
(1987) 01 MAD CK 0002
In the Madras High Court
Case No : Criminal M.P. 2775 of 1986

Selvaraj	Vs	APPELLANT
State and another		RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157(2), 173, 173(2)(i)(b), 173(2)(ii)
Penal Code, 1860 (IPC) — Section 147, 154, 157, 324, 380

Citation : (1987) LW(Cri) 61

Hon'ble Judges : David Aunoussamy, J

Bench : Single Bench

Advocate : M. Karpagavinayagam, for the Appellant; P.T. Rajan for Public Prosecutor, for the Respondent

Judgement

David Aunoussamy, J.—This is a petition under S.482, Cr.P.C. The case of the petitioner is as follows:

2. On 3.3.1984 at 3.30 p.m. Tvl. Samba-sivam and Vedachalam accompanied by Thiru Varadarajan, retired constable, and three others came

with deadly weapons, broke open the locks, trespassed in the rooms of the house of the petitioner, attacked the sister of the petitioner and took

away the house hold articles belonging to the petitioner's family. This fact was brought to the notice of C.3 Seven Wells Police Station, where a

written complaint was also filed alleging the commission of offences under S. 147, 447, 324, 380 and 427, I.P.C. and the police issued a receipt

bearing No. 196/LP/84. But, no case was registered. The petitioner gave complaints and reminders to the Deputy Commissioner of Police on 12-

3-1984, 28-3-1984 and 7-4-1984. A report was sent to the Honourable Chief Minister on 18-4-1984. On 23-4-1984 another complaint was

given to the Commissioner of Police. The Assistant Commissioner of Police-second respondent herein made on-the spot inspection on 8-6-1984, and enquired into the incidents. Being satisfied about the genuineness of the complaint filed by the petitioner, he directed the assailants to return the articles forthwith and asked the Sub inspector of Police. C.3 police station to take prompt action. But no action was taken by the police either to restore to the petitioner the articles lost or to book the offenders and to commit them for trial. In spite of the direction given by the Assistant Commissioner of Police, no case was registered in respect of the complaint given by the petitioner. He accordingly prayed this Court to issue directions to the respondents to take effective steps as provided in law for registering the complaint given by him against Tvl. Sambasivan, Vedachalam and others, to investigate the same, to give protection to the petitioner's family and briefly to direct the respondent to process the above-said complaint in accordance with law.

2. The Public Prosecutor, who took notice on behalf of respondents took several adjournments. An order was passed on 2-5-1986, directing the respondents to inform immediately the petitioner about the steps taken in respect of the complaint given by the petitioner. In compliance of that order, a memo signed by the Inspector of police, C.3 Seven Wells Police Station, was filed by the Public Prosecutor, which memo reads as follows

Office of the Inspector of Police, C.3 Seven Wells P.S. Madras 79, dt. 10-6-86
Memo

Ref. 1. M P No, 2775/86 dt. 31.1.1986.

2. K.4/957/36248/86 of C.P.O, Madras, dt. 7.4.86.

This is to inform you that your petition dt. 5-3-1984, has been registered in C.3 Seven Wells P.S. Local petition No. 196/84 on 5-3-1984. This was enquired and referred as civil nature and directed to seek remedy in court on 29-5-84 by my predecessor. This is for your information. To
Mr. Selvaraj 57, Mullah Sahib St., Madras-79.

3. After hearing both parties, the Public Prosecutor was directed to produce the entire records in possession of the police in this case. It was subsequently reported on behalf of the prosecution that the petition be allowed

directing investigation in this case.

4. Chapter XII of the Criminal Procedure Code contains the provisions relating to the information to the police of offences and their powers to

investigate. We are more particularly concerned with S.157 which prescribes the procedure for investigation in respect of cognizable offences. It is

clear from the provisions of that section that two courses are open to the investigating officer. Once he gets an information of commission of a

cognizable offence as per S.154, if it appears to the officer in charge that there is no sufficient ground for entering on an investigation, he shall not

investigate the case. But he should along with the first information report send to the Magistrate his reasons for not entering into an investigation and

the officer shall also forthwith notify to the informant the fact that he will not investigate the case. Order 584 of the Madras Police Standing Orders

has laid down the principles for the guidance of the station house officers for the exercise of their discretion regarding refusal of investigation. The

second course open to the investigating officer arises when it appears to him that there is sufficient ground for entering on an investigation In that

case, he should complete his investigation and send his final report under S.173, CrI.P.C. The report may be positive or negative, when it is a

positive one, under S.173 (2)(i)(b) he will state what offences appear to have been committed and if so by whom. If the report is a negative one,

he will state that no offence appears to have been committed by any one or that the culprit cannot be identified. The officer should also inform the

complainant about the contents of the report filed by him before the Magistrate under S.173, CrI.P.C as prescribed under S.173 (2)(ii), CrI.P.C.,

Therefore, whatever course is taken by the police officer in charge of the police station, after he received a report under S.154, CrI.P.C., he is

bound to report the fact to the Magistrate and inform also the complainant. In case of refusal of investigation, as stated earlier, there will be only

one report, viz., the first information report along with the mention that the police officer is not entering on an investigation for the reasons stated by

him. In case the officer enters on an investigation, he will send in addition a final report under S.173 of CrI.P.C.

5. Now turning back to the present case, it is stated that the matter was enquired into and referred as of civil nature. This statement would suggest

that the matter was investigated upon. It so, the Officer should have filed not only the first information report, but also a final report. But it is reported on behalf of the Public Prosecutor that the matter was not investigated upon and that the petitioner was informed about the same. But the petitioner says that he did not receive any information and there is no record in the hands of the respondents to show that the complainant has been informed as mandatorily ordained under Sec. 157(2), Cr.P.C. There is also no record of a first information report having been sent to the Magistrate as prescribed by law.

6. It is thus found in this case that the concerned Officer has not followed the procedure clearly laid down by the Criminal Procedure Code. The reasons for his indulging in such dereliction of duty will have to be investigated by the superior officers and proper action taken. It is enough for the disposal of this petition to direct the first respondent to investigate the case registered in C.3, Seven Wells Police station, Madras and file an appropriate report under S. 173, Cr.P.C. and to direct the second respondent to see that the investigation is carried out most expeditiously.

7. In the result, the petition is ordered accordingly.