

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

(Orders reserved on 29.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.11940 of 2016

T.K.S.Elangovan .. Petitioner

Vs.

1. The Director,
Central Bureau of Investigation,
Plot No.5B, 6th Floor, CGO Complex,
Lodhi Road, New Delhi-110 003.
2. The Joint Director and Head of Zone (Chennai),
Central Bureau of Investigation,
III Floor, EVK Sampath Building,
College Road, Chennai-6. .. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the respondents to take the complaint on file, dated 30.05.2016, enquire into the matter and file a final report before a competent Court.

For petitioner : Mr.P.Wilson, Senior Counsel for
Mr.R.Girirajan

For respondents: Mr.K.Srinivasan, Spl.P.P. for CBI cases

ORDER

This Crl.O.P. is filed to direct the respondents to take the complaint, dated 30.05.2016 on file, enquire into the matter and file final report before a competent Court.

2. In the petition, it is stated that the petitioner is a Member of Parliament and belongs to a political party. When the Election process to the 15th Legislative Assembly of Tamil Nadu, was going on, on 13.05.2016, midnight of Friday, around 12.45 a.m., the Election Commission Surveillance Team, headed by one Mr.Vijayakumar, stationed at Tirupur, chased down and seized

three tanker lorries, which were escorted by three Innova Cars, said to be transporting huge amount of money to the tune of Rs.570 Crores in the service road of Peramanallur-Kunnathur Road, Chengapalli in Uthukuli Taluk, Tirupur District. The seized lorries were brought and parked in the office of the District Collector, Tirupur from 14.05.2016 to 17.05.2016. The container lorries bear the Registration Nos.AP-13-X-8650, AP-13-X-5203 and AP-13-X-5204. When the Surveillance Team questioned the three drivers and the persons who accompanied the said lorries in Innova Cars, they were not in a position to give proper answers or documents for transportation of huge sum of Rs.570 Crores. The Surveillance Team found that the documents submitted by these persons did not have the vehicle numbers of the container lorries. The persons who accompanied the vehicles in three Innova Cars, claimed that they were security officers from Andhra Pradesh, but there were not in uniform. Out of three seized vehicles, one lorry bearing Reg.No.AP-13-X-5204 is not the number registered for the lorry, but rather it is the number of an Innova Car belonging to one Jaffer Ahmed Khan. The vehicle bearing Reg.No.AP-13-X-8650 belongs to one Kaja Mohammed and the vehicle bearing Reg.No.AP-13-X-5203 belongs to one Salim Mohammed. The R.C. book for Reg.Nos.AP-13-X-8650 and AP-13-X-5203 vehicles, have the same photograph of one person. Therefore, it is clear that they are nothing but fake.

3. It is further averred that after lapse of 18 hours, suddenly some letters were created in the name of the State Bank of India and the Income Tax Department made a claim before the Chief Electoral Officer, vide Letter No.13451/Ele-X/2016-1, dated 15.05.2016, requesting for transport of the three containers to the State Bank of India, Treasury Branch, Coimbatore. After such claim and interference by the Income Tax Department, the Election Commission of India, vide Letter dated 16.05.2016 in Ref.No.76/EEPS/GE-2016/TN, directed the Chief Electoral Officer to facilitate the DEO, Coimbatore and Tirupur to facilitate transport of three vehicles to SBI Treasury Branch, Coimbatore. Accordingly, the CEO directed the DEO, Tirupur District, by Letter No.13451/Ele-X/2016-2, dated 16.05.2016 to take necessary action on the basis of the Commission's instructions immediately. Accordingly, three trucks were transported to SBI Treasury Branch, Coimbatore. About 195 sealed boxes were found in three containers with currencies of different denominations and the currencies contained the seal of Axis Bank. SBI claims that currencies were transported from its Chest and the money belongs to them. While so, it is the claim of the SBI, vide their letters dated 06.05.2016 (without an file/reference number, etc.) and 10.05.2016 that there is a direction from the Reserve Bank of India, Chennai that the cash of Rs.570 Crores has been sought for. However, the RBI, Chennai

has not given any such direction or permission for such cash remittances of Rs.570 Crores. As per the RBI Guidelines, whenever huge monies are to be transported between the chest of the same or different banks within the State or Inter-State, the same has to be done only through Rail and has to be escorted by the local Police. However, no such steps have been taken in the instant case.

4. It is the further case of the petitioner that already huge sums of money in 5 container lorries, left from Nilgiris District, crossed Tamil Nadu and proceeded to Andhra Pradesh. While so, seizure of such money involving three container lorries can only be treated as Hawala transactions and it is probably from crime proceeds. The high level bank officials have conspired together and created forged documents with fake authorisation from RBI, Chennai in order to transport the huge sum of Hawala money and they are not only punishable for the offences under the Indian Penal code, but also for the offences punishable under the Prevention of Corruption Act. Therefore, the respondents alone have jurisdiction to register the complaint and take action in accordance with law. The petitioner sent complaint, dated 30.05.2016 to the respondents, but till date, the respondents have not taken any action, that too when the country has never seen such seizure of Rs.570 Crores. Since no action is taken, the present petition is filed for the above relief.

