

CrI.R.C.(MD).No.1114 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.02.2025

PRONOUNCED ON : 28.02.2025

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.1114 of 2024

Shyni

... Revision Petitioner / Petitioner

Vs.

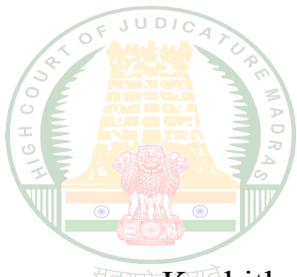
1.State represented through
The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

... 1st Respondent/Respondent

2.Thangamani
3.Selvi
4.Thangaraj
5.Devagi
6.Selvaraj

.... Respondents 2 to 6/
Accused Nos.1 to 5

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the impugned order passed by the learned Judicial Magistrate in Cr.M.P.No.8411 of 2022, dated 21.12.2023 from the file of the learned Judicial Magistrate No.I,



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Kuzhithurai, Kanyakumari District and set aside the same and to direct the first respondent police to register a case on the basis of the petitioner's complaint dated 15.07.2022 within the time stipulated by this Court.

For Petitioner : Mr.M.R.Srinivasan

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (CrI.Side)
for R.1

: Mr.V.Sasikumar
for R.2 to R.6

ORDER

This Criminal Revision is directed against the order made in C.M.P.No. 8411 of 2022, dated 21.12.2023, on the file of the Court of Judicial Magistrate No.I, Kuzhithurai, dismissing the petition filed under Section 156(3) Cr.P.C.

2. The case of the petitioner is that the lands in S.No.8/4, 7/11 and 7/12 of Nallur Village, are owned by the petitioner's sister, that she constructed a house leaving some vacant portion adjacent to the house for her convenient enjoyment, that though the respondents 2 to 6 are having separate pathway to the house of the second respondent, with evil intention to form pathway through the



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petitioner's sister's land, attempted to trespass and harass the petitioner and her family members, that on 15.07.2022, the respondents 2 to 6 with the help of some rowdy elements trespassed into the petitioner's land and caused damages to the compound wall, that when the same was questioned, the fourth respondent abused the petitioner in filthy language and attempted to outrage her modesty and threatened the petitioner with dire consequences, that the fifth respondent has assaulted the petitioner's son and mother, that the respondents 2 to 6 caused damages to the paver blocks and also damaged the floor and wall, that when the petitioner attempted to prevent the illegal acts of the accused, they assaulted the petitioner indiscriminately and as a result of which, the petitioner sustained injuries all over her body, that she was admitted in Government Hospital, Kuzhithurai and was taking treatment as inpatient till 17.07.2022, that since the police did not registre the case, the petitioner sent a complaint to the Superintendent of Police, Kanyakumari District, that since there was no action, the petitioner was constrained to file a petition under Section 156(3) Cr.P.C., before the Judicial Magistrate No.I, Kuzhithurai, that the respondent police by suppressing the real facts and in order to support the accused persons, filed a false report, that the Judicial Magistrate, without considering the facts of the case in proper perspective, relying on the report of the police, passed the impugned



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order dismissing the petition filed under Section 156(3) Cr.P.C., and that therefore, challenging the said order, the present Criminal Revision Case came to be filed.

3. The learned Judicial Magistrate No.I, Kuzhithurai, taking the petition filed under Section 156(3) Cr.P.C., on file in C.M.P.No.8411 of 2022, called for a report from the first respondent Police.

4. The case of the respondents 2 to 6 is that since the second respondent was sick, he was admitted in the private hospital at Kuzhithurai, that when the second respondent was taken to home through ambulance, the same was restrained by the petitioner and her family members by placing jalli and blocked the common pathway, that when the blocking of common way was questioned, the petitioner and her family members abused the respondents in filthy language, that even before the alleged occurrence, there was a wordy quarrel between the second respondent and the petitioner and her family members and hence, a complaint and a counter complaint had been made and on that basis, C.S.R.Nos. 223 of 2022 and 224 of 2022 came to be registered, that the first respondent police advised both the parties to measure the property with the help of surveyor

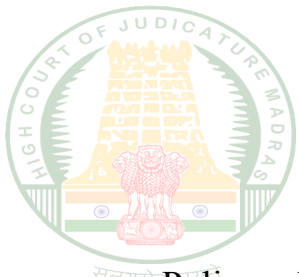


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and settle the issue amicably, that on 20.06.2022, the petitioner restrained the respondents 2 to 6 from entering the house and hence, a complaint was lodged in C.S.R.NO.645 of 2022 and that while the said complaint was pending, the alleged occurrence was said to have taken place.

