

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.1395 of 2015

G.Devarajan

.. Petitioner

vs

1. The Police Commissioner,
New Police Commissioner Office,
Chennai - 600 007.
2. Additional Director General of Police,
Economic Offences Wing,
C-48, 3rd Floor, TNHB Building,
2nd Avenue, Main Road, Anna Nagar, 600 040.
3. Central Bureau of Investigation,
Joint Director and Head of Zone,
III Floor, E.V.K.Sampath Building, College Road,
Chennai - 600 006.
4. District Collector,
Collectorate, Kancheepuram District,
Pin Code 631 501.
5. District Collector,
Collectorate, Tiruvallur, Pin Code 602 001
6. The Commissioner
Head of The All District Collector,
Commissionerate of Revenue Administration,
Ezhilagam, Chepauk, Chennai - 5.
7. The Commissioner,
Commissionerate of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.
8. The Commissioner,
Commissioner of Commerical, Ezhilagam,
Chepauk, Chennai - 5.

9. The Commissioner,
Income Tax Department, 121 M.G.Road,
Nungambakkam, Chennai - 34.

.. Respondents

Prayer:- This Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the CBI, Central Bureau of Investigation to register the case, investigate the matter, pertaining to the petitioner complaint dated 12.01.2015 and to deal according to law.

For Petitioner : Mr.G.Devarajan
Party-in-Person

For Respondents: Mr.K.Srinivasan
Special Public Prosecutor for CBI
Cases (R3)

ORDER

This Criminal Original Petition is filed to to direct the CBI, Central Bureau of Investigation to register the case, investigate the matter, pertaining to the petitioner's complaint dated 12.01.2015 and to deal according to law.

2.At the time of admission itself, this Criminal Original Petition is taken up for final disposal since the learned Special Public Prosecutor for CBI Cases appeared. Considering the prayer sought for, notice to the other respondents is not necessary.

3.The petitioner is the President of the "All India Consumer Human Activity Against Anti Corruption and Crime" registered under the Societies Act. While he purchased a cinema ticket, he came to know that there is a cheating practice of Cinema Theatre owners by collecting more than the Government fixed ticket charges. He made a petition under Right to Information Act that whether theatre owners had any right to collect excess amount more than the Government fixed rate of tickets and also excess screening of more than four shows is permissible, etc. In reply, he received a list of theatres which have no right to collect more than the Government fixed price for viewing the cinema.

4.Further, to ascertain the exact ticket fares, the petitioner made representation on 02.02.2011 and 18.04.2011 to the District Collector, Tiruvallur/5th respondent herein and Commissioner of Police, Chennai City/1st respondent herein respectively. He received a reply stating that Government determined charges alone are applicable in charging cinema tickets to be collected from the public. It is further submitted that Government has fixed the rate for cinema ticket in G.O.MS.No.1265 dated 31.12.2006 for collecting charges from the public. Further, on 20.05.2009, the Tamil Nadu Cinema Theatre Regulation Act, 1957 was amended by G.O.MS.NO.105 with retrospective effect from 1st January 2007 except Clause (2) (a). The

amended Rule provides for the rates for admission to film theatres. It provides for the minimum and maximum rate that can be collected.

5. On 02.12.2014, the petitioner made a general complaint to the respondents 2 to 8 to take action against the Tamil Nadu Cinema Theatre owners who are planning to sell the cinema tickets of the movies titled as "Linga" and "I" by collecting more than the Government fixed ticket charges.

6. On 11.12.2014, the petitioner gave a complaint at P-6 Kodungaiyur Police Station against Sri Shanmuga Theatre, Moolakadai and Sri Brinda Theatre, Perambur since they collected higher fare from the petitioner for the movie "Linga". He was issued with CSIR No.1618/2014. Since no action has been taken, he made Online complaint to the Commissioner of Police, Chennai City on 12.12.2014.

7. Further, on 12.12.2014, the petitioner made a written complaint to the Commissioner of Police, The Commissioner, Head of The All District Collector for Commissionerate of Revenue Administration, Ezhilagam at Chennai, the Commissioner-Commissionerate of Land Administration, Ezhilagam at Chennai, The Commissioner, Commissioner of Commercial Tax at Chennai to take necessary and appropriate action against the Tamil Nadu Cinema Theatres who had charged Rs.200/- and Rs.250/- for the movie "Linga" which is a clear violation of G.O.MS.No.405 dated 20.05.2009.