5. The respondents/CBI have filed counter affidavit opposing the prayer of the petitioner and the sum and substance of the counter affidavit is that with regard to the allegations made in the petition, a clarification has to be sought for only from SBI/RBI and if such clarification is received, that would facilitate this Court to take appropriate decision. It is further stated that the CBI, with the limited strength of investigating officers, is entrusted with the duties of conducting investigation of offences or classes of offences committed in connection with the Departments of Central Government, including specially important cases under the Defence of India Act and Rules, particularly of hoarding, black-marketing and profiteering in essential commodities and the collection of intelligence relating to certain types of crimes, participation in the role of National Crime Bureau, connected with the INTERPOL and specialised crime of particular interest to the Government of India or crimes having particular importance from the social point of view, are entrusted to the IO's of CBI and that there is no international aspects involved in the case or any other such requisite facts like involvement of Government Servants or loss to Government of India to warrant

CBI investigation. Hence, the respondents prayed for dismissal of the petition.

6. When the matter is taken up for hearing, the learned Senior Counsel appearing for the petitioner made detailed arguments and reiterated the averments made in the petition. He sought for a direction to the CBI to register the said complaint. With regard to the statement made in the counter affidavit to the effect that a clarification has to be obtained from SBI/RBI, learned Senior Counsel submitted that since the complaint is as against the SBI, there is no need for clarification either from SBI or RBI, but on the other hand, it is for the respondents/CBI to conduct preliminary enquiry on the complaint and to register a case. In this regard, learned Senior Counsel appearing for the petitioner relied on a judgment of the Supreme Court reported in 2014 (4) SCC 626 (Dinubhai Boghabhai Solanki Vs. State of Gujarat) in support of his contention that it is not necessary to give an opportunity of hearing to the proposed accused as a matter of course and if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. Thus, by relying upon the said judgment, he submitted that absolutely there is no need for this Court to get a clarification from SBI/RBI, since the allegation in the complaint itself is merely as against the SBI only, with regard to their letters, which have come into existence subsequent to the interception of the lorries, which raises serious doubt about the claim of movement of money really undertaken by the SBI, Coimbatore Branch to SBI, Vishakapatnam Branch.

7. Opposing the above submissions made by the learned Senior Counsel appearing for the petitioner, learned Special Public Prosecutor appearing for the respondents submitted that the entire allegations made in the complaint are only based on suspicion and therefore, it is absolutely necessary to get a clarification from SBI/RBI by obtaining affidavit from them. Learned Special Public Prosecutor further submitted that no cognizable offence is made out in this case. Learned Special Public Prosecutor relied on a decision of the Supreme Court reported in 2010 (3) SCC 571 (State of W.B. Vs. Committee for Protection of Democratic Rights), wherein it has been held by the Apex Court as follows:

"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 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 investigation."

8. Thus, by relying upon the above judgment of the Apex Court, learned Special Public Prosecutor appearing for the respondents submitted that if direction as sought for is given, then CBI would be flooded with large number of cases and with limited resources, and it may find it difficult to properly investigate a case. Learned Special Public Prosecutor also relied on a judgment of a Division Bench of this Court in W.P.Nos.18054 of 2016, dated 18.05.2016 (Traffic Dr.K.R.Ramaswamy Vs. The Chief Election Commissioner of India, New Delhi and four others) and submitted that the same issue was dealt with by the Division Bench of this Court and the Writ Petition was already dismissed. Therefore, the same issue cannot be raked up once again. Thus, he prayed for dismissal of the petition.

9. Keeping the above submissions in mind, I have carefully gone through the materials available on record.

10. It is the grievance of the petitioner that complaint was given on 30.05.2016 with regard to the above said seizure of Rs.570 Crores in three container lorries and also with regard to the letters created by SBI claiming the above amount, but till date, no action is taken. But, according to the learned Special Public Prosecutor, the allegations made in the complaint are only based on suspicion and therefore, there is no need to entertain the prayer sought for in this petition. Further,

according to him, the same issue was already dealt with by a Division Bench of this Court as indicated above and the prayer in the Writ Petition was rejected. He further submitted that the allegations in the complaint do not constitute a cognizable offence. At the same time, it is admitted by the learned Special Public Prosecutor that so far, no preliminary enquiry was conducted on the complaint lodged by the petitioner.