5. It is the further case of the private respondents that the petitioner's vendor had executed a sale deed in favour of the petitioner in respect of the property which was to be kept common use as a pathway, contrary to the partition deed, that the respondent police referred both the parties before the Revenue Divisional Officer, Padmanabhapuram under Section 145 Cr.P.C., that the first respondent after analysing the civil dispute between the parties, filed final report and that the learned Magistrate rightly dismissed the petition filed under Section 156(3) Cr.P.C.

6. The first respondent has filed a counter statement stating that the petitioner's sister has got the property in Re.Sy.No.8/4, 7/11 and 7/12 measuring 9.968 cents in Nalloor Village, that there is a dispute in respect of a pathway between the petitioner's family and one Thangamani, that the petitioner's husband Rajiniganthan has earlier filed a complaint before the Marthandam

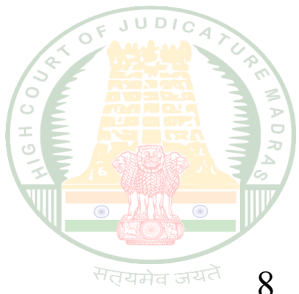


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Police alleging that one Rayappan @ Thangamani abused and criminally intimidated him and on that basis, C.S.R., came to be registered in C.S.R.No.223 of 2022 and during enquiry, both of them agreed to measure the property with the help of a surveyor and to fix the boundaries and on that basis, their complaint was ordered to be closed, that the parties had again quarrelled with each other in connection with the property dispute and on that basis of the complaint given by the either side, C.S.R.Nos.760 of 2022 and 761 of 2022 came to be registered, that since both parties have been disturbing the peace in the locality, the first respondent referred both parties before the Revenue Divisional Officer, Padmanabhapuram under Section 145 Cr.P.C., in L.I.R.No.28 of 2022 and that the learned Judicial Magistrate, taking into consideration all the aspects, has rightly dismissed the petition filed under Section 156(3) Cr.P.C.

7. It is not in dispute that subsequently, on the basis of the complaint lodged by the petitioner's husband for the alleged occurrence on 28.01.2024, F.I.R., came to be registered in Cr.No.48 of 2024 for the offences under Sections 147, 148, 149, 294(b), 323, 379 NP, 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.



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8. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***M/S Indian Oil Corporation vs M/S NEPC India Ltd., and Others, in Crl.A.No.834 of 2002, dated 20.07.2002,*** wherein, the Hon'ble Apex Court has *deprecat*ed the practice of attempting to settle the civil disputes by applying pressure through criminal prosecution and the relevant passage is extracted hereunder:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of



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other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

9. In *Mitesh Kumar J Sha vs The State Of Karnataka (Crl.A.No.1285 of 2021, dated 26.10.2021)*, the Hon'ble Supreme Court has reiterated that cloaking



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a civil dispute with a criminal nature in order to get quicker relief is an abuse of process of law which must be discouraged. Bearing the above legal position on mind, let us consider the case on hand.

10. It is also not in dispute that the first respondent had already referred the matter to the Revenue Divisional Officer under Section 145 Cr.P.C., in L.I.R.No.28/2022 treating the private respondents as “A” party and the petitioner's group as “B” party.

11. The learned Counsel for the private respondents would submit that the property comprised in S.No.8/4 of Nallur village to an extent of 1.578 cents is a common property as per the registered partition deed dated 14.07.1982 and as per the said deed, one Rengasamy was allotted 5th Schedule property, who in turn had executed a registered Will in favour of one Sathananthavalli, vide registered document No.57/2003, that he had executed the Will including the portion of the common property, which was earmarked for pathway and that taking advantage of the Will, the said Sathananthavalli obtained patta and executed a sale deed in favour of the petitioner's sister.