8. Since the complaint of the petitioner was kept pending without any action, the present Criminal Original Petition has been filed to direct the CBI to register a case, investigate the matter pertaining to his complaint dated 12.01.2015.

9. Heard the petitioner appearing in person and the learned Special Public Prosecutor for CBI Cases appearing for the third respondent CBI.

10. The petitioner, in his petition, would submit that he is the President of "All India Consumer Human Activity Against Anti Corruption and Crime" and when he purchased a ticket for the movie "Linga", the theatre owners had sold the ticket for higher price violating the G.O.MS.No.405 dated 20.05.2009. Even though he made a complaint before the City Police, they are not taking any steps. Hence, he was forced to file this petition. He relied upon the judgment of the Hon'ble Apex Court in Crl.A.No.1389 of 2008 (State rep. By D.S.P., S.B.C.I.D., Chennai vs. K.V.Rajendran and others) and sought for the relief as prayed for.

11. Resisting the same, the learned Special Public Prosecutor for CBI Cases would taken me through the judgment of the Hon'ble Supreme Court reported in AIR 2010 SC 1476 (1) (State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal

and others) and submits that in so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Hence, he prays for dismissal of this petition.

12. Considered the rival submissions made on both sides and perused the typed set of papers.

13. The petitioner has come forward with this petition for directing the third respondent to register a case. Even though he included other respondents, he solely seeks direction against the third respondent to register a case and investigate the matter on the basis of his complaint dated 12.01.2015. In his complaint, he stated that the Income Tax Department should conduct raids in the house of "Linga" movie producer, Director K.S. Ravikumar, Vendhar Movies, Eras International, Marina Pictures and several other distributors, Actor Rajinikanth, Actresses Anushka, Sonakshi and Actor Santhanam. Income Tax shall be paid for the total distribution cost of this movie and if crime committed, criminal cases should be filed against the theatres that screened "Linga".

14. Now, the petitioner has relied upon the judgment of the Hon'ble Apex Court passed in Crl.A.No.1389 of 2008, wherein the respondent filed a petition for direction before this Court to immediately register a FIR based on the complaint filed on 02.09.1998 and to transfer further investigation to the Central Bureau of Investigation and to order payment of compensation of Rs.1,00,000/-. This Court by order dated 01.03.2001 has stated that already case has been registered after conducting confidential inquiry and the Deputy Superintendent of Police, SBCID, Nagapattinam was directed to investigate the matter and the relief sought for to transfer the investigation to CBI was dismissed. Subsequently, the case was reopened and final order has been passed directing the CBI authorities to investigate the matter and against which, the said Criminal Appeal has been preferred, in which, the Hon'ble Apex Court has held that once the final order has been passed, the Court has power to recall his order under Section 362 of the Code prohibits reopening of a final order except in the cases of clerical or arithmetical errors. On that basis, the appeal has been allowed. So, the above citation does not help the case of the petitioner and it is not applicable.

15.It is pertinent to note the judgment relied upon by the learned Special Public Prosecutor for CBI cases reported in AIR 2010 SC 1476, wherein, the Constitutional Bench of the Hon'ble Apex Court has held that direction should not be incompatible with federal structure or doctrine of separation of powers and such power to be exercised sparingly, cautiously and in extraordinary situations. It is appropriate to incorporate paragraph No.46 of the judgment:

"46.Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

16.Even though judgment has been rendered in powers of doctrine of separation of powers whereas it was held that extraordinary powers to transfer the investigation to CBI may be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order is necessary for doing complete justice and enforcing fundamental rights.

17.In such circumstances, I am of the view that CBI cannot be burdened by directing to register a case and investigate the matter. The petitioner has every right to approach the appropriate forum for taking necessary action.

