

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

(Orders reserved on 04.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.22953 of 2015

K.Kathiresan

.. Petitioner

Vs.

1. The Director of Vigilance and Anti-Corruption (DVAC),
NCB-21-28, P.S.Kumarasamy Raja Salai,
(Greenways Road),
Raja Annamalaipuram,
Chennai-600 028.
2. The Joint Director,
Central Bureau of Investigation,
South Zone, 3rd Floor,
Sastri Bhavan,
No.26, Haddows Road,
Nungambakkam, Chennai-600 006.
(Second respondent is impleaded as per the
order of this Court, dated 09.02.2016 made in
M.P.No.1 of 2015 in
Cr1.O.P.No.22953 of 2015)

.. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to direct the second respondent, the Central Bureau of Investigation, to register FIR based on the petitioner's complaint, dated 24.08.2015 sent to the first respondent and investigate the matter and further to direct the second respondent to register FIR against Mr.Jatindranath Swain, IAS., the Principal Secretary to Government and his staff whose names not known and the concerned Police Officers of the first respondent under Section 218 of IPC. (Prayer amended as per the order of this Court, dated 05.04.2016 made in M.P.No.2 of 2015 in Cr1.O.P.No.22953 of 2015).

For petitioner : Mr.N.Subramaniam

For respondents: Mr.P.Govindarajan, Addl.P.P. for R-1

ORDER

This Crl.O.P. is filed to direct the second respondent, the Central Bureau of Investigation, to register FIR based on the petitioner's complaint, dated 24.08.2015 sent to the first respondent and investigate the matter and further to direct the second respondent to register FIR against Mr.Jatindranath Swain, IAS., the Principal Secretary to Government and his staff whose names not known and the concerned Police Officers of the first respondent under Section 218 of IPC.

2. According to the petitioner, he came to know that selection of 83 candidates to the post of Group-I officers for the year 2000-2001 was set aside by this Court by order dated 04.03.2011 in W.A.Nos.1063 and 1287 of 2009 and directions were issued to TNPSC to re-draw the selection list. Challenging the order passed by this Court, Group-I Officers filed appeal before the Supreme Court. The petitioner came to know that the Officers who have filed appeal before the Supreme Court, had stayed in the Tamil Nadu House, New Delhi, as if they have gone for official purpose and gained pecuniary benefits, which is a criminal offence. Further, according to the petitioner, the said officials made false representation to the Secretary to Government, Public Department that they are visiting New Delhi for official purpose and obtained reservation order to that effect and based on that said reservation order, they were allowed to stay in the Tamil Nadu House and use the Government vehicles free of cost. False entries were made in public records to cause loss to the State funds and by abusing their powers, they have made authorities to believe their statement as correct, thereby, had pecuniary advantage for themselves, which are patently offence punishable under IPC and the Prevent of Corruption Act. In this regard, the petitioner made a detailed complaint to the first respondent by Speed Post with Acknowledgement Due on 24.08.2015 and the said complaint was received by the first respondent on 25.08.2015. But, they did not act upon it till date. The petitioner's enquiry reveals that since the proposed accused are high officials having influence over the Government Administration, the first respondent failed to act in accordance with law. The proposed officials have committed the offence punishable and cognizable under the Indian Penal Code(IPC) and the Prevention of Corruption Act and the offence committed was not done during their discharge of their official duties, but while acting in their individual and personal capacity. It is the further case of the petitioner that the offence committed by the Officers being cognizable and grave and since no action has been taken, the petitioner has come forward with this petition for the above relief.

3. When the matter is taken up for consideration, learned counsel for the petitioner submitted that the petitioner has lodged a compliant as against Group-I Officers, whose selection was set aside by a Division Bench of this Court. He further submitted that the Officers whose selection was set aside, have filed Special Leave Petition (SLP) before the Supreme Court. While they were going to New Delhi to attend their case in the Supreme Court in personal capacity, they have falsely claimed that as if they are going for official purpose and stayed in Tamil Nadu House. In this regard, learned counsel for the petitioner submitted that the said Officers, by abusing their position to influence the concerned official in-charge functioning in the Tamil Nadu House, who is the reserving authority, stayed in Tamil Nadu House and availed concessional rates. In this regard, learned counsel invited the attention of this Court to the application submitted by the Officers and submitted that the said Officers conveniently suppressed the purpose of their visit to New Delhi.

