

Crl.O.P.(MD)No.4339 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.4339 of 2025

S.L.Anish

.. Petitioner

Vs.

**1. The Additional Superintendent of Police
Colachel, Kanyakumari District**

**2.Ignos Kumar
The Inspector of Police
Nithravilai Police Station
Kanyakumari District**

**3.Al Ameen
4. Satheesh
5. Shakul Hameed
6. Gnanasigamani
Sub Inspector of Police
Nithravilai Police Station
Kanyakumari District**

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS,
to call for records pertaining to the order passed by the learned Judicial
Magistrate No.II,Kuzhithurai, Kanyakumari District in Crl.M.P.No.5385
of 2024 dated 06.07.2024 and set aside the same.



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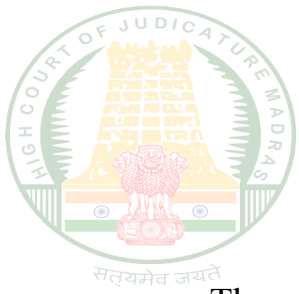
Crl.O.P.(MD)No.4339 of 2025

For Petitioner : Mr.J.Pandi Dorai
For Respondents : Mr.M.Sakthi Kumar
No. 1 Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District in Crl.M.P.No.5385 of 2024 dated 06.07.2024.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the defacto complainant and he filed a petition under Section 156(3) of Cr.P.C seeking direction to register the First Information Report as against the respondents 2 to 6. Infact the petitioner is graduate in Bachelor of Science and he is serving as a President, Munchirai Taluk Committee, Democractic Youth Federation of India and he is also a member of Munchirai Taluk Committee, Communist Party of India(Marxist). The petitioner and one Chellasamy were subjected to inhuman treatment violating their human rights and privacy by the second respondent and were also brutally attacked by respondents 3 to 5. Further the sixth respondent abused the petitioner in order to protect the respondents.



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Therefore he lodged a complaint before the Nithravilai Police Station/sixth respondent on 15.03.2024 but no action was taken. Hence he filed complaint before the Superintendent of Police on 03.04.2024 no action was taken. Therefore he filed a petition before the learned Judicial Magistrate No.II, Kuzhithurai in Crl.M.P.No.5385 of 2024 and the learned Magistrate passed order directing the first respondent to enquire the petition and file a report. The learned Magistrate closed the petition and directed the first respondent to conduct enquiry. The learned Magistrate had not applied the mind but simply ordered to conduct enquiry and submit a report by the concerned police. The learned Magistrate ought to have directed the first respondent to register First Information Report and investigate the case once satisfied the *prima facie* material available, instead only passed two line order to enquire the petition, if it thinks fit proceed by law and file a report, therefore the order passed by the learned Magistrate is liable to be set aside. To support his contention he also relied on the orders passed by this Court ***Mohamed Noufal .vs. Habib Mohamed @ Yasar in Crl.O.P(MD) No.9896 of 2023*** and ***Manimaran .vs. The Inspector of Police, Manamadurai Police Station, Manamadurai and others in Crl.O.P(MD) No.21081 of 2023.***



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3. Since the present petition pertaining to the pre taking cognizance stage the right of ordinance to the private respondents is dispensed with.

4. The learned Government Advocate(Crl.Side) appearing for the first respondent would submit that the petitioner herein has filed a petition under Section 156(3) before the learned Judicial Magistrate No.II, Kuzhithurai and the learned Magistrate had directed the first respondent to enquire the petition if it thinks fit proceed by law and file report before the Court as early as possible but now the respondent is enquiring the matter. In the meantime, the present petition has been filed

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

6. In this case the petitioner has filed a petition under Section 156(3) before the learned Judicial Magistrate No.II Kuzhithurai and the learned Magistrate has passed the following order:

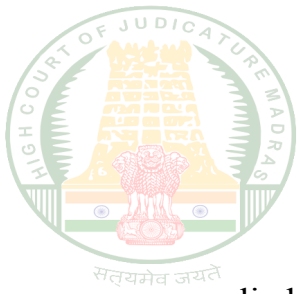
“Petitioner present, heard , Records persued. Prima facie documents also produced hence this Court hereby directed to ASP, Colachel to enquiry this petition if it thinks fit proceed by law and file report before this Court as early as possible”



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7. So far as order under Section 156(3) of Cr.P.C., is concerned it is a judicial order and after applying mind the court has to pass orders. In this case the order passed by the learned Magistrate is only two line order and without applying the mind the learned Magistrate has passed order. More over, once the petition filed under Section 156(3) of Cr.P.C., the learned Magistrate has to pass speaking order after applying his mind and the Magistrate ought to have directed the first respondent to register First Information Report and not to conduct enquiry, if *prima facie* materials available to constitute the offence otherwise if no any material available the Magistrate has to dismiss the petition. In this case the learned Magistrate after receipt of complaint under Section 156(3) of Cr.P.C., has passed two line order without applying his mind and if any cognizable offence is made out the Magistrate has to direct the police to register the First Information Report but the Magistrate cannot once again direct the police to conduct enquiry and submit a report.

8. In the case on hand, the Magistrate has not passed speaking order and without applying mind simply directed to proceed by law and file a report, therefore the order passed is not in accordance with law.



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9. At this juncture, the learned counsel appearing for the petitioner relied on the orders passed by this Court in ***Mohamed Noufal .vs. Habib Mohamed @ Yasar in Crl.O.P(MD) No.9896 of 2023*** and ***Manimaran .vs. The Inspector of Police, Manamadurai Police Station, Manamadurai and others in Crl.O.P(MD) No.21081 of 2023***, wherein this Court had decided about the powers of the learned Magistrate. When the learned 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 cognizable offence is made out, the Magistrate has to direct to registration of First Information Report by the police and for conducting investigation. The Magistrate cannot order the police to conduct a preliminary enquiry and submit a report. Such direction given by the Magistrate is not within the scope of Section 156(3) of Cr.P.C., If the Magistrate find that no cognizable offence is made out based on the allegations made in the complaint and the materials 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 compliant and work out his remedy. In the case on hand also, the learned Magistrate has not passed speaking order simply forwarded by directing the first respondent to conduct enquiry.



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Therefore the order passed by the learned Magistrate is unsustainable and same is liable to be set aside

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10. In view of the same, this Criminal Original Petition stands allowed and the order passed by the the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District in Crl.M.P.No.5385 of 2024 dated 06.07.2024 is set aside and the matter is remanded back to the learned Magistrate for passing appropriate orders in accordance with law.

11.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District
2. The Additional Superintendent of Police
Colachel, Kanyakumari District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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