



CCr.O.P.No.8708 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.8708 of 2022

and

CrI.M.P.No.5076 of 2022

Praveen Rajesh
Inspector of Police
R-8, Vadapalani Police Station
Arcot Road, 100 feet road,
Vadapalani, Chennai – 600 026

.... Petitioner

Vs.

1. Commissioner of Police
No.132, Commissioner Office Building
EVK Sampath Building, Vepery
Chennai – 600 007

2. Inspector of Police
R-5, Virugambakkam Police Station
Chennai – 600 093.

3. Ilaiyarani Ponraj

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in respect of the impugned order dated 01.02.2022 in CrI.M.P.No.333 of 2022 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, under Section 156(3) of Cr.P.C. directing the 2nd respondent to register Fir against the petitioner and to file the report and set aside the same as against the petitioner/accused.



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For Petitioner : Mr.N.Ramesh

For Respondents-1 &2 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

For Respondent -3 : Mr.M.Marimahesh

ORDER

This Criminal Original Petition has been filed challenging the order of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, dated 01.02.2022 made in Crl.M.P.No.333 of 2022 under Section 156(3) of Cr.P.C., directing the 2nd respondent police to register FIR against the petitioner on the basis of the private complaint filed by the 3rd respondent/defacto complainant.

2. The contention of the learned counsel for the petitioner is that the defacto complainant claims to be a practicing Lawyer. The background on which the private complaint was filed is that during Covid-19 restrictions, the defacto complainant along with her husband had traveled in a motorcycle without wearing mask. At that time, police Constables and Sub Inspector of Police intercepted them and when they questioned them, there ensued altercation. On hearing the same, the Inspector of Police/the petitioner herein came to the spot and thereafter, due to the altercation and protest shown by the defacto



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complainant and her husband, registered FIR against the husband of the defacto

complainant for the offence under Section 75 of Tamil Nadu City Police Act,

1888 and released him on station bail immediately. Thereafter, on the same

during night hours, the defacto complainant and her husband were admitted in

the hospital as if, they sustained some injuries. Subsequently, she has given a

complaint to R-5 Virugambakkam Police Station but, the same was not taken on

file. Hence, she gave a complaint to the Commissioner of Police. The Assistant

Commissioner on enquiry, found that the complaint given by the defacto

complainant was motivated and exaggerated and hence, closed he same.

Thereafter, the defacto complainant filed a private complaint before the XXIII

Metropolitan Magistrate, Saidapet, Chennai, for a direction under Section

156(3) Cr.P.C. Subsequently, the learned Metropolitan Magistrate by an order

dated 01.02.2022, directed the Station House Officer, R5 Virugambakkam

Police Station, to register the FIR as sought for by the defacto complainant.

Challenging the same, the present petition has been filed before this Court.

4. The learned counsel appearing for the petitioner mainly contended that

the entire complaint is motivated due to previous case filed against the husband

of the defacto complainant. He further contended that the learned XXIII



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Metropolitan Magistrate, Saidapet, Chennai, has no territorial jurisdiction to

entertain the private complaint. But on the contrary, he has entertained the private complaint and mechanically passed such an order without applying his mind. His another contention is that the alleged medical certificates produced itself would clearly show that the complaint is nothing but motivated. Further, at the time of alleged occurrence, the petitioner who is the Inspector of Police was on official duty and therefore, before taking any action and registering FIR, prior sanction is required from the authorities concerned. Hence, submitted that the order directing to register FIR against a serving Inspector of Police, based on the complaint given by the person who had already involved altercation and facing charge under Section 75 of Tamil Nadu City Police Act, is nothing but abuse of process of law. Hence, the seeks to quash the said order.

5. The learned counsel for the 3rd respondent/defacto complainant submitted that the defacto complainant and her husband were abused and attacked the by the petitioner and his police party and they were taken to the police. Hence, they gave a complaint before the R5 Virugambakkam Police Station. But the same was not taken on file despite the production of medical certificate. Hence, the defacto complainant left with no other option than to file a

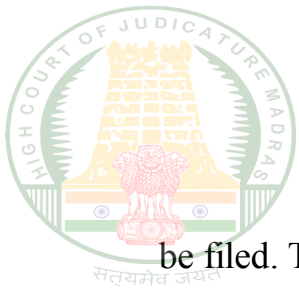


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private complaint under Section 156(3) Cr.P.C. and therefore, she filed a private complaint. The learned Magistrate applied his mind properly and after verifying the documents, directed the police to register FIR. Hence, the petitioner cannot challenge such order. His further contention is that the question of obtaining sanction does not arise in this case as the alleged offence is not connected with the official act of the petitioner and therefore, sanction is not necessary. Hence, opposed the application.

6. The facts as narrated speaks volume about the background of the case. The main contention of the defato complainant in filing the private complaint is that her husband was seriously injured and also sustained external injury over the eyes due to the attack of the petitioner. Therefore, he got treatment in the hospital. The further contention is that despite such injury and medical report, the Station House Officer in R-5 Virugambakkam Police Station, did not take any action. The so called medical certificate issued by the Rajeev Gandhi Hospital is also annexed in the typed set.

7. A bear perusal of the above documents namely the so called medical certificate speaks volume about the background on which the complaint came to



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be filed. The said medical certificate issued by the Rajeev Gandhi Hospital is just a prescription wherein, it is prescribed only Paracetamol, Rantac and vitamin tablets and there is no iota of evidence to show that either the defacto complainant or her husband suffered any injury, abrasion or contusion as alleged in the petition and this was the document relied in the private complaint. The learned Magistrate without even having a glance of the document, has mechanically passed the order directing to register FIR. If the Magistrate had applied his mind correctly by taking the well settled legal provision of law, such direction would have not been given to register FIR.

