



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2007

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THE HONOURABLE MR. JUSTICE G. RAJASURIA

Crl.O.P. (MD) No. 6616 of 2007

Paramasivam Pillai

... Petitioner

Vs

1. The Superintendent of Police,
Pudukkottai.
2. The Superintendent of Police,
Trichy.
3. The Inspector of Police,
District Crime Branch,
Pudukkottai District.
4. The Inspector of Police,
Viralimalai Police Station,
Pudukkottai District.

... Respondents

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure, to direct the second respondent to forward the matter to the third respondent for registration of case on the basis of the petitioner's complaint dated 31.05.2007 and may consequently direct the third respondent to file the final report after conducting fair enquiry.

For Petitioner : Mr. K.P. Narayanakumar

For Respondents : Mr. P. Rajendran
Government Advocate (Crl. Side)

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ORDER

This petition is focussed to get an F.I.R registered based on the complaint of the petitioner dated 31.05.2007 and investigated by the police.

2. Heard both sides.

3. The nitty-gritty, the gist and kernel, the pith and marrow of the grievance of the petitioner is that despite he having lodged the complaint with the police, the latter failed to respond to it legally, whereas the learned Government Advocate (Criminal Side) would submit that police is enquiring into the matter.

4. In this factual matrix, I would like to observe that whenever a complainant could not get registered an F.I.R, it is open for him to send the complaint by R.P.A.D for registering the case as per Section 154(3) Cr.P.C, to the Superintendent of Police concerned and even thereafter, if there is no response, his remedy is to approach the learned Magistrate as under.

5. Trite, the proposition of law is that a complaint which is popularly called as 'private complaint' could rightly be filed before the learned Magistrate who on receipt of it could *suo motu* invoke his power under section 156(3) Cr.P.C and send the complaint without taking cognizance of the offences referred to in the application to the police for registering an F.I.R and investigate into the matter as per the Code of Criminal Procedure or in the



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alternative, the learned Magistrate without sending the application under Section 156(3) Cr.P.C could himself record the sworn statement of the complainant and thereby take cognizance of the offences referred to in the complaint. Relating to this procedure, there are catena of decisions as under:

1. *Abhinandan Jha v. Dinosh Mishra* reported in AIR 1968 SC 117.

2. *H.S.Bains, v. The State (Union Territory of Chandigarh)*, reported in AIR 1980 SUPREME COURT 1883.

3. *TULA RAM V. KISHORE SINGH*, reported in (1977) 4 SCC 459.

6. I would also like to sensitize the Magistrate and the police about the dicta of the Honourable Apex Court in the following decisions:

(i) *State of Haryana v. Bhajan Lal* reported in AIR 1992 SUPREME COURT 604.

(ii) *Prakash Singh Badal v. State of Punjab* reported in (2007) 1 Supreme Court Cases 1.

(iii) *Lallan Chaudhary and others v. State of Bihar and another* reported in (2007) 1 Supreme Court Cases (Cri) 684 and accordingly, the matter should be processed.

7. However, I would like to highlight a fresh procedure which may not be a new one in *stricto sensu*, but to the legal field in this part of the country, it might be new to a few and caviar to the general, so to say, to file an application incorporating the averments constituting the offences in terms of Section 156(3) Cr.P.C only and also highlighting therein the justification for sending the said application to the police and the importance of gathering evidence by conducting a detailed investigation by the police as absolutely necessary in addition to expounding the futility of pursuing his remedy in the form of private complaint by himself before the Magistrate. Whereupon, the learned Magistrate shall apply his mind as to whether from the versions averred in the petition any cognizable offence is made out in addition to assessing as to whether a detailed police investigation is absolutely necessary for gathering evidence. Once he comes to the conclusion that a cognizable offence is made out from the said averments and that the police investigation is a must, he is duty bound to send the application in terms of Section 156(3) Cr.P.C to the police concerned having jurisdiction to register an F.I.R and investigate into the matter. Thereupon, the

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police without any demur of hesitation, by way of implicitly obeying the direction of the Magistrate under Section 156(3) Cr.P.C, should register the F.I.R in the prescribed format and thereupon, it is open for the police to investigate into the matter keeping in mind Section 157 Cr.P.C and other allied provisions under Chapter XII of the Code of Criminal Procedure. //

8. The learned Magistrate while sending the application in terms of Section 156(3) Cr.P.C to the police shall make a despatch entry in a separate register meant for it. The police after registering the F.I.R as quickly as possible consequent upon the receipt of such application, shall send the F.I.R to the learned Magistrate without any delay and on receipt of such F.I.R from the police, the learned Magistrate shall make the receipt entry in that aforesaid register. If there is failure on the part of the police, immediately the learned Magistrate is expected to issue memo to the police calling upon the police to appear and thereupon, he shall enforce compliance with his direction under Section 156(3) Cr.P.C.

Handwritten signature and initials.

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5)

G. RAJASURIA, J

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9. Here, in this case, the petitioner is directed to approach the learned Magistrate with an application in terms of Section 156(3) Cr.P.C thereupon, the learned Magistrate shall adhere to the procedures set out supra.

10. With the above direction, this petition is closed.

may be circulated among the subordinates suitably

[G.R.S.J.]

18.07.2007

sj

Note: Office to issue copy on 19.07.2007

To

- 1. The Superintendent of Police, Pudukkottai.
- 2. The Superintendent of Police, Trichy.
- 3. The Inspector of Police, District Crime Branch, Pudukkottai District.
- 4. The Inspector of Police, Viralimalai Police Station, Pudukkottai District.
- 5. The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

of Division 19.7.07
ASST. Registrar
(Co)

DESPATCHED
11 JUL 2007
CURRENT SECTION
Madras High Court,
Madurai Bench

Crl.O.P. (MD) No. 6616 of 2007

copy

*In Chief Side Registrar,
Pudukkottai*

*FILED MR. K.P. Narayanaswamy (12)
Adm (CC-11-26278) 19-7*

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