11. The Supreme Court in the case of Lalita Kumari Vs. Govt. of U.P., reported in 2014 (2) SCC 1, held that when a complaint is given, registration of the FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and if the information received does not disclose a cognizable offence, but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. In the instant case, admittedly, no such enquiry is conducted by the CBI so far. The Supreme Court, in the above said Lalita Kumari's case, gave the following directions:

"Conclusions/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

12. Keeping the above principles in mind, if the case on hand is examined, it is seen that the alleged complaint was lodged as early as on 30.05.2016. It is not in dispute that the respondents have not taken any steps on the said complaint. The learned Special Public Prosecutor submitted that the issue involved in this petition is already decided by a Division Bench of this Court in W.P.No.18054 of 2016, which was filed by one Traffic K.R.Ramaswamy to consider the petitioner's representation to postpone the Election alleging that the political parties have involved in corrupt practices by distributing money to the voters. In the said Writ Petition, the petitioner therein appeared as party-in-person and made his submissions and prayed for direction to the Election Commission to conduct enquiry with regard to the seized amount of Rs.570 Crores by the Income Tax Department on 14.05.2016 and also to suspend or withdraw the recognition of the recognised political parties. The said Writ Petition was dismissed by this Court. In

the said Writ Petition, CBI is not a party. But, in the case on hand, the present Crl.O.P. has been filed by the complainant himself and therefore, dismissal of the said Writ Petition will not be a bar to entertain the prayer in this Crl.O.P. Since the complaint of the petitioner is pending before the respondents herein and since they have not taken any action on the complaint, he has filed this petition.

13. It is yet another contention of the learned Special Public Prosecutor that this Court may get clarification from the SBI/RBI. But, in my considered view, when the complaint itself is against the SBI/RBI, there is no need for getting clarification and it is for the respondents to conduct enquiry and find out as to whether a cognizable offence has been made out or not.

14. Accordingly, by following the dictum laid down by the Apex Court in Lalita Kumari's case (cited supra), this Court directs the respondents to conduct preliminary enquiry on the petitioner's complaint, dated 30.05.2016 and upon enquiry, if the materials available on record as well as the other materials that are going to be gathered during the course of enquiry, indicate any cognizable offence, then the respondents are further directed to register a case on the said complaint and proceed in accordance with law, as early as possible.

15. With the above directions, this petition is disposed of.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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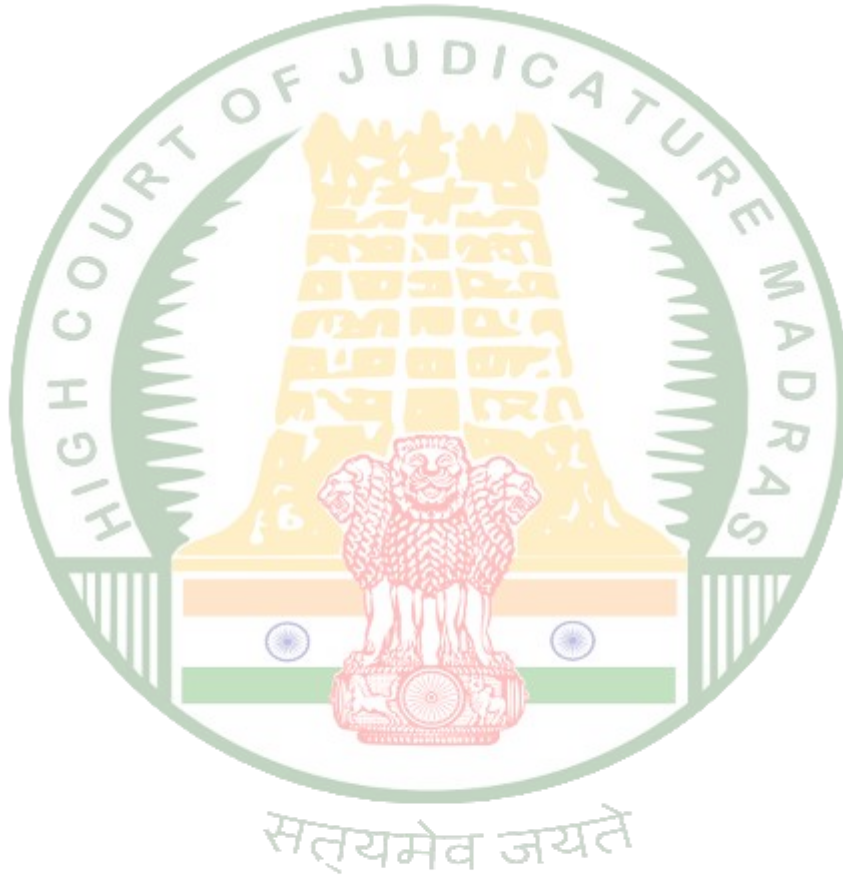
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3. The Special Public Prosecutor (CBI Cases),
High Court, Madras.

1 cc to Mr.K.Srinivasan, Advocate, sr.37345

Cr1.O.P.No.11940 of 2016

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