

(2007) 07 MAD CK 0243

In the Madras High Court

Case No : Criminal O.P. (MD) No. 7142 of 2007

M. Rajavel

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154(3), 156(3), 157

Citation : (2007) 07 MAD CK 0243

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Sankar Ganesh, for the Appellant; P. Rajendran, Government Advocate (Crl. Side), for the Respondent

Judgement

G. Rajasuria, J.—This petition is focussed to get an F.I.R registered based on the complaint of the petitioner dated 11.05.2007 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 the 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 u/s 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 alternative, the learned Magistrate without sending the application u/s 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 and Others Vs. Dinesh Mishra, .

2. H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), .

3. Tula Ram and Others Vs. Kishore Singh, .

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 and others Vs. Ch. Bhajan Lal and others, .

(ii) Parkash Singh Badal and Another Vs. State of Punjab and Others, .

(iii) Lallan Chaudhary and Ors. v. State of Bihar and Anr. reported in (2007) 1 SCC (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 police without any demur of hesitation, by way of implicitly obeying

the direction of the Magistrate u/s 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 u/s 156(3) Cr.P.C.

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.