



Crl.R.C.(MD)No.1111 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 11.03.2025

Pronounced on : 09.04.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1111 of 2024

Athiyaman

... Petitioner

Vs.

1.The Inspector of Police,
Puthukottai Police Station,
Thoothukudi District.

2.S.Balasudhakar

3.S.Balaprabhakar

4.Suseela

... Respondents

Prayer : This Criminal Revision Case filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the order passed by the learned Judicial Magistrate No.III, Thoothukudi in Crl.M.P.No.21640 of 2023 dated 05.12.2023, examine the records, set aside the same and allow this revision.



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For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.R.Jenifar Bibin

For R1 : Mrs.M.Aasha
Government Advocate (Crl. Side)

For R2 & R4 : Mr.V.Kathirvelu, Senior Counsel
for Mr.V.Shathurthi Raja

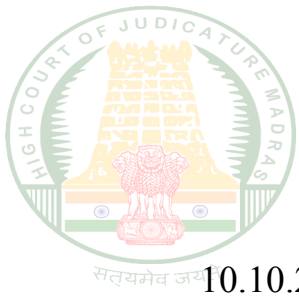
For R3 : Mr.R.Ilayaraja

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.21640 of 2023 dated 05.12.2023 on the file of the Court of the Judicial Magistrate No.3, Thoothukudi, directing investigation and for filing of report, on the basis of the petition filed under Section 156(3) of the Code of Criminal Procedure.

2. The case of the petitioner is that the petitioner is doing plantain cultivation in his lands, that the petitioner was keeping timber logs and JSW sheets for the purpose of cultivation, that on 15.09.2022 night 80 timber logs and 42 JSW sheets were stolen by his brother/second respondent herein and some others, that though the petitioner has lodged a complaint before the Pudhukkottai Police, there was no action, that on

2/12

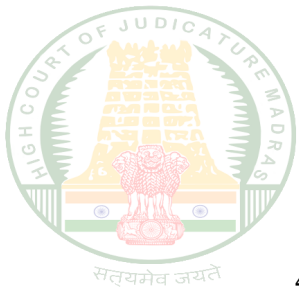


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10.10.2022, again 6 JSW sheets were stolen from the petitioner's field, that though the complaint was lodged, there was no action from the police, that when the petitioner was doing cultivation on 13.07.2023, the respondents 2 and 3 at the instigation of the fourth respondent had attacked the petitioner indiscriminately with rod and wooden log and caused serious injuries, that the petitioner was immediately admitted in Government Hospital and the police from Pudhukkottai Police Station came to the hospital and recorded statement from him, that the petitioner has also sent a complaint to the District Superintendent of Police, that the respondents 2 to 4 at the police enquiry have informed that they have not stolen any materials and that since there was no action, the petitioner was constrained to file the above petition under Section 156(3) Cr.P.C.

3. The learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C. on file in Crl.M.P.No.21640 of 2023 and upon perusing the petition and the petitioner's affidavit and the documents filed along with the petition and on hearing the petitioner's side, has passed the impugned order dated 05.12.2023 directing the first respondent police to conduct investigation and to submit a report.

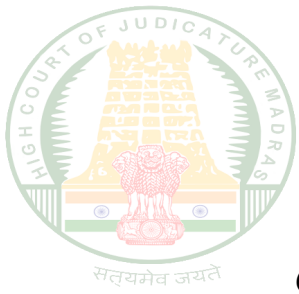


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4. The main contention of the petitioner is that though the complaint discloses cognizable offence, the learned Magistrate ought to have directed the first respondent police to register an FIR and then to conduct investigation but the learned Magistrate, without issuing any such direction, only directed the police to conduct investigation and file a report, that the first respondent police, without conducting proper investigation, filed a closure report and that the impugned order directing investigation and filing of report and the closure report filed by the first respondent police cannot legally be sustained.

5. As rightly contended by the learned counsel appearing for the petitioner, the learned Magistrate, in the impugned order, has specifically observed that the complaint discloses cognizable offence, that there existed *prima facie* case for proceeding with the investigation by the police and that the failure of the police to conduct proper enquiry upon receipt of the petitioner's complaint cannot be sustained and by holding so, directed for investigation and filing of report, on the basis of the petition filed under Section 156(3) Cr.P.C.



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6. When the learned Magistrate himself has come to a *prima facie* finding that the complaint discloses cognizable offence, this Court is at loss to understand as to why the learned Magistrate has not directed the first respondent police to register FIR and to proceed with the investigation, but on the other hand, direction was given only for investigation and filing of report. The first respondent police taking advantage of the order passed by the learned Magistrate, without registering FIR despite the disclosure of cognizable offence, has proceeded with the alleged investigation and filed the closure report.

7. The petitioner has produced the closure report submitted by the first respondent police before the jurisdictional Court. It is evident from the closure report that the first respondent police has recorded the statements from the respondents 2 to 4 and though it was alleged that the petitioner was also summoned, they have not referred about the statement alleged to have been given by the petitioner, if any.

