

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.14215 of 2015

Adv.R.Krishnamurthy

.. Petitioner

Vs.

1. The State of Tamilnadu
Rep. by the Principal Secretary
Department of Home,
Secretariat,
Fort St. George,
Chennai-600 009.
2. The Director General of Police,
State Police Head Quarters,
Dr. Radhakrishnan Road,
Mylapore, Chennai-600 004.
3. The Director,
Central Bureau of Investigation,
CGO Complex,
Lodhi Road,
New Delhi-110 001.
4. The Joint Director,
Central Bureau of Investigation,
Shastri Bhavan,
College Road,
Chennai-600 002.
5. The Deputy Inspector General of Police,
CBCID Branch,
Electronic Complex,
SIDCO, Guindy,
Chennai-600 032.

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6. The Superintendent of Police,
CBCID Branch,
Electronic Complex,
SIDCO, Guindy,
Chennai-600 032.

7. The Principal Secretary,
Department of Agriculture,
Secretariat,
Fort St. George,
Chennai-600 009.

8. The District Collector,
Collectorate Palayamkottai,
Tirunelveli District,
Tirunelveli.

9. Agri. Krishnamurthy,
Former Minister of Tamil Nadu State
Remand Prisoner,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the 6th respondent to hand over and entrust the Agriculture Engineer S.Muthukumarasamy suicidal case dated 05.04.2015 to 4th respondent for an effective, free and fair investigation on the basis of News Paper which published in "The Hindu" dated 06.04.2015 in accordance with law.

For Petitioner : Mr.Adv. R.Krishnamurthy
(Party-in-person)

For Respondents : Mr.S.T.S.Moorthy, Govt. Pleader
Assisted by
Mr.T.N.Rajagopal, Spl. Govt. Pleader
for R1, R2, R7 and R8

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

By consent, the writ petition is taken up for final disposal.

2. Based on a news paper report, dated 06.04.2015, published in 'The Hindu' daily newspaper, Mr.R.Krishnamurthy, claiming to be an Advocate, practising in the Hon'ble Supreme Court of India, has filed a pro bono publico Litigation, seeking for a Writ of Mandamus,

directing the Superintendent of Police, CBCID Branch, Chennai/sixth respondent herein to hand over and entrust the Agricultural Engineer, S.Muthukumarasamy suicidal case, dated 05.04.2015, to the 4th respondent herein, for an effective, free and fair investigation, on the basis of the above said "News Paper report".

3. During the course of hearing, R.Krishnamurthy, Party in person submitted that there is an external influence in the investigation conducted by CBCID, Chennai. He also submitted that if the said agency is allowed to conduct the investigation, it would not be free and fair. Added further, he submitted that no fair enquiry can be expected, when a former Minister and sitting member of the Legislative Assembly, is involved.

4. When this Court posed a specific question to the Party in Person, as to who and what is the external influence, there was no answer. Though the party in person, at para 9 of the affidavit, has contended that nobody can expect a free and fair investigation by the CBCID Police and the only remedy is a CBI probe and that a free and fair investigation could be conducted only by entrusting the investigation of the said case to CBI, this Court is not inclined to accept the contention made by the party in person, for the reason that the aforesaid conditions are not substantiated by any material.

5. Per contra, Mr.S.T.S.Murthy, Learned Government Pleader submitted that when death was reported to the Railway Police, Tirunelveli, on 20.02.2015, a case in Crime No.44/2015, under Sections 120(b) and 306 IPC, was registered. Thereafter, investigation was transferred to CBCID Branch and a new OCU Crime Number No.1 of 2015, dated 08.03.2015 (Organised Crime Unit) has been assigned. Thereafter, investigation was taken up by the Deputy Superintendent of Police, CBCID, Control Wing, Headquarters Chennai. Agri Krishnamurthy, Former Minister of State, Agriculture Department, was arrested on 05.04.2015. By the orders of the learned Judicial Magistrate No.III, Tirunelveli, he was sent to judicial custody. Thereafter, 89 persons have been examined. Though Agri Krishnamurthy has filed bail application, before the learned Principal Sessions Court, Tirunelveli, the same was opposed strongly and that bail was refused. Thereafter, he moved before the Madurai Bench of Madras High Court, by filing a bail application and that the same was also dismissed. Learned Government Pleader further submitted that there is absolutely no basis for making allegations against CBCID. He denies all the allegations made. There is no external influence. Though Agri Krishnamurthy was a Former Minister and a sitting MLA of the Ruling Party, investigation is being done in accordance with law.