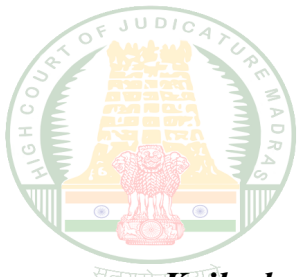


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12. Even according to the petitioner, the petitioner's sister constructed a house leaving some vacant portion adjacent to the house for her convenient enjoyment. But according to the private respondents, it is a common pathway. As rightly contended by the learned Government Advocate (CrI.Side), considering the case of both parties, it is clearly evident that there existed pathway dispute between them, that they have been quarrelling each other very often and on the complaint lodged by either side, C.S.R., came to be registered, that they have agreed to measure the property with the help of the Surveyor, but without taking any steps, they have again started to quarrel among themselves and that therefore, the first respondent was constrained to refer the matter before the Revenue Divisional Officer under Section 145 Cr.P.C.

13. The learned Counsel for the petitioner would submit that since their petition filed under Section 156(3) Cr.P.C., discloses the commission of cognizable offence, the learned Judicial Magistrate is duty bound to forward the complaint to the concerned police for registering an F.I.R., and that he has no power or jurisdiction to dismiss the same by himself. The learned Counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in



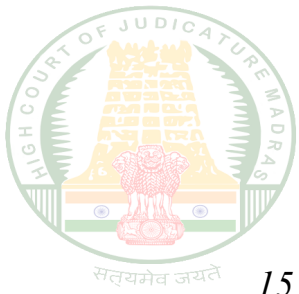
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Kailash Vijayvargiya Vs. Rajalakshmi Chaudhuri and others reported in **2023(2) MWN (Cr.) 18 (SC)**, wherein the Hon'ble Apex Court referring to its earlier judgment in ***Lalita Kumari Vs. Government of Uttar Pradesh and others*** reported in **2014(2) SCC 1** reiterated the position that the police is bound to proceed to conduct investigation upon receiving the information about the commission of cognizable offence and that once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice.

\ 14. The learned Counsel for the petitioner would rely on the decision of this Court in ***M.Veluthai Vs. Superintendent of Police, Thoothukudi and another*** reported in **2024 (1) MWN (Cr.) 13**, wherein, a learned Magistrate has passed an order under **Section 156(3) Cr.P.C.** in Crl.M.P.No.5511 of 2023 directing the respondent police therein to register an FIR and for conducting investigation but the respondent police has conducted an enquiry and finally filed a closure report and in that fact situation, a learned Judge of this Court has held,

*“14. In the case on hand, the petitioner filed a complaint under **Section 156(3)** of Cr.P.C. and the same was referred to police. The police instead of registering FIR has closed the same stating that there is no cognizable offence made out. The procedure followed by police is incorrect.*



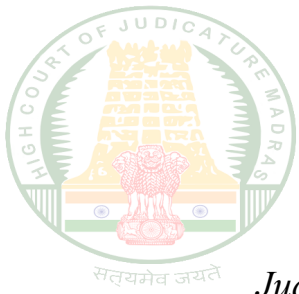
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15. Considering the discussions above, filing of a closure report by the respondent police after the complaint referred to by learned Magistrate under [Section 156\(3\)](#) of Cr.P.C. is illegally not permissible. Once the Magistrate refers the complaint to the police under [Section 156\(3\)](#) of Cr.P.C. the police have no option except to register FIR and investigate the case. Once the complaint has been referred by learned Magistrate to police under 156(3) of [Cr.P.C.](#) it means that the learned Magistrate has prima facie satisfied that the cognizance has already been committed. Therefore, the police should have registered the FIR and started investigation.”

15. I had an occasion to deal with the similar fact situation in the case of ***D.Vinoth Vs. Superintendent of Police, Virudhunagar District and another*** passed in Crl.O.P.(MD)No.22627 of 2022 dated 20.01.2023 and the relevant passages are extracted hereunder:-

“8. At the outset, it is pertinent to note that the learned Judicial Magistrate, in the case on hand, has not passed any order, directing the Station House Officer to register the FIR and the contention of the learned counsel for the petitioner in this regard is patently incorrect. The learned Judicial Magistrate, as already pointed out, has specifically directed the Station House Officer to peruse the complaint and other documents and to conduct an enquiry and in case, if the complaint disclose any cognizable offence, he has to register the FIR and then to submit a report. Since the learned



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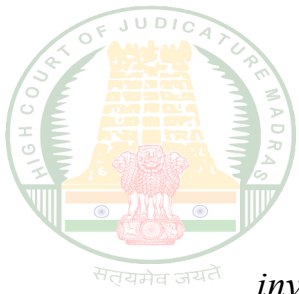
Judicial Magistrate has not specifically directed the second respondent to register the FIR, the procedure adopted by the second respondent in conducting enquiry and submitting the report, cannot be found fault with.

