



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

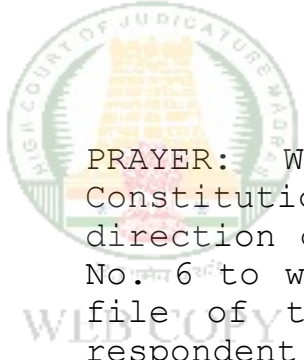
W.P. (MD) No.11779 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015

C.ANAND RAJ

.. Petitioner

Vs.

1. UNION OF INDIA REP.BY
ITS SECRETARY, HEALTH DEPARTMENT,
PARLIAMENT COMPLEX, NEW DELHI.
2. THE DRUGS CONTROLLER GENERAL OF INDIA,
CENTRAL DRUGS STANDARD CONTROL ORGANIZATION,
MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA,
FDA BHAVAN, ITO, KOTLA ROAD,
NEW DELHI.
3. THE DIRECTOR,
FOOD SAFETY AND DRUG ADMINISTRATION DEPARTMENT,
OFFICE OF THE DIRECTOR OF DRUGS CONTROL,
NO.359, ANNA SALAI, TEYNAMPET,
CHENNAI 600006.
4. THE HEALTH SECRETARY,
SECRETARIAT, STATE OF TAMILNADU,
FORT.ST. GEORGE,
CHENNAI.
5. THE JOINT DIRECTOR AND HEAD OF ZONE,
CENTRAL BUREAU OF INVESTIGATION,
III FLOOR, E.V.K.SAMPATH BUILDING,
COLLEGE ROAD, CHENNAI 600 006.
6. THE DIRECTOR GENERAL OF POLICE,
OFFICE OF THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, BEACH ROAD,
CHENNAI.
7. THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH POLICE STATION, MADURAI
CITY, MADURAI. .. Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing or order in the nature of writ directing the respondent No.6 to withdraw the case in Crime No. 55 of 2015 pending on the file of the respondent No.7 and entrust the same to the 5th respondent to investigate the case effectively within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani
 For R3, R4, R6
 and R7 : Mr.M.Alagadevan
 Special Government Pleader

ORDER

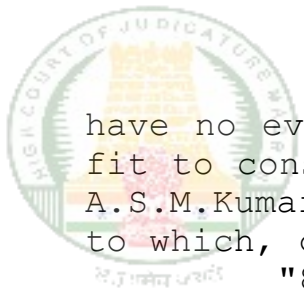
(The order of the Court was made by S.MANIKUMAR, J.)

On the basis of news item published in all the news papers on 05.06.2015, that expired 'Stents' have been used in surgeries, for heart patients and further news item dated 20.06.2015, published in Dinamalar daily news paper that, a Bombay bound Company namely Medtronic, had issued a public notice stating that the said Company had already disconnected its relationship with one Thirumala Traders in Madurai, in September 2014 itself; that 'Stents' have been supplied to Saravana Multi Speciality hospital, and on the basis of a criminal case in crime No.15 of 2015 registered on the file of the Inspector of Police, Central Crime Branch, for the offences under Sections 336, 418, 420, 380 r/w Section 120(b) IPC and further contending that considering the fact that the matter is of public importance, the Inspector of Police, Central Crime Branch, the respondent No.7 cannot conduct a proper investigation; that the constitutional guarantee under Article 47 of the Constitution of India had not been taken note, the petitioner is stated to have submitted a representation dated 30.06.2015 to the respondents to take necessary action.

2.Apprehending that investigation, would not be conducted in a proper manner and truth would not come to the light, *pro bono* writ petition has been filed by the petitioner seeking for a Mandamus against the Director General of Police, the respondent No.6 to withdraw the case in Crime No. 55 of 2015 pending on the file of the respondent No.7 and entrust the same to the 5th respondent, to investigate the case effectively, within the time stipulated by this Court.

3.Heard Mr.R.Alagumani, learned counsel for the petitioner and perused the materials available on record.

4.Finding of all, we are of the view that a *pro bono* public interest writ petition cannot be entertained as a matter of right on the basis of news item published in dailies. Newspaper reports



have no evidentiary value. At this juncture, this Court deems it fit to consider a Hon'ble Division Bench decision 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, held as follows:

"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."

5. On the aspect of transferring investigation to CBI, at paragraph No.11, the Hon'ble Apex Court considered an earlier decision.

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."

12.Yet another decision in *Dr.B.Singh Vs. Union of India (UOI)* and others reported in 2004 (3) SCC 363 dealing with a public interest litigation, challenging



the propriety of the third respondent therein for being considered for appointment as a Judge, the Supreme Court while expressing its anguish found that:

"the petitioner has nowhere stated that he has personal knowledge of the allegations made against R3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some other paper cuttings of news items. It is too much to attribute authenticity or creditability to any information or fact merely because, it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports *per se* do not constitute legally acceptable evidence."

6. Secondly, there are absolutely no materials to arrive at a conclusion that the Inspector of Police, Central Crime Branch Police Station, Madurai City, Madurai, the seventh respondent herein, is not investigating the matter in accordance with law. Needless to state that the crime branch police of the State, has unearthed many crimes. But in certain hard cases, there may not be a breakthrough. Averments of the petitioner that the Inspector of Police, Central Crime Branch Police Station, Madurai City, Madurai cannot conduct a proper investigation and that truth will not come, is without any materials.

7. Mandamus to transfer the investigation from the seventh respondent and to entrust the same to CBI, Chennai, cannot be sought for as a matter of right, without there being any substantive material placed before the Court. Crime No.55 of 2015 under Sections 336, 418, 420, 30 r/w Section 120(b) of IPC on the file of the Inspector of Police, Central Crime Branch Police Station, Madurai City, Madurai, has already been registered. By this time, investigation would be in progress.

8. In the light of the above discussion and decisions, directions to entrust the investigation of the above said crime to CBI, Chennai, cannot be granted.

9. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/



To

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CHENNAI.
7. THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH POLICE STATION,
MADURAI CITY, MADURAI.

+ 1 CC TO MR.R.ALAGUMANI, ADVOCATE IN SR NO. 38709

RJ2

TE/AAL-MPA/ : 27/10/2015 : 5P/9C

Order made in
W.P. (MD) No.11779 of 2015
14.07.2015