

(2009) 10 MAD CK 0139

In the Madras High Court

Case No : Criminal O.P. No. 22163 of 2009 and M.P. No. 1 of 2009

B. Jayachandran, J. Dhanalakshmi and J. Anand

APPELLANT

Vs

State and V. Muralidharan

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3)
Penal Code, 1860 (IPC) — Section 120, 417, 420

Citation : (2009) 10 MAD CK 0139

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : P.V. Rajeswari, for the Appellant; N.R. Elango, Additional Public Prosecutor, C.S. Dhanasekaran, for the Respondent

Judgement

R. Regupathi, J.—A private complaint has been preferred by the second respondent as against the petitioners herein, before the Judicial Magistrate, No. VI, Coimbatore, for an offence punishable u/s 120(b), 417 and 420 IPC, whereupon, after taking the complaint on file, the learned Magistrate issued a direction u/s 156(3) Cr.P.C. to the first respondent for investigation and, pursuant thereto, enquiry was taken up in CFR No. 6131 of 2009 and, seeking to quash the same, the present petition has been preferred.

2. The learned Counsel for the petitioners, by submitting that the offences alleged are not made out as the dispute involved is purely civil nature, would point out that, pending enquiry in CFR No. 6131 of 2009, the second respondent preferred a petition before this Court in CrI.O.P. No. 17440 of 2009 seeking for a direction to register First Information Report and investigate into the complaint forwarded by the learned Magistrate by order dated 10.06.2009; under such circumstances, an FIR need not be registered since the first respondent has already taken up the enquiry.

3. Per contra, the learned Additional Public Prosecutor submits that the enquiry conducted by R-1 in CFR No. 6131 of 2009 was completed and, on 29.06.2009,

final report has been filed to the effect that the dispute is of civil nature and such conclusion having been reached prior to the order of this Court dated 24.08.2009 in CrI.O.P.No17440 of 2009, such order may be set aside with liberty to the 2nd respondent to file protest petition before the learned Magistrate.

4. Learned Counsel for the second respondent/ complainant submits that it is the bounden duty of the first respondent police to register an FIR soon after the direction issued u/s 156(3) Cr.P.C by the learned Magistrate, but, curiously, with self-motivated zeal, he proceeded to conduct an enquiry in CFR No. 6131 of 2009 without registration of an FIR; that being so, the final report filed would have no validity or sanctity in the eye of law. Moreover, having regard to the order passed by this Court in CrI.O.P. No. 17440 of 2009 dated 24.08.2009, the first respondent must register an FIR, conduct investigation afresh and come to a conclusion one way or the other. To substantiate his contention, learned Counsel relied on a decision of Apex Court reported in Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, wherein it has been ruled as follows:

The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 156 of the Code. Even if a Magistrate does not say in so many words while directing investigation u/s 156(3) of the Code 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 because that police officer could take further steps contemplated in Chapter XII of the code only thereafter.

Next, he relied on the decision of this High Court reported in (2007) 2 MLJ (CrI) 332 in K. Sundaaravelu @ K. Balasundaram v. Deputy Commissioner of Police, Central Crime Branch Chennai and Anr. by referring to the following observation,

9. Therefore, in view of the well settled principle of law laid down by the Apex Court, it is crystal clear that the complaint, disclosing the cognizable offence, may well justified the Magistrate in sending the complaint u/s 156(3) of Cr.P.C. to the police for investigation. In the above said decision, the Hon"ble Supreme Court also made it clear that in such case where the Magistrate directs the concerned police officer to register the First Information Report, it is the mandatory duty of the police official to record and register the First Information Report and he can take the further steps contemplated under Chapter XII of the Code.

10. Therefore, this Court, in view of the above said sequence of events and in

view of the admitted fact that the first respondent has yet to take any action and not even registered the First Information Report on the basis of the complaint preferred by the petitioner herein dated 07.07.2006 as referred by the learned Magistrate through his order dated 27.09.2006 to register the First Information Report and to investigate into the matter in accordance with law and to file the final report, is constrained to direct the second respondent to register F.I.R., investigate into the matter in accordance with law and to file the final report within a period of six months from the date of receipt of order copy of this Court.

11. In this matter, it is also made clear that though this Court heard the arguments of the learned Counsel for the proposed accused the settled position of law is very clear to the effect that the proposed accused persons have no locus standi to raise their voice and object for registering the case.

According to the learned Counsel, since there is apparent violation of the procedure on the part of the first respondent with reference to the Court orders passed, the direction issued in CrI.O.P. No. 17440 of 2009 dated 24.8.2009 need not be set aside.

5. It is seen that the learned Magistrate, after taking the private complaint on file, issued a direction u/s 156(3) of Cr.P.C to the first respondent to conduct an enquiry. It follows thereby that the first respondent at once registers a case and takes up the task of investigation. But, the first respondent bypassing the procedure, conducted an enquiry with reference to CFR No. 6131 of 2009 and ultimately, concluded the case and filed final report. When there is a specific direction issued by the learned Magistrate in that line, the practice adopted by the first respondent is contrary to the procedure prescribed by Criminal Procedure Code and the decisions of the Apex Court. Since the procedure contemplated was not followed, the second respondent preferred CrI.O.P. No. 17440 of 2009 with the prayer,

The petition is filed, seeking for a direction to the 1st respondent to register F.I.R., investigate into the matter in accordance with law and to file the final report as referred by the learned Judicial Magistrate, No. VI, Coimbatore by his order dated 10.06.2009.

and, in the meantime, a conclusion has been reached by the first respondent to the effect that the dispute is of civil nature. While passing orders in the Criminal Original Petition, the said fact was not brought to the notice of this Court. Under such circumstances, since the first respondent police misdirected himself, the Commissioner of Police, Coimbatore City, is directed to nominate an officer, who, in turn, is directed to comply with the direction issued by this Court in CrI.O.P. No. 17440 of 2009 dated 24.08.2009 by registering an FIR and proceeding with the investigation in the manner prescribed by law. With the above direction, the petition is dismissed and the connected miscellaneous petition is closed.