9. Now turning to the other submission of the learned counsel for the petitioner, even though the learned Magistrate has forwarded the complaint under [Section 156\(3\) Cr.P.C.](#), to conduct enquiry/ investigation, the Station House Officer has no other go, but to register the FIR and then to proceed with the investigation.

10. No doubt, such was the position prevailing prior to the judgment of the Constitution Bench in [Lalita Kumari Vs. Government of Uttar Pradesh and Others](#) reported in (2014) 2 SCC 1.

11. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court, in the case of [Madhu Bala Vs. Suresh Kumar and others](#) reported in (1997) 8 SCC 476, has specifically observed that even in the absence of a direction to register the case by the Magistrate, the Police is bound to formally register a case and then investigate into the same and the relevant passage is extracted hereunder :

“10.From the foregoing discussion, it is evident that whenever a magistrate directs an investigation on a 'complaint', the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above rules. It, therefore, passes our comprehension as to how the direction of a magistrate asking the police to 'register a case' makes an order of

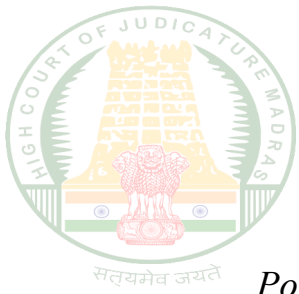


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investigation under [section 156\(3\)](#) legally unsustainable. Indeed, even if a magistrate does not pass a direction to register a case, still in view of the provisions of [section 156\(1\)](#) of the Code which empowers the police to investigate into a cognizable 'case' and the rules framed under the [Indian Police Act, 1861](#), it (the police) is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, do not in any way stand in the way of a magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion, when an order for investigation under section 156(3) of the Code is to be made, the proper direction to the police would be to register a case at the police station treating the complaint as the First Information Report and investigate into the same.”

12. [Section 154 \(1\)](#)Cr.P.C, contemplates that any information relating to the commission of a cognizable offence, is given orally, such information is to be reduced in writing and after getting the signature of that person, the matter shall be entered in a book to be kept by that Officer. If a person is aggrieved by refusal on filing a complaint by the Officer in charge of the Station, then in such a case, the said person has to send such information in writing to the Superintendent of Police concerned. If still no action is taken, then the said person can approach the Magistrate under [Section 156\(3\)](#)Cr.P.C. If a complaint is received by the Police Officer from the complainant directly or from the Court under [Section 156\(3\)](#)Cr.P.C, attracting any cognizable offence the concerned



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Police Officer, is duty bound to register an FIR and then to investigate the same. But the Constitution Bench of the Hon'ble Apex Court in [Lalita Kumari's](#) case, has conferred some extra rights on the Police, which is not contemplated by [Cr.P.C](#), for conducting primary enquiry in cases where the police is not able to find out whether the complaint discloses any cognizable offence or not.

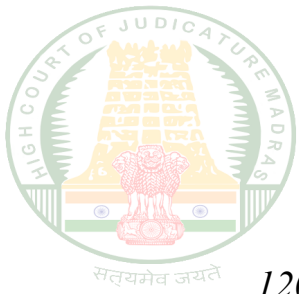
13. No doubt, the Hon'ble Supreme Court has specifically clarified that the registration of FIR is mandatory under [Section 154](#)Cr.P.C, if the information discloses commission of a cognizable offence and in that situation, no preliminary enquiry is permissible.

14. The Hon'ble Apex Court has held that if the information received does not disclose a cognizable offence, but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. It is necessary to refer the directions issued by the Hon'ble Supreme Court in [Lalita Kumari's](#) case, hereunder for better appreciation :

120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.



