

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06..04..2015

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.No.11091 of 2012

P.Pugalenthi

.. Petitioner

versus

1. State of Tamil Nadu
represented by the Secretary to Government
Home Department,
Secretariat,
Chennai 600 009.

2. The Director General of Police
Chennai 600 004.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Declaration, declaring that the police personnel are not entitled to examine the plea of private defence that may be advanced by the accused and to accept such a plea of private defence during the course of investigation of an offence.

For Petitioner ::: Mr.M.Radhakrishnan
For Respondents ::: Mr.S.T.S.Moorthy
Government Pleader

सत्यमेव जयते
O R D E R

(The Order of the Court was made by The Hon'ble The Chief Justice)

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The petitioner, claiming to be an Advocate and Secretary of the Tamil Nadu People's Right Forum, which is stated to be a human right organisation, has filed the present Public Interest Litigation, seeking declaration of law that the police personnel are not entitled to examine the plea of private defence that may be advanced by the accused and to accept such a plea of private defence during the course of investigation of an offence.

2. The petition is not based on any enquiry caused by the petitioner, but purely on the basis of the articles in the newspaper. It is the case of the learned counsel for the petitioner that the petitioner is not required to do anything more and it is for the respondents/authorities to explain the position, once such a petition is filed.

3. The learned counsel for the petitioner in the alternative seeks time be granted for the petitioner to carry out further investigation and obtain material in support of the petition.

4. We are not inclined to accept the plea of the learned counsel for the petitioner. In our view, such an exercise ought to have been carried out before filing the petition and not that a petition is first filed based on newspaper reports and then it is kept pending for three years, whereafter it is stated before us that now the petitioner will look for materials in support of the petition. Merely because the petition has been filed does not mean the burden shifts on the respondents/authorities to explain their stand.

5. The Honourable Supreme Court has repeatedly emphasised that a person must carry out a proper enquiry before filing the PIL and it should not be merely on newspaper reports. What is material to note here is that the petitioner is an Advocate, well aware of law and thus in a position to obtain requisite material. Not only that, he claims that he is the Secretary of the People's Right Forum, a human rights organisation.

6. We are thus of the view that the petitioner never carried out the necessary preliminary enquiry to file the present petition. Further, any observation made by us in general nature has a possibility of prejudicing the trial, if it is commenced in any of the three incidents given. No material about the present position has been placed before us by either of the parties. We are thus of the view that the present petition is liable to be closed and if any infraction of law is found, which is capable of giving rise to a PIL with sufficient material, the same is not precluded.

The writ petition accordingly stands closed. No costs.

ksr

-s/d-
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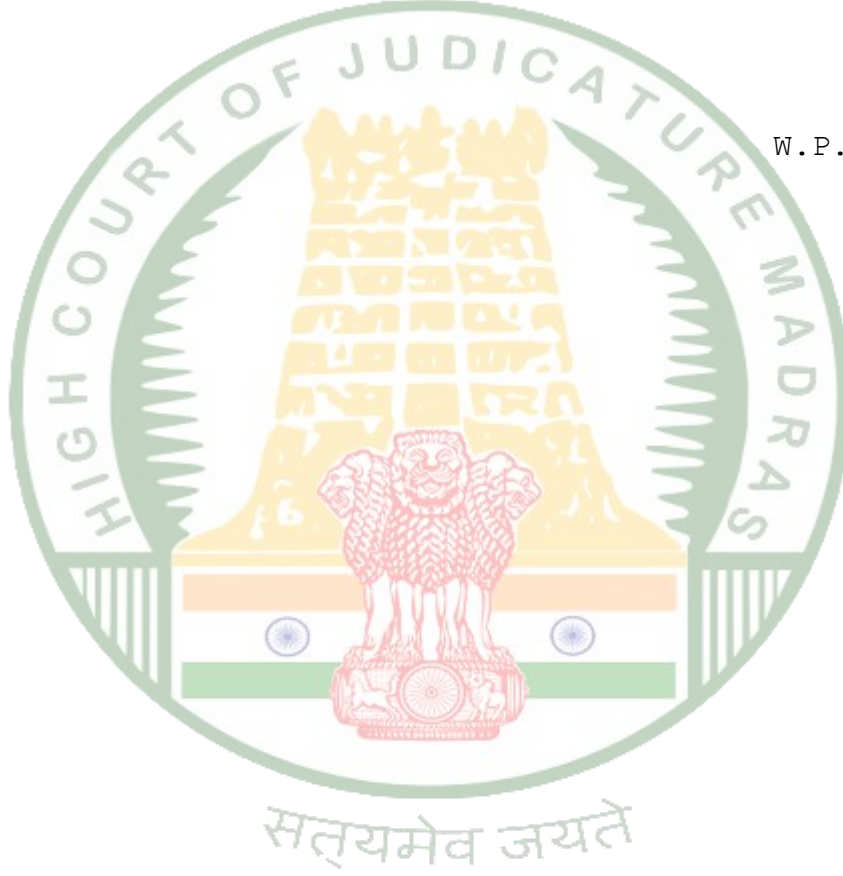
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+ 1 cc to the Government Pleader, High Court, Madras SR 18982

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