6. Heard the learned counsel for the parties and perused the materials placed on record.

7.Except the paper notification, there is no other material even to suggest that the investigation done by CBCID is not free and fair, as observed earlier. Party in person was silent and not furnished any details regarding external influence. His submission made is in air. Therefore, we are not inclined to accept the same.

8.This Court deems it fit to consider, as to whether, newspaper reports, can be given any credence. A Hon'ble Division Bench of this Court in A.S.M.Kumar v. State of Tamil Nadu reported in 2008 (5) MLJ 399, to which, one of us, is a party, has considered the following judgments,

"8.The question of admissibility of the newspaper reports came up for consideration in Samant N.Balkrishna and another Vs.George Fernandez and other reported in 1969 (3) SCC 238 at paragraph 26, the Apex Court observed that

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

9.As regards nature and admissibility of a newspaper report, the Supreme Court in Lakmi Raj Shetty and another Vs. State of Tamil Nadu reported in 1988 (3) SCC 319, opined that

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

10.In Quamarul Islam Vs. S.K.Kanta reported in 1994 (1) SCC 452, the question as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein came up for consideration. The Apex Court at Paragraph 48 of the judgment held that,

"48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

11. The Supreme Court dealing with a "pro bono publico" litigation in B.P. Singhal Vs. State of Tamil Nadu and others reported in 2004 (13) SCC 673, wherein the petitioner sought for a transfer of an investigation from Tamil Nadu State Police to the Central Bureau of Investigation, opined that:

"the petition is lacking in material particulars. All the averments made in the petition are based, by and large, on news reports and not on personal knowledge. The petition does not state that the petitioner has taken any care to verify himself the correctness of the averments made."

13. In matters relating to public interest litigation, the Supreme Court has time and again cautioned that the Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. Reference can be made to the recent decision of the Apex Court in Holicow Pictures Pvt., Ltd., Vs. Prem Chandra Mishra and others reported in 2008 (1) CTC 711 (Para 20)."

9. After considering the decisions of the Hon'ble Apex Court, at Paragraph 16, the Hon'ble Division Bench in A.S.M. Kumar's case (cited supra), has further observed as follows:

"It is now well settled that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. Though the parameters of public interest litigation have been indicated by the Supreme Court in large number of cases, yet unmindful of the real intentions and objectives, the petitioner, without

verifying the authenticity or otherwise of the news items, has chosen to resort to the extra ordinary jurisdiction. The Public Interest Litigation intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. Before maintaining a cause before the Court one should prove that there is concrete and credible basis, notwithstanding the credentials claimed of the person moving the courts."

10. We are inclined to accept the submission of the learned Government Pleader. Having regard to the discussion and decisions, we are of the view that there is no merit in the case. The allegations made against CBCID are not substantiated.

11. Before parting with the case, we wish to state that a party-in-person is bound to answer to the queries made by the Court. When the party-in-person was posed with questions, instead of answering the same, he had even gone to the extent of submitting that the Court is threatening him. Conduct of the petitioner is not appreciable. Hoping sincerely that, he would correct himself in future, costs is not imposed.

12. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Deputy Registrar(J)

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Sub-Assistant Registrar

To

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+ 1 cc to Mr.Advocate R.Krishnamurthy, Supreme Court Advocate SR 24931

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