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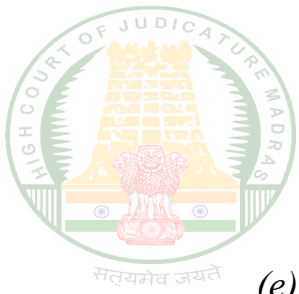
120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*



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(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

15. The learned counsel for the petitioner would contend that the above directions issued by the Hon'ble Supreme Court are applicable only in the cases of complaint received by the Police under [Section 154Cr.P.C](#) and not when the complaint is forwarded by the Judicial Magistrate under [Section 156\(3\)Cr.P.C](#).

16. [Section 156\(3\)Cr.P.C](#) says that any Magistrate empowered under [Section 190Cr.P.C](#), may order such enquiry as above mentioned.

17. No doubt, the above provision is very briefly worded. But the Hon'ble Apex Court in catena of decisions has specifically observed that [Section 156\(3\)Cr.P.C.](#), is wide enough to include all such powers



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in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation. To put it in short, [Section 156\(3\)Cr.P.C](#) is very wide and it would include all such incidental powers as are necessary for ensuring a proper investigation.

18. As already pointed out, in the case on hand, the learned Magistrate has not given a finding/observation that the complaint of the petitioner discloses commission of a cognizable offence. But, on the other hand, the learned Magistrate directed the Station House Officer to conduct an enquiry and to register an FIR, if the complaint and enquiry discloses commission of a cognizable offence. Since the learned Magistrate has not taken a decision as to whether any cognizable offence is disclosed or not and the complaint was forwarded directing the Police Official to find out whether any cognizable offence is disclosed or not, after conducting enquiry, it can easily be inferred/observed that the Station House Officer has to act under Section 154 r/w 156(i)[Cr.P.C](#).

19. The learned counsel for the petitioner has relied on another judgment of the Hon'ble Supreme Court in [Hemant Ashwant Dhage Vs. State of Maharashtra and others](#) reported in (2016) 6 Supreme Court Cases 273, wherein the Division Bench of the Hon'ble Apex Court has referred its earlier decision in [Mohamed Yousuf Vs. Afaq Jahan](#) reported in 2006 (1) SCC 627, wherein the Hon'ble Apex Court has pointed out that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R.



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and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R.

20. As already pointed out, the Mohamed Yousuf's case was decided prior to the judgment in Lalita Kumari's Case.

21. In view of the above, the procedure adopted by the second respondent cannot be found fault with and hence, this court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.”

16. Moreover, as rightly contended by the learned Counsel for the respondents, the complainant does not have an unqualified right to demand police investigation in all circumstances and moreover, it is not mandatory on the part of the learned Judicial Magistrate to refer the complaint to the concerned police for registration of the case. It is pertinent to note that it is always open to the petitioner to file a private complaint and to proceed to prosecute the accused even if the learned Judicial Magistrate refused to exercise his power under Section 156(3) Cr.P.C. It is settled law that the learned Judicial Magistrate while exercising power under Section 156(3) Cr.P.C., cannot act in a mechanical or casual manner and its duty to consider the nature of the offence or the offence alleged and to decide about the course of action to be taken and it cannot be

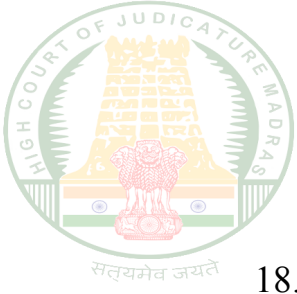


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stated that the order of the Judicial Magistrate refusing to direct the police to register an F.I.R., completely shut out all the opportunites for the complainant. If the petitioner is having necessary particulars and materials to show a prima facie case against the proposed accused, he can very well file a private complaint under Section 200 Cr.P.C., and there is absolute no bar or prohibition for filing a private complaint on the ground that the petition filed under Section 156(3) Cr.P.c., was dismissed by the Magistrate. In the present case, the learned Magistrate, considering the averments raised in the complaint and also taking note of the report of the police, has come to a decision that the dispute is of civil in nature, dismissed the petition.

17. Considering the above, this Court has no hesitation to hold that the petitioner has been attempting to give a civil case a criminal colour and as such, the impugned order dismissing the petition filed under Section 156(3) Cr.P.C., cannot be found fault with. Consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.



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18. In the result, the Criminal Revision Case is dismissed. The petitioner is at liberty to file a private complaint, if so advised.

28 .02.2025

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

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To

1. The Judicial Magistrate Court No.I, Kuzhithurai,
Kanyakumari District.
2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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