

**(2013) 09 MAD CK 0287**

**Madras High Court**

**Case No:** Criminal O.P. No. 27720 of 2012

K. Vadivelu

APPELLANT

Vs

Rangasamy and Others

RESPONDENT

**Date of Decision:** Sept. 16, 2013

**Citation:** (2013) 4 MLJ(Cri) 323

**Hon'ble Judges:** P. Devadass, J

**Bench:** Single Bench

**Advocate:** N. Manokaran, for the Appellant;

**Final Decision:** Disposed Off

### **Judgement**

@JUDGMENTTAG-ORDER

P. Devadass, J.

Vadivelu, whose complaint has been returned making an endorsement sought for a direction to the learned Judicial Magistrate No. II, Sankari to take further action on his complaint as per law. Petitioner presented a complaint u/s 200 Cr.P.C. to the learned Judicial Magistrate No. II, Sankari, complaining of commission of certain cognizable offences by certain persons.

2. The complaint has been dealt with by the learned Judicial Magistrate as under:

11.08.2012

Received by the Court on 11.08.2012. Check and Call on 16.08.2012. Sd/- 11.08.2012

16.08.2012

Complainant not present. Call on 21.08.2012

21.08.2012

Complainant not present. No representation. In the interest of justice call on 07.09.2012.

07.09.2012

Complainant present. At request. Call on 28.09.2012.

28.09.2012

Complainant present. At request call on 08.10.2012. Complainant is directed to produce documents as he stated on that day without fail failing which further order will be passed.

08.10.2012.

No proof of documents produced. How this petition is maintainable at this stage. Hence returned.

Sd/- J.M. 2, Sankari.

3. There are two types of criminal cases. They are police case and private case. Complaints (see Section 2(d) Cr.P.C.) is to be presented to the Judicial Magistrate u/s 200 Cr.P.C. Thereafter, the Magistrate has to record the sworn statement of the complaint and his witnesses if any. After perusing the same, if he feels some more material is needed, then he can order police investigation u/s 202 Cr.P.C. If he see any prima facie case, he can take cognizance and issue summons to the accused u/s 204 Cr.P.C. But, without following the above modes, u/s 156(3) Cr.P.C. he can direct the police to register a case and investigate. These are the courses available to a Magistrate to deal with a private complaint. Choosing the appropriate mode is the discretion of the Magistrate. Thus without taking action following any one of the modes stated, Magistrate has no power to return the complaint. Under no circumstances, a Magistrate can return a private complaint. If there are doubts to be clarified, mistakes to be rectified, keeping the complaint with the Court, a memorandum to that effect can be issued to the complainant or to his counsel fixing a date. The Code of Criminal Procedure does not authorize returning of a private complaint by the Magistrate. If a defective complaint is filed let the complaint run the risk of it. For that matter a complaint cannot be returned (See [A. Vinayagam and 3 others Vs. Dr. Subash Chandran and another,](#))

4. In the circumstances, the petitioner will present the complaint to the learned Judicial Magistrate No. II, Sankari within 15 days from the date of receipt of a copy of this order, on receipt of the same, the learned Judicial Magistrate will take further action in accordance with law. With the above direction, this petition is disposed of.