



Crl.O.P.(MD) No.4227 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.03.2025

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THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. OP(MD). No.4227 of 2025

1. Jeyalakshmi

2. Vasantha

... Petitioners

Vs.

1. The Superintendent of Police
Office of the Superintendent of Police
Thanjavur

2. The Inspector of Police
District Crime Branch, Thanjavur

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS to call for the entire records relating to the impugned order dated 10.10.2024 made in Crl.M.P.No.9 of 2024 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu and set aside the same as illegal.

For Petitioners : Mr.K.Pragadeesh Kumar

For Respondents : Mr.M.Sakthi Kumar
No.1 and 2 Government Advocate (Crl. Side)



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ORDER

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This petition has filed to set aside the order passed in Crl.M.P.No.9 of 2024 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu dated 10.10.2024.

2. The learned counsel appearing for the petitioners would submit that the petitioners are the defacto complainant in this case and they filed a petition under Section 156(3) of Cr.P.C., and the same was ordered by directing the respondent police to expedite the preliminary enquiry and if cognizable offence is made out to register FIR and investigate and if non cognizable offence is made out either to proceed under Section 155(1) or (2) of Cr.P.C and if no offence is made out to file closure report. Thereafter the respondent police have not complied with the order of the learned Magistrate, thereby the said Crl.M.P.No.9 of 2024 was closed without giving opportunity to the petitioner for filing protest petition or contempt petition , thereby the said impugned order is under challenge.

3. The learned Government Advocate(Crl.Side) would submit that based on the order passed by this Court they conducted enquiry and the same



was closed and the closure report was also served to the petitioner through post, therefore nothing survives for further adjudication in this case.

4. Heard both sides and perused the materials available on record.

5. According to the petitioner they filed a petition under Section 156(3) of Cr.P.C., and the same was forwarded to the second respondent and the second respondent without registering First Information Report keeping on the matter pending. In the meantime the trial Court also kept pending the Crl.M.P. and thereafter due to non filing of report closed the petition. It is well settled law that once the Magistrate passed an order under Section 156(3) of Cr.P.C., it is a judicial order and the respondent police have to register the First Information Report and thereafter they have to conduct investigation. Thereafter only to file final report. In this case the learned Magistrate without applying his mind simply passed order as follows:

“ On perusal of the records this Court has issue direction to SHO concerned police station to register the First Information Report . But this Cr.M.P pending for not filing report by the SHO. Hence, this Cr.M.P.is closed and given liberty to the petitioner to file the protest petition or contempt petition under district police Act against the SHO of concerned PS.Thus this Cr.M.P is closed.”



WEB COPY 6. The above said order show the non application of mind by the learned Magistrate and therefore the said order has to be set aside.

7. At this juncture, the learned Counsel for the petitioner relied upon the following judgments:

(i) ***Hemant Yashwant Dhage Vs. State of Maharashtra and others*** reported in ***(2016) 6 SCC 273***;

(ii) ***Mohd. Yousuf Vs. Afaq Jahan and another*** reported in ***(2006) 1 SCC 627*** and

(iii) ***Saravanan Vs. The Inspector of Police, Thirupattur Town Police Station***, in ***Crl.R.C.No.1527 of 2022*** on the file of this Court.

8. On careful perusal of the above said judgment, it is clear that the registration of 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. Even if a Magistrate does not say in any words while directing investigation under Section 156(3) of Cr.P.C 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



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by the complainant. In the case on hand also the learned Magistrate passed order in the petitioner filed under Section 156(3) of Cr.P.C and forwarded the complaint to the S.H.O. while so, the SHO ought to have registered FIR. After receipt of the complaint from the Court under Section 156(3) of Cr.P.C, once again, the police cannot conduct enquiry. Therefore, it is the duty of the second respondent to register an FIR and investigate the case.

9. Since the previous order is set aside the subsequent order passed by the learned Magistrate by closing the complaint for non filing of report is also set aside.

10. In view of the same, this Criminal Original Petition stands allowed and the learned District Munsif cum Judicial Magistrate, Orathanadu is directed to pass appropriate orders after applying his mind in the application filed by the petitioners within a period of one month from the date of receipt of a copy of this order.

25.03.2025

Internet :Yes
Index :Yes/No
NCC :Yes/No
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- 1.The District Munsif cum Judicial Magistrate, Orathanadu
2. The Superintendent of Police
Office of the Superintendent of Police
Thanjavur
3. The Inspector of Police
District Crime Branch, Thanjavur
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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