

Crl.O.P.(MD)No.7573 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2025

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CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.7573 of 2025

D.Malanraj

... Petitioner

Vs

**1. The State of Tamilnadu
Rep., by, the Superintendent of Police,
Thoothukudi District, Thoothukudi.**

**2. The Inspector of Police,
Kovilpatti West Circle Police Station,
Thoothukudi District.**

3. Salini Devi

4. Backiyam

5. Balasubramaniam

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of BNSS to direct the respondents 1 and 2 to comply with order passed in Crl.M.P.No. 6278 of 2024 dated 12.06.2024 on the file of the Judicial Magistrate No. II, Kovilpatti.



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Crl.O.P.(MD)No.7573 of 2025

For Petitioner : Mr. Aayiram K. Selvakumar

For R1 and R2 : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

ORDER

This petition is filed by the petitioner to direct the respondents 1 and 2 to comply with order passed in Crl.M.P.No. 6278 of 2024 dated 12.06.2024 on the file of the Judicial Magistrate No. II, Kovilpatti.

3. The learned counsel for the petitioner would submit that he approached the Judicial Magistrate-II, Kovilpatti and filed a petition in Crl.M.P.No.6278 of 2024 under Section 156(3) of Cr.P.C. and the same was allowed and forwarded to the second respondent for taking appropriate action. The second respondent without registering FIR, closed the petition without conducting enquiry. Therefore, the second respondent has not taken any steps to register FIR. To that effect, he also sent a representation dated 29.03.2025, but no action was taken. Hence, he filed this petition.

4. The learned Government Advocate (Crl.Side) for the respondents 1 and 2 would submit that the petitioner filed the petition before the



Crl.O.P.(MD)No.7573 of 2025

Judicial Magistrate-II, Kovilpatti under Section 156(3) of Cr.P.C. in Crl.M.P.No.6278 of 2024 and the learned Magistrate also allowed the petition directing the police to make preliminary enquiry within seven days from the date of receipt of this order and during the enquiry, if any cognizable offences are made out and register FIR and proceed in accordance with law. Thereby, they conducted enquiry and closed. Therefore, they already complied with the order.

5. Considering the prayer sought for in this petition, this Court, without issuing notice to the respondents 3 to 5, is inclined to pass orders.

6. It is an admitted fact that the petitioner filed a petition before the learned Judicial Magistrate-II, Kovilpatti in Crl.M.P.No.6278 of 2024 under Section 156(3) of Cr.P.C. and the same was forwarded to the second respondent by directing the second respondent to conduct preliminary enquiry and to register the FIR, if cognizance is made out. Based on the same, the second respondent also conducted enquiry and closed the complaint and the report also filed.

7. It is a well settled law that as far as the order passed under



Section 156(3) of Cr.P.C. is concerned, the learned Magistrate, after applying judicial mind and satisfying with *prima facie* material, has to forward the case to the police. In this case, the learned Magistrate passed the order by directing the police to conduct preliminary enquiry and thereafter, if any cognizance is made out, to register the FIR. The learned Magistrate ought not to have passed such order. If the learned Magistrate satisfied that there are *prima facie* materials to make out the cognizable offence, ought to have directed the police to register FIR. Otherwise, the learned Magistrate ought to have dismissed the petition. Without doing so, the learned Magistrate passed the order and based on the same, the second respondent also conducted enquiry and closed. Once the learned Magistrate forwarded the case to the second respondent, it is the duty of the police to register the FIR and thereafter, they have to conduct investigation and file Final Report. There are procedural violations and the second respondent have not registered the FIR and therefore, the order passed by the learned Magistrate is liable to be set aside. Though the petitioner has not challenged the order passed by the learned Magistrate in Crl.M.P.No. 6278 of 2024 dated 12.06.2024 and now, the petitioner filed the petition to execute the order by directing the second respondent to comply with the order, considering the procedural irregularities, by



Crl.O.P.(MD)No.7573 of 2025

invoking Section 528 of BNSS, this Court set aside the order passed by the learned Judicial Magistrate No.II, Kovilpatti.

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8. 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.

9. 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 cognizance 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 by the complainant. In the case on hand also



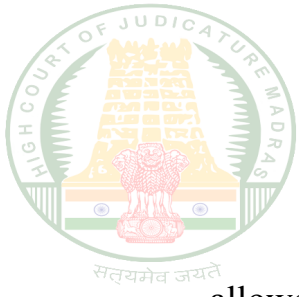
Crl.O.P.(MD)No.7573 of 2025

the learned Magistrate passed order in the petitioner filed under Section 156(3) of Cr.P.C and forwarded the complaint to the second respondent.

While so, the second respondent 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.

10. Since the order passed by the learned Magistrate is set aside, the consequent enquiry made by the second respondent is also set aside and the learned Judicial Magistrate No.II, Kovilpatti is directed to pass fresh orders in the petition after applying judicial mind and if any cognizable offence is made out, to pass the order by directing the second respondent to register the case, otherwise, the learned Magistrate can dismiss the petition.

11. In view of the same, the order passed by the learned Judicial Magistrate-II, Kovilpatti in Crl.M.P.No. 6278 of 2024 dated 12.06.2024, is set aside and the matter is remitted back to the Judicial Magistrate-II, Kovilpatti for passing fresh order after applying judicial mind.



Crl.O.P.(MD)No.7573 of 2025

12. With the above direction, this Criminal Original Petition stands
allowed.

WEB COPY

25.04.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

apd

To

1. The Judicial Magistrate-II,
Kovilpatti.

2. The Superintendent of Police,
Thoothukudi District, Thoothukudi.

3. The Inspector of Police,
Kovilpatti West Circle Police Station,
Thoothukudi District.

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



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Crl.O.P.(MD)No.7573 of 2025

P. DHANABAL, J.,

apd

Crl.O.P.(MD)No.7573 of 2025

25.04.2025