4. Learned counsel for the petitioner relied on Clause 23 of the Tamil Nadu House Manual and submitted that the requisition of the Officers should contain full particulars regarding the nature and purpose of visit, whether it is official or private. But, in this case, none of the Officers have mentioned about the purpose of their visit. Learned counsel further submitted that if the visit is official or private, the Officers are entitled to avail concessional rates of Rs.60/- per day and for private visit, the charges will be doubled after the first five days. But, in this case, by not mentioning the purpose of the visit, at the same time, by creating an impression as if the Officers are going to stay for official purpose, they have paid only concessional rates for their stay. In this regard, learned counsel for the petitioner produced a chart before this Court relating to the number of days stayed by the Officers and monetary loss caused to the Government.

5. That apart, learned counsel for the petitioner submitted that as per Rule 38 of the said Manual, the Officers who are going to New Delhi for official purpose, are entitled to use the car on concessional rates. If the visit is for official purpose, the mileage charges should be collected at Rs.1.25 per km. and if it is not for official purpose, the charges will be more. He further submitted that if the Officers stay in Tamil Nadu House, when the cars travel empty to pick up an officer, no charges will be collected. But, if the Officers staying outside the Tamil Nadu House, call for the cars of the Tamil Nadu House, they will be charged for empty run. In this case, the Officers suppressed the fact of their purpose of visit and have availed concessional rates. Learned counsel for the petitioner also

submitted that under the Right to Information Act, the petitioner obtained log-sheet, which shows that the Officers have travelled long distance and claimed that they have travelled only short distance. Learned counsel made detailed arguments in respect of the distance travelled by each officers.

6. Learned counsel for the petitioner also submitted that earlier, when the matter came up for hearing, this Court, by order dated 05.10.2015, directed the first respondent to submit relevant documents showing the official purpose for which the persons mentioned in the petition, have gone to New Delhi and stayed in Tamil Nadu House. In spite of the said direction of this Court, the first respondent has not produced some of the documents, namely the copy of the Entry Register in the Tamil Nadu House, New Delhi for the period from 01.07.2014 to 25.11.2014, the explanation/clarification for the column "Booking Src" found in the Guest Stay Register, etc. Learned counsel for the petitioner further submitted that the allegations contained in the complaint given by the petitioner, make out a prima-facie case and hence, he prayed for a direction as sought for in this petition.

7. Countering the above submissions, learned Additional Public Prosecutor appearing for the first respondent submitted that the petition sent by the petitioner was received by the DVAC, Chennai on 27.08.2015 and the contents of the petition were perused. Thereafter, it was forwarded to the Principal Secretary to Government, Public Department, Secretariat, Chennai, vide letter dated 07.09.2015 as per the instructions issued in the DVAC Manual for necessary action at their end, as the petition did not disclose specific offence under the Prevention of Corruption Act. In this regard, learned Additional Public Prosecutor submitted that in fact, similar petition, dated 11.02.2015 sent by one Kannan for similar allegations to the DVAC, was forwarded to the Principal Secretary to Government, Public and Rehabilitation Department, Secretariat, Chennai, as per the instructions issued in Government Memo No.1356/64/2, Public (Services-B), dated 08.04.1964 and incorporated in Para 10(3) of the DVAC Manual, vide Ref.Nos.1447/2015/REV/MU, dated 24.02.2015 for necessary action at their end, as the petition did not disclose specific offence under the Prevention of Corruption Act. Thereafter, letter dated 06.03.2015 was addressed to the Principal Secretary to Government, Public and Rehabilitation Department, Secretariat, Chennai, by the first respondent to intimate the status of the petition of the said Kannan. In response to the said letter, the Principal Secretary to Government, Public (General-2) Department, Secretariat, Chennai sent a reply to the first respondent, vide Letter No.5314/General-2/2015-1, dated 23.03.2015, in which, it was informed that the allegation levelled in the petition, dated 11.02.2015 of the said Kannan

were not based on the facts about the rental rates applicable to the Tamil Nadu Government Officials in the Tamil Nadu House, New Delhi.