8. Yet another factor is that ignoring of jurisdiction. Admittedly the alleged occurrence took place within the limit of Vadapalani Police Station. Having alleged that the defacto complainant and her husband suffered assault at the hands of the Inspector of Police, Vadapalani Police Station, there was no necessity for the defacto complainant to give a complaint in a different Police Station namely R-5 Virugambakkam Police Station. It is also relevant to note that based on the complaint, the Assistant Commissioner also made enquiry and after thorough enquiry, he has concluded that the complaint given by the defacto complainant was motivated, exaggerated and offshoot of the criminal case filed



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against her husband who is said to be a Journalist. Not satisfied with such a reply, the private complaint was filed before the XXIII Metropolitan Magistrate, Saidapet, Chennai. It is relevant to note that the XXIII Metropolitan Magistrate, Saidapet, Chennai has no jurisdiction over Vadapalani area and his territorial jurisdiction is Virugambakkam alone. But the entire alleged occurrence is said to have been taken place comes within the limit of Vadapalani Police Station. Hence, the XVII Metropolitan Magistrate Court only is having the territorial jurisdiction over Vadapalani area. If the allegations are true and if the defacto complainant wanted to prosecute the person who alleged to have attacked them, she should have filed such complaint only before the Court which is having territorial jurisdiction but, it was not done so.

9. All the above said factors clearly show that the entire private complaint has been initiated by the defacto complainant only in order to wreck vengeance against the Inspector of Police/the petitioner herein since he had filed a case against her husband for the offence under Section 75 of Tamil Nadu City Police Act for disregarding Covid restrictions and regulations. This Court also finds fault with the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, as he has not even seen the nature of the documents. A Magistrate cannot act as a Post



Office and direct for registration of FIR. Registering FIR is not an ordinary thing. It will affect the rights of the individual and even some times, it will destroy the carrier of the people. Normally, the Magistrates would direct the police to file a report on the basis of the complaint filed under Section 156(3) Cr.P.C. whereas, in this case, the learned Metropolitan Magistrate has straight away directed the Station House Officer, R-5 Virugambakkam Police Station, to file FIR which itself clearly indicates that he has not applied his mind.

10. It is relevant to note that the Hon'ble Delhi High Court in the case of ***Ramesh Awasthi Vs. State of NCT of Delhi, reported in 2014 SCC Online Del 7832 & (2017) 3 DLT (Cri) 22*** by distinguishing the power under Section 154 and 156 Cr.P.C. after referring to the law as laid down by the Hon'ble Apex Court in the ***Central Bureau Of Investigation Vs. State Of Rajasthan and Another, reported in (2001) 3 SCC 333*** has held that;

“... though Section 154 Cr.P.C. does not qualify the territorial jurisdiction of the officer in-charge who receives the information to register the same, however, Sections 155 and 156 Cr.P.C. qualify the territorial jurisdiction of the officer in-charge to investigate



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offences within the limits of such station. Therefore, a Magistrate can direct the officer in-charge of a police station to investigate a cognizable offence which is within the jurisdiction of its local area. Thus, a Magistrate is required to adhere to the territorial jurisdiction and in case it is not empowered to try the said offence, it has no jurisdiction to pass order under Section 156(3) Cr.P.C.”

11. Therefore, when the XXIII Metropolitan Magistrate, Saidapet, Chennai, has no territorial jurisdiction over Vadapalani area, ought not to have entertained such complaint first. Be that as it may. Even assuming that the entire allegations as alleged by the defacto complainant was true, on the date of alleged occurrence, the petitioner who is Inspector of Police, was discharging his official duty during Covid restrictions and was trying to prevent spread of infections by insisting people who were roaming without masks as such, he was discharging his official duty on the date occurrence. Such being the position, there must be a prior sanction to proceed against such Officer. In this regard, the Hon'ble Calcutta High Court in a case in ***Dr.Nazrul Islam Vs. Basudeb Banerjee and Others reported in CDJ 2022 Cal HC 011***, has held as follows;



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21. *Once it is noticed that there was not previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372: (2009) 2 SCC (L&S) 200} and Subramanian Swamy [(2012) 3 SCC 64: (2012) 1 SCC (Cri) 1041: (2012) 2 SCC (L&S) 666] cases.*

... .. Thus, it has been categorically observed by the Hon'ble Supreme Court that if it is noticed there was no previous sanction the Magistrate cannot order investigation against the public servant while invoking powers under Section 156(3) of Cr.P.C.

12. Therefore, this Court finds that the criminal proceeding has been maliciously instituted by the defacto complainant and her husband to wreck vengeance against the officer who proceeded against them previously. Hence, this Court can very well interfere by exercising its power under Section 482 Cr.P.C. which has also been held by the Hon'ble Apex Court in the case of **State**



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of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335. Hence, applying the

above Judgment and considering the facts of the case, this Court is of the view that the very filing of the private complaint itself is abuse of process of law. That apart, entertaining such complaint and directing to register FIR without applying the mind by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai is nothing but against law which cannot sustain in the eye of law.

13. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed. The order passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.333 of 2022 dated 01.02.2022 directing the Station House Officer, R5 Virugambakkam Police Station, to register FIR is quashed. Subsequently, the private complaint is also quashed as an abuse of process of law.

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Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

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N. SATHISH KUMAR,J.

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To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Commissioner of Police
No.132, Commissioner Office Building
EVK Sampath Building, Vepery
Chennai – 600 007
3. Inspector of Police
R-5, Virugambakkam Police Station
Chennai – 600 093.
4. The Public Prosecutor,
Madras High Court, Chennai.

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