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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

W.P(MD)No.14756 of 2015
and M.P.(MD) No. 1 of 2015

R.Seenichamy

: Petitioner

Vs.

1.The Director General of Police,
Mylapore, Chennai.

2.The Inspector of Police,
South Zone, Madurai.

3.The Superintendent of Police,
Theni District, Theni.

4.The Deputy Superintendent of Police,
Aundipatti,
Theni District.

5.The Inspector of Police,
Rajathani Police Station,
Theni District.

6.The Inspector of Police,
Central Beaura of Investigation,
Chennai.

7.Mr.Kulam

8.Mr.Balamurugan

9.Mr.Boologa Sundar

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the first respondent to transfer the investigation in Crime No.195 of 2015 on the file of the fifth respondent to the file of the sixth respondent and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.V.Kanna

For R1 to R5 : Mr.R.Shanmuganathan

Special Government Pleader

For R6 : Mr.Jeyakumar,

For R9 : Mr.R.Murugan

O R D E R



investigation in Crime No.195 of 2015 on the file of the fifth respondent to the file of the sixth respondent.

2. By consent, the Writ Petition itself is taken up for final disposal.

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3. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the Respondents 1 to 5 and the learned counsel appearing for the sixth respondent and the learned counsel appearing for the ninth respondent.

4. The learned counsel appearing for the petitioner would submit that on the basis of the complaint given by the petitioner, a case in Crime No.195 of 2015 has been registered by the fifth respondent and the fifth respondent has not investigated the matter in a proper direction and he has colluded with the accused.

5. He would further submit that the accused was arrested at 6.00 p.m on the date of occurrence and he was produced before the Magistrate on 8.00 a.m and at that time, he has reported that he was suffering from chest pain and even though the court has ordered that the accused shall be remanded to judicial custody, instead of producing before the prison authorities, he was admitted in the hospital.

6. The report of the Doctor has been received and it would show that the accused was suffering from chest pain and loose motion but, his ECG was normal. In this regard, the Superintendent of Police, Theni District was directed to appear before this Court and today, he has appeared.

7. The Superintendent of Police, Theni District, would submit that on the basis of the complaint given by the defacto complainant, the Additional Deputy Superintendent Police is being enquired the matter in view of the activities of the investigation officer-the fifth respondent herein. The Superintendent of Police, Theni District, fairly conceded that he would transfer the investigation from the fifth respondent to the neutral Investigating Officer in the rank of the Deputy Superintendent of Police to investigate the matter afresh.

8. At this juncture, it is useful to refer the decision of the Apex Court (2010)3 Supreme Court 571 (State of West Bengal and Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others). In this judgment, the Hon'ble Supreme Court has held that the extraordinary power to transfer the investigation to CBCID must be exercised only in exceptional situations. Paragraph No.70 of the said Judgement is extracted hereunder:

70. 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. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to



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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 extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 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" .

9. According to the learned Special Government Pleader, the defacto complainant is not co-operating with the investigation. Hence, the defacto complainant is directed to co-operate with the newly appointed Investigating Officer in the rank of Deputy Superintendent of Police and put forth his case before him.

10. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar.

To

1.The Director General of Police,
Mylapore, Chennai.

2.The Inspector of Police,
South Zone, Madurai.

3.The Superintendent of Police,
Theni District, Theni.

4.The Deputy Superintendent of Police,
Aundipatti,
Theni District.

5.The Inspector of Police,
Rajathani Police Station,
Theni District.

6.The Inspector of Police,
Central Beaura of Investigation,
Chennai.

+1CC to M/S.M. Maharajan,Advocate, SR.No. 61697.

+1CC to The Special Government Pleader SR.No. 60919.

Order made in
W.P (MD) No.14756 of 2015
and M.P. (MD) No. 1 of 2015
Dated:-
14.10.2015