8. Learned Additional Public Prosecutor further submitted that the said Kannan earlier filed W.P.(MD).No.3037 of 2015 before the Madurai Bench of this Court for the same set of allegations, which was dismissed by a Division Bench of this Court on 12.06.2015. He further submitted that Crl.O.P.(MD).No.3783 of 2015 filed by the said Kannan, before the Madurai Bench of this Court, was also dismissed on 06.04.2015. The present Crl.O.P. is filed by the petitioner after the dismissal of the said petitions filed by the said Kannan and the petitioner herein is none other than a close relative of the said Kannan. Learned Additional Public Prosecutor, by referring to the applications of the Officers, submitted that the Officers have not made any misled statement in their applications stating that they are going to stay in Tamil Nadu House for official purpose, but the mistake was committed by the receptionist in the Tamil Nadu House and departmental action was taken against the receptionist. However, later the short-fall amount was also recovered from the Officers and it is a very meagre amount. Learned Additional Public Prosecutor prayed for dismissing the petition.

9. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

10. Though very many contentions have been raised by the learned counsel for the petitioner by inviting the attention of this Court to the Tamil Nadu House Manual, the sum and substance of the submissions made by him is that the Officers concerned went to New Delhi to attend their case in the Supreme Court in their individual and personal capacity and by suppressing the purpose, they have submitted applications as if they are going for official visit and availed for their stay at concessional rates. But on a perusal of the applications of the Officers, I find that the Officers have not made any misled statement. They have simply requested to grant them accommodation in the Tamil Nadu House, as they have to appear for case in the Supreme Court. Their application was treated as official visit mistakenly by the staff of the Tamil Nadu House. But later on, it came to be known that their visit was not official and the short-fall amount was also recovered and action was taken against the staff of the Tamil Nadu House. Considering all these facts in proper perspective, the first respondent has come to the conclusion that no cognizable offence has been made out warranting them to take action. Absolutely, I do not find any infirmity in the decision taken by the first respondent.

11. Further, for the very same relief, earlier one Kannan has filed two petitions, namely Crl.O.P.(MD).No.3783 of 2015 and W.P.(MD).No.3037 of 2015 before the Madurai Bench of this Court and the relevant portion of the orders passed in these petitions are as follows:

Crl.O.P.(MD).No.3783 of 2015, order dated 06.04.2015:

8. The petitioner is a person, who has lost in the competitive examination. It appears that he wants to settle his personal score by filing one petition or the other. It is the fact that those persons against whom allegations are made had stayed in the Tamil Nadu House at the concessional rate. As pointed out by the learned Additional Advocate General, irrespective of the fact whether their private visit or official visit, they are entitled for concessional rate. Thus, there is no illegality in their using the Tamil Nadu House at the concessional rate. Thus, I do not find any offence warranting investigation by the respondent police."

W.P.(MD).No.3037 of 2015, order dated 12.06.2015:

"4. We find the present writ petition is completely misconceived. The question of taking any action would have arisen under the judgment of this Court and the honorable Supreme Court, if the honourable Supreme Court had not granted interim orders directing status quo to be maintained. Once that order is granted, it is not open to anyone to plead on the basis of the orders passed by this Court or by the honourable Supreme Court under Review and that too a third party and claim relief under the garb of public interest litigation."

12. Therefore, already the same issue was dealt with by the Madurai Bench of this Court and it was negatived. The present Crl.O.P. is filed by K.Kathiresan, who is none other than a close relative of the said Kannan, which is evident from the petition filed by the said Kannan before the Madurai Bench of this Court in Crl.O.P.(MD).No.3783 of 2015 and the relevant portion of the same reads as follows:

"4. petitioner obtained the guest staying details of Tamilnadu Guest House for the period from 01.07.2014 to 25.11.2014 through his relative, Mr.K.Kathiresan."

