upon, it is always left open to the Magistrate to close the application. Even thereafter, it is always be left open to the complainant to file a private complaint and work out his remedy since while entertaining the private complaint, the Magistrate can entertain the same even if the complaint makes out only a non-cognizable offence. In other words, in a private complaint, the differentiation between a cognizable and non-cognizable offence pales into insignificance.

7.In the light of the above discussion, the order passed by the learned Judicial Magistrate, Manamadurai, in CrI.M.P.No.2592 of 2023 dated 16.06.2023 and the consequent closure report filed by the respondent police dated 21.06.2023 are held to be illegal. It is left open



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to the petitioner to submit a fresh application before the learned Magistrate and seek for a direction under Section 173(4) of BNS or in an alternative, it is also left open to the petitioner to file a private complaint and work out his remedy.

8.In the result, this Criminal Original Petition is disposed of in the above terms.

28.11.2024

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

To

The Inspector of Police
Manamadurai Police Station
Manamadurai.

2.The Superintendent of Police,
Sivagangai.

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



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N.ANAND VENKATESH,J.

PKN

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