8. In the closure report, they have referred about 3 complaints and registration of 3 CSRs in CSR Nos.669/2022, 726 of 2022 and 450 of

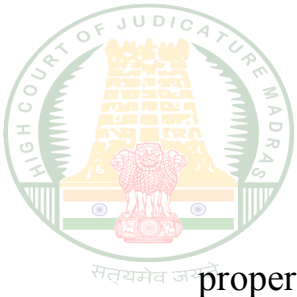


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2023 and the closure of the complaints. Admittedly, the petitioner and the respondents 2 and 3 are brothers and that the first respondent police in respect of the complaints in CSR Nos.669 of 2022 and 450 of 2023 has come to a decision that the petitioner due to enmity with regard to the property in dispute has lodged complaints for the alleged incidents, which were not at all occurred and on that basis, closed the complaints as 'Mistake of Fact'. It is pertinent to note that with regard to the complaint in CSR No.726 of 2022, the investigating officer in the closure report has observed that since they could not trace out the stolen articles and secure the accused, enquiry was ordered to be closed. When the police themselves have observed that they could not trace out the stolen articles and secure the accused, this Court is at loss to understand as to why they have not chosen to register FIR but only proceeded with CSR enquiry.

9. Considering the closure report, as rightly contended by the learned counsel appearing for the petitioner, it can easily be inferred that the first respondent police has not at all chosen to examine the petitioner nor received any records from him. Considering the above, this Court has no hesitation to hold that the first respondent police has not conducted



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proper enquiry in respect of the complaints lodged and without even examining the petitioner, by only examining the proposed accused has closed the complaints in a mechanical fashion and as such, the closure report cannot be sustained and is liable to be set aside. Even assuming that the closure report could be taken into account, according to the petitioner, neither the first respondent police nor the Court has chosen to issue notice with regard to the closure report.

10. The learned counsel appearing for the petitioner would submit that though the petitioner was not served with any notice with regard to the closure report by the police, even after filing of such report before the concerned Court, the learned Magistrate has also not chosen to issue any notice.

11. At this juncture, it is necessary to refer a decision of this Court in ***Bavani Vs. State rep by Inspector of Police, Pavoorchatram Police Station***, in ***Crl.O.P.(MD)No.9405 of 2024 dated 25.09.2024*** and the relevant passages are extracted hereunder:-

“9. Now turning to the next contention, what is the course open to the petitioner/complainant in case of



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filing of such a closure report in pursuance of the directions of the learned Magistrate and without registration of FIR. No doubt, the closure report came to be filed by the respondent police after conducting preliminary enquiry in the petition filed by the petitioner and in pursuance of the direction given by the learned Magistrate under Section 156(3) Cr.P.C. and hence, the petitioner is entitled to know about the result of the enquiry conducted by the concerned police and on that basis, the petitioner is certainly entitled to get the copy of the closure report. After filing of the closure report before the jurisdictional Court, the petitioner is also entitled to raise her objections by filing a memo of objections (called as protest petition in the legal parlance) and on such filing of a protest petition, the learned Magistrate is duty bound to conduct a summary enquiry and on considering the closure report and the objections raised by the complainant, if the Magistrate finds that there are materials which discloses cognizable offence, then he can direct the concerned police to register an FIR and proceed with the investigation or if the Magistrate finds that the way in which enquiry conducted is not proper, he can direct the concerned police to conduct a fresh enquiry and to submit a report or if the Magistrate finds that enquiry came to be conducted properly and that the materials does not



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disclose any cognizable offence, can very well accept the closure report and direct the complainant to file a private complaint, if so advised.

10. No doubt, there is a confusion that the protest petition can be filed by the complainant only in case of filing of the negative final report by the concerned police after conducting investigation in pursuance of the registration of the FIR and there is no practise of filing any protest petition for the closure report filed in pursuance of the enquiry conducted under Section 156(3) Cr.P.C. But the fact remains that since the petitioner has lodged a complaint raising some averments and alleging some occurrences against the proposed accused and the respondent police, after conducting an enquiry, comes to a decision that there was no scope for registering FIR and for proceeding further and in that scenario, the complainant is certainly entitled to know about the nature of the enquiry and the result of the enquiry. After receiving the copy of the closure report, she can very well agitate the way in which enquiry is conducted is not proper or that the materials gathered by the concerned police during the enquiry discloses cognizable offence and as such, the filing of the closure report is not proper. There is absolutely no legal bar or prohibition for filing protest



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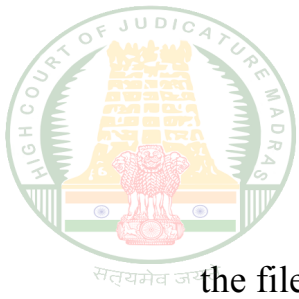
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petition objecting to the closure report filed by the concerned police in pursuance to their preliminary enquiry conducted in pursuance of the order of the learned Magistrate passed under Section 156(3) Cr.P.C. ...”

12. In the present case also, the first respondent police, in pursuance of the direction of the learned Magistrate under Section 156(3) Cr.P.C., has filed the closure report. It is not the case of the first respondent police that they have served the copy of the closure report on the petitioner.

13. Considering the legal position above referred, the petitioner is certainly entitled to raise objections with regard to the closure report. Moreover, the learned Magistrate has also not chosen to send any notice to the petitioner, upon receipt of the closure report. Considering the above, the course adopted by the first respondent police as well as by the Court cannot be sustained. Consequently, this Court concludes that the impugned order as well as the consequential closure report are liable to be set aside.

14. In the result, this Criminal Revision Case stands allowed and the impugned order dated 05.12.2023 passed in Crl.M.P.No.21640 of 2023 on



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the file of the Judicial Magistrate, Thoothukudi and the closure report filed by the first respondent police are hereby set aside. The first respondent police is directed to register a case and proceed with the investigation and to file a final report as expeditiously as possible before the jurisdictional Magistrate Court. No costs.

09.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Judicial Magistrate No.3,
Thoothukudi.
- 2.The Inspector of Police,
Puthukottai Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
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Dated : 09.04.2025