13. Therefore, from the above facts, it is clear and apparent that the petitioner herein is well aware of the earlier proceedings in the above said W.P. and Crl.O.P. filed by his relative Kannan, and hence, as the same issue has already been dealt with and rejected by the Madurai Bench of this Court in the above said two cases, the present Crl.O.P. is not liable to be entertained.

14. Learned counsel for the petitioner relied on the decisions of the Supreme Court reported in 2015 (8) SCC 286 (Ravinder Kaur Vs. Anil Kumar), 2004 (3) SCC 767 (K.Anbazhagan Vs. Superintendent of Police) and 1989 (1) SCC 101 (Municipal Corporation of Delhi Vs. Gurnam Kaur), in support of his contention that the second Crl.O.P. filed by the petitioner herein is maintainable. The principles laid down in those decisions could be applied only considering the facts and circumstances of each case and so far as the present case is concerned, the facts are distinguishable.

15. Therefore, for the foregoing reasonings, I do not find any valid reason to entertain this Crl.O.P. Moreover, I am of the opinion that there is no merit in this case warranting this Court to give direction as prayed for in this petition. Accordingly, this Crl.O.P. is dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Director of Vigilance and

Anti-Corruption (DVAC),

NCB-21-28, P.S.Kumarasamy Raja Salai,
(Greenways Road), Raja Annamalaipuram,
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2. The Joint Director,

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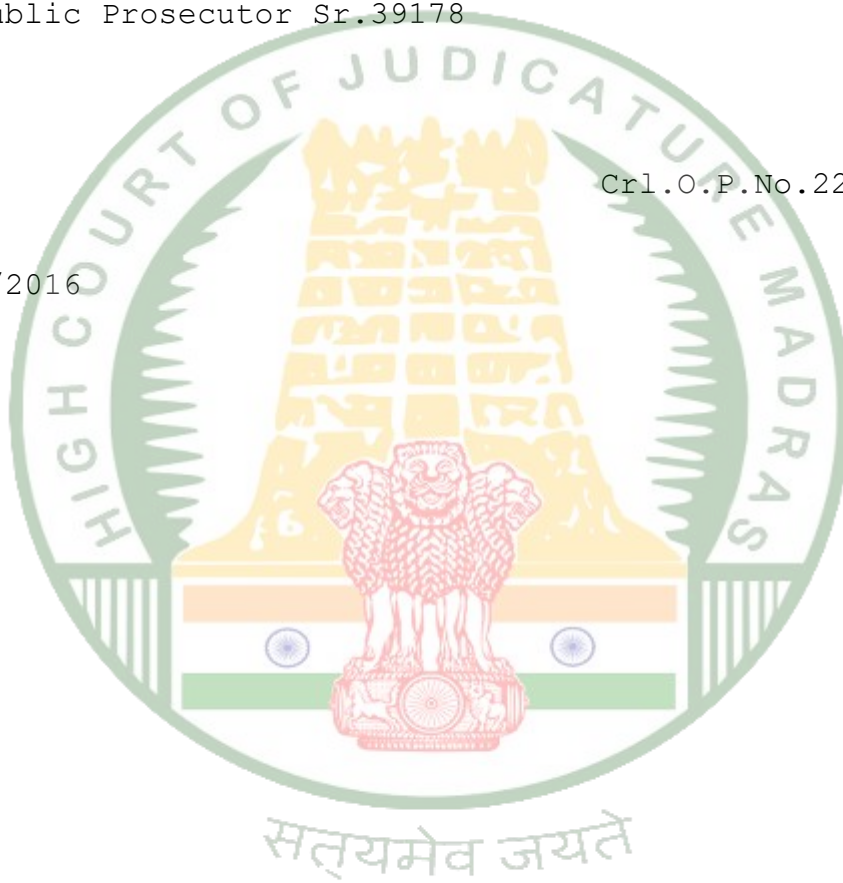
3. The Public Prosecutor,
High Court,
Madras.

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

+lcc to Mr.N.Subramaniyan, Advocate Sr.39400
+lcc to Public Prosecutor Sr.39178

Cr1.O.P.No.22953 of 2015

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