18.Further, the petitioner has taken me to the order passed by this Court in Crl.OP.No.24124 of 2012. The petitioner herein has filed the said petition for direction to direct the respondents to to register the case and investigate the matter pertaining to his complaint dated 21.07.2012, wherein this Court directed the respondents 1 and 2 therein to look into the allegations made by the petitioner in his complaint dated 21.07.2012 and subsequent complaints, in the light of G.O.MS.No.1265 dated 31.12.2006, which has been issued by the Government fixing the ticket charges and conduct an enquiry and register the complaint if cognizable offence is made out, within a period of three months from the date of receipt of a copy of that order and proceed in accordance with law.

19.But the order made in Crl.OP.No.24124 of 2012 will not in any way help the petitioner, because, here he has come forward with this petition for directing the CBI to register the case on the complaint dated 12.01.2015 but he has also given a complaint before the territorial jurisdictional police. In such circumstances, the above order is not applicable to the facts of this case. Hence, I do not find any merits in the Criminal Original Petition and the same is liable to be dismissed.

20.Accordingly, the Criminal Original Petition is dismissed at the admission stage itself.

cse

-s/d-

Assistant Registrar(CS-III)

Dt:13/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Police Commissioner,
New Police Commissioner Office, Chennai - 600 007.
2. Additional Director General of Police,
Economic Offences Wing,
C-48, 3rd Floor, TNHB Building,
2nd Avenue, Main Road, Anna Nagar, 600 040.
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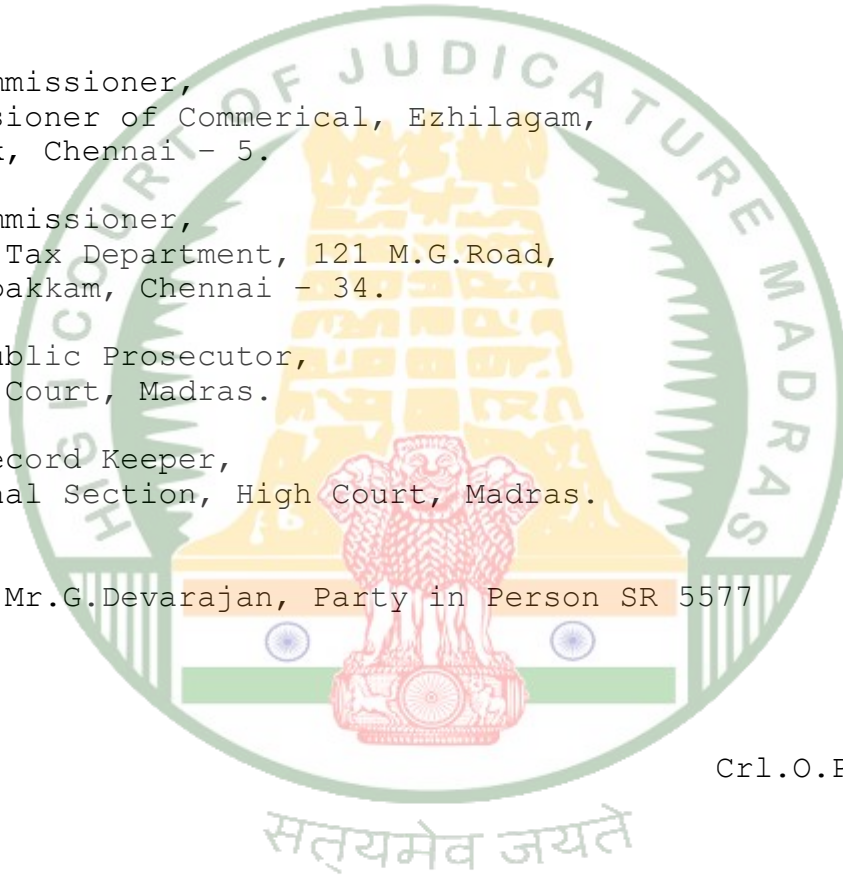
9. The Commissioner,
Income Tax Department, 121 M.G.Road,
Nungambakkam, Chennai - 34.

10. The Public Prosecutor,
High Court, Madras.

11. The Record Keeper,
Criminal Section, High Court, Madras.

+ 1 cc to Mr.G.Devarajan, Party in Person SR 5577

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