

S. Pangajam Vs. the Inspector of Police, District Crime Branch

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Court : Chennai

Decided On : Jan-17-2005

Reported in : 2005(3)CTC537

Judge : N. Kannadasan, J.

Acts : Indian Penal Code (IPC) - Sections 34, 465 and 471; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 154 and 156(3)

Appeal No. : Crl.O.P. (MD) No. 4782 of 2004

Appellant : S. Pangajam

Respondent : The Inspector of Police, District Crime Branch

Advocate for Def. : A. Ramar, Government Adv.

Advocate for Pet/Ap. : S. Nagamuthu, Adv.

Judgement :

ORDER

N. Kannadasan, J.

1. The above petition is filed for the relief as stated therein.
2. The petitioner filed a complaint before the learned Judicial Magistrate, Thiruvaiyaru for the alleged offences under Sections 465, 465 read with 34 and

471, I.P.C. According to the learned counsel for the petitioner, the accused has forged the signature of the petitioner in certain documents and false documents have been created and the civil suits are filed by the respective parties. In the meanwhile, since the respondent police has not initiated any action, the petitioner has approached the learned Magistrate to order for necessary investigation by the respondent police and accordingly, an order was passed on 3.10.2002 under Section 156(3), Cr.P.C, directing the respondent police to conduct the investigation. Subsequently, the persons, against whom the complaint was lodged, have approached the Principal Sessions Judge, Thanjavur for grant of Anticipatory Bail in CrI.M.P. No. 3522 of 2002, wherein it was reported by the learned Public Prosecutor that there was no case pending as against the petitioners therein and no crime number was assigned. In the light of the above statement, the Principal Sessions Judge, Thanjavur has dismissed the petition for Anticipatory Bail, but however, observed as follows:

'In view of the above arguments, the petition is dismissed with a direction that the concerned police are not to interfere with the civil dispute pending before the Civil Court.'

3. According to the learned counsel, as per the settled law, as and when a direction is issued by the learned Magistrate under Section 156(3), Cr.P.C, the Police Officer is bound to register a case by taking the complaint on file and accordingly, prayed for a direction as against the respondent police to register a case.

4. Per contra, the learned Government Advocate (Criminal side) would contend that the respondent police had conducted the investigation and the parties have expressed their desire that they would settle the matter before the Civil Court. The learned Government Advocate (Criminal side) would also contend that on the earlier occasion when the petitioner has approached this Court for the same relief, it was not granted and as such, opposed the relief claimed herein.

5. It is not in dispute that the learned Magistrate has passed an order under Section 156(3), Cr.P.C, directing the respondent police to conduct the investigation. If such an order is passed, it is mandatory on the part of the police to

register a case and conduct the investigation. In this connection, it is useful to refer the decision of the Apex Court in Suresh Chand Jain v. State of Madhya Pradesh 2001 CrL.L.J. 954 wherein it is observed as hereunder:

'10. The position is thus clear. Any Judicial Magistrate, before, taking cognizance of the offence, can order investigation under Section 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 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 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 cognizance offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.'

6. In the light of the above legal position, the respondent police has to necessarily register a case and conduct the investigation. It is needless to state that on such investigation, if it is found that no case is made out, it is open to the respondent to file a report accordingly before the learned Magistrate. Hence, there will be a direction to the respondent police to register a case and conduct the investigation and to submit a report as per the investigation conducted by them. The petition is disposed of in the above terms.