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**(2009) 02 MAD CK 0084**

**In the Madras High Court**

**Case No : Criminal O.P. (MD) . No. 8464 of 2008**

S. Uthaya Suriyan

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision : 19-02-2009**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154(3), 156(3), 190, 200, 482

**Citation : (2009) 02 MAD CK 0084**

**Hon'ble Judges : P.R. Shivakumar, J**

**Bench : Single Bench**

**Advocate : V. Manoharan, for the Appellant; L. Murugan, Government Advocate (Crl. Side), for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

P.R. Shivakumar, J.—Aggrieved by the non-registration of a case based on the complaint of the petitioner herein dated 20.08.2008, the petitioner has come forward with this petition u/s 482 Cr.P.C., seeking a direction to the first respondent to register a case based on the complaint of the petitioner date 20.08.2008.

2. This Court heard the submissions made by Mr. V. Manoharan, learned Counsel appearing for the petitioner and by Mr. L. Murugan, learned Government Advocate (Criminal side) appearing for the respondents.

3. The grievance of the petitioner is that despite the fact that the complaint lodged with the respondent police disclosed the commission of a cognizable offence, they have not chosen to register a case and investigate the same, even though, as per law it is mandatory on their part to do so.

4. In two judgments of the Hon'ble Supreme Court, one of a two Judge Bench and the other of a three Judge Bench, the modalities available to such a complainant for seeking redressal of his grievance have been dealt with. They are: (i) Sakiri Vasu v. State of U.P. reported in 2008 (1) MLJ (Crl) 1393 (SC); and

(ii) Aleque Padamsee v. Union of India reported in 2008(1) MLJ (Crl) 490 (SC).

5. In Sakiri Vasu's case, the Hon'ble Supreme Court has held that the remedy, in such cases, for the complainant was to approach the Superintendent of Police u/s 154(3) Cr.P.C. and in case of inaction on his part also, the complainant would approach the Judicial Magistrate by way of an application u/s 156(3) Cr.P.C., for a direction to investigate the matter. In Aleque Padamsee's case, it was held that in case of refusal on the part of the police officials to register the case, even though the complaint disclosed a cognizable offence, the modalities to be adopted by the complainant were as set out in Section 190 r/w Section 200 Cr.P.C. Those two judgments of the Hon'ble Supreme Court came to be considered by a learned Single Judge of this Court sitting in the Principal Bench (Justice M. Jeyapaul) in G. Arokiya Marie v. Superintendent of Police reported in 2008 (2) MLJ (Crl) 796 and it was held therein that the prohibition for entertaining a writ petition or a petition u/s 482 Cr.P.C. seeking a direction to register a case was not absolute and that in appropriate cases, namely cases of serious nature requiring immediate action so as to prevent the evidence getting erased, such directions would be issued. In all those cases, it was held in clear and unambiguous terms that the power u/s 482 Cr.P.C. should be sparingly used. The above said learned Single Judge of this Court has given some illustrations of the cases (murder, attempt to murder wherein grievous injuries have been caused, robbery, dacoity, rape and attempt to rape) in which, the inherent power of the High Court u/s 482 Cr.P.C. can be invoked for directing the Station House Officer to register the complaint.

6. When the ratio decidendi found in the above said judgments of the Supreme Court, as interpreted by the learned Single Judge of this Court in G. Arokiya Marie's case, is applied to the facts of the case, this Court has to necessarily come to the conclusion that the offences alleged are not heinous offences listed out in the above said judgment of the learned Single Judge of this Court, which require immediate action without any loss of time to prevent the evidence getting erased and thus, making the case an exceptional one, so that the power u/s 482 Cr.P.C. can be invoked. Moreover, the petitioner has not stated in the petition what offence was committed and under what penal provision the act of the proposed accused becomes punishable. Therefore, even if the offences listed by the Hon'ble Single Judge of this Court in G. Arokiya Marie's case can be held illustrative and not exhaustive and in appropriate cases, depending upon the peculiar facts of the case, the same can be extended to other offences also, this Court is of the considered view that it is not such a case wherein the power u/s 482 Cr.P.C. should be exercised in favour of the petitioner as an exceptional one.

7. For all the reasons stated above, this Court comes to the conclusion that the petition deserves to be dismissed. Accordingly, this petition is dismissed.