

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.44757 of 2002

S.Ilandirayane

...Petitioner

-Vs-

1.State rep. By
the Home Secretary,
Secretariat,
Fort St. George, Chennai.

2.Logayan
Inspector of Police,
Thirukovilur, Villupuram District.

3.Disciplinary Authority,
Deputy Superintendent of Police,
Office of the Superintendent of Police,
Villupuram District.

4.J.Sekar
Chairman,
Jayarama Engineering College,
Sellankuppam,
Cuddalore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents 1 and 3 to initiate legal action both criminal proceedings and disciplinary proceedings against the second respondent and award compensation.

For Petitioner : Mrs.Sudha Ramalingam

For R1 & R3 : Mr.A.Kumar, SGP

For R2 : Mr.R.Sundararajan

O R D E R

The petitioner being a French National, was arrayed as one of the accused in Cr.No.958/1998 on the file of Cuddalore OT Police Station. It is seen from the records that the petitioner has been arrayed so subsequently, based upon the available materials. Since the petitioner was not available, a

non bailable warrant was issued by the Jurisdictional Magistrate. Thus, the petitioner's name was included in the final report filed by the second respondent, which was taken on file as CC No.434 of 2000 by the learned Judicial Magistrate No.II, Cuddalore.

2.The petitioner challenged the criminal proceedings initiated against him, before this court by way of CrI.OP.No.13776 of 2001. This Court by order dated 17.6.2002, quashed the proceedings, placing reliance upon the passport, which indicted the factum that the petitioner was in abroad during the material time of occurrence of offence. This Court also took note of the fact that the petitioner was added as accused subsequently.

3.The present writ petition has been filed by the petitioner seeking a writ of mandamus, directing respondents 1 and 3 to initiate action both departmentally and by criminal proceedings against the second respondent, apart from awarding compensation to the petitioner.

4.Learned counsel for the petitioner submitted that in view of the findings rendered by this court in CrI.OP.No.13776/2001, the present writ petition will have to be allowed. When the petitioner is a French national, the second respondent ought to have conducted due enquiry before framing any charges against him. The fact that the second respondent retired from service, cannot be a ground to deny the relief sought for herein. Learned counsel for the petitioner also placed a reliance on a decision of the Hon'ble Supreme Court reported in (2012) 8 SCC 263 (Dayal Singh and others v. State of Uttaranchal).

5.Learned counsel for the second respondent submitted that the second respondent is entitled for protection available under section 52 of the Indian Penal Code. In this case, the petitioner's father has not divulged the relevant facts. The second respondent has acted in good faith. The order passed based on the materials in exercise of discretionary power under section 482 of the Criminal Procedure Code, cannot be the basis for filing this writ petition. Therefore, no interference is warranted.

6.Heard the submissions made on both sides.

7.Admittedly, in the proceedings initiated before this court, the second respondent herein has not been arrayed as party respondent and was added in the official capacity. Thus, the finding rendered by this court has to be seen in the context, in which it was said. Though it has been stated that the action was taken by the second respondent deliberately against the petitioner, there should be material contra to hold that the officer has not acted in good faith.

8. In the case on hand, the third respondent also filed an affidavit stating that the father of the petitioner has not furnished the required information. The petitioner has been arrayed as accused based on the statement given under Section 161 Cr.P.C. Thus, it can be said that there was non-application of mind on the part of the jurisdictional Magistrate and he was also responsible for the situation. The second respondent recorded the statement of the fourth respondent and one Arumugam before including the petitioner's name in the final report. Mere fact that the petitioner has not been arrayed as accused at the time of registration of the First Information Report, would show that his name was included subsequently based on the statement obtained thereafter. In fact, final report filed by an officer after conclusion of the investigation, has to be tested and proved before the court, since the same is only a process of finding of truth, which is the duty of the concerned jurisdictional Magistrate ultimately.

9. Learned counsel for the second respondent submitted that the whereabouts of the second respondent are not known. The second respondent has retired from service about 9 years ago. At this stage, this court is not willing to initiate a probe into the things happened long time back. Except the order passed by this court in the criminal proceeding, based on the records, such as passport, there is no other material available to hold that the second respondent has not acted in good faith. It is not the case of the petitioner that despite furnishing the information regarding the non-availability of the petitioner at the material time of occurrence of offence, the second respondent has deliberately implicated the petitioner as an accused.

10. Thus, in the light of the above discussions, this court is not inclined to exercise discretionary power in favour of the petitioner. Accordingly, the writ petition is dismissed. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Home Secretary, Secretariat,
Fort St. George, Chennai.

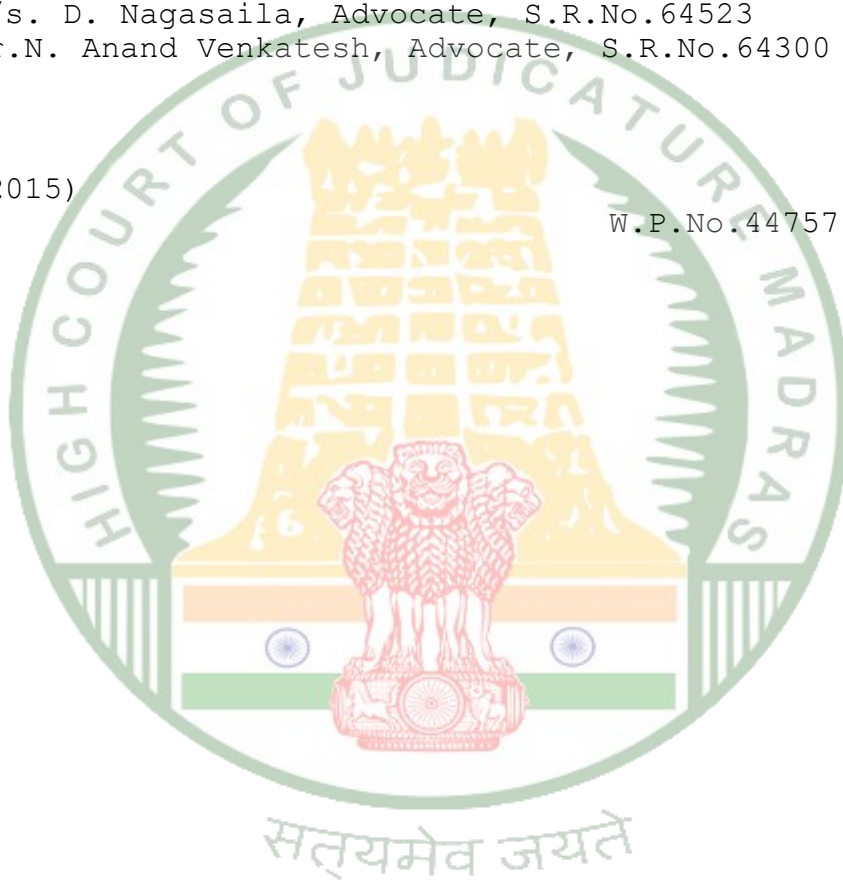
2.Deputy Superintendent of Police,
Office of the Superintendent of Police,
Villupuram District.

+lcc to M/s. D. Nagasaila, Advocate, S.R.No.64523

+lcc to Mr.N. Anand Venkatesh, Advocate, S.R.No.64300

VSN(CO)
EU(14/12/2015)

W.P.No.44757 of 2002



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