

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2016

CORAM

THE HON'BLE Mr.JUSTICE P.N.PRAKASH

W.P.No.40700 of 2016

1. V.Lingeswari Vidya
2. V.Jagath Prasad
3. V.Manjeshwar Ramkanth
4. V.Kumudha .. Petitioners

Vs.

1. The Commissioner of Police,
Egmore, Chennai-8.
2. The Deputy Commissioner of Police,
Chennai.
3. The Inspector of Police,
CCB-II, Team-26,
Land Grabbing Special Branch-II,
Vepery, Chennai-7.
4. V.Sankari Leela Devi
5. B.Gopalakrishnan
6. P.Boominathan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records relating to the third respondent dated 02.09.2016 and to quash the same and consequently direct the third respondent to register the complaint vide C.No. 3565/CCB/Visitors/2016 dated 08.08.16.

For Petitioners : Mr.S.Vijayakumar
For R1 to R3 : Mr.C.Emalias, APP

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ORDER

This petition has been filed to quash the order dated 02.09.2016 passed by the third respondent and to direct the third respondent to register the complaint vide C.No. 3565/CCB/Visitors/2016 dated 08.08.16.

2. Today, Ms.M.R.Manjula, Inspector of Police, Team-26, CCB, is present before this Court.

3. Heard Mr.S.Vijayakumar, learned counsel for the petitioners and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondents 1 to 3.

4. One Jagath Prasad, the second petitioner herein, gave a complaint dated 08.08.2016, alleging that his mother Pushpakantha died on 14.11.2004, leaving behind a property measuring 3,138 sq.ft., Plot Nos.11 and 12 in Peerkankaranai Village. It is also stated that his father Vedachalam had gone missing, in connection with which, H.C.P.No.1246 of 2011 is pending on the file of this Court. It is the case of Jagath Prasad that he and his siblings, viz., Lingeswari Vidhya [sister], Manjeshwar Ramkanth [brother] and Kumudha, who is the wife of this deceased brother Nirmal Prabhu, are the only legal heirs of their mother Pushpakantha. While so, one Gopalakrishnan has got a Power of Attorney dated 08.02.2016, registered as Document No.613 of 2016 before the SRO, Tambaram, as if it has been executed by Pushpakantha, W/o.Vedachalam and on the strength of the said Power of Attorney, a Sale Deed has been executed in favour of Gopalakrishnan on 28.03.2016, which has been registered as Document No.1698 of 2016 before the SRO, Tambaram. Hence, the FIR.

5. The Police conducted enquiry on the complaint and closed the same on 02.09.2016, on the ground that the complainant had not submitted sufficient materials to show that Pushpakantha had died on 14.11.2004 and that, he is the legal heir of Pushpakantha. Challenging the Closure Report dated 02.09.2016, the complainant, together with his siblings and deceased brother's wife, has filed the present writ petition.

6. Under normal circumstances, this Court will not sit in judicial review under Section 482 of the Code, over the Closure Report filed by the police, in the light of the law laid down by this Court in *Sugesan Transport Pvt. Ltd. Vs. The Assistant Commissioner of Police, J-2 Adyar Police Station, Adyar, Chennai-20* and another reported in 2016[5] CTC 577 : 2016-2-LW [Cr1.] 499.

7. Perhaps, to get over the law laid down in the aforesaid judgment, the petitioners have filed this writ petition challenging the closure report. In *Sakiri Vasu v. State of Uttar Pradesh and others [(2008) 2 SCC 409]*, the Supreme Court has clearly held that if a person has a grievance that his complaint has not been registered by the police, he cannot approach the High Court invoking Article 226 of the Constitution of India, but, can approach the Magistrate under Section 156(3), Cr.P.C. On this short ground alone, this writ petition is liable to be dismissed.

8. However, at the time of admission, this Court perused the death certificate of Pushpakantha, which shows that Pushpakantha, W/o Vedachalam had died on 14.11.2004, whereas, she is said to have executed a power of attorney on 08.02.2016 registered as Document No.613 of 2016 in favour of Gopalakrishnan, with which, Gopalakrishnan has sold the property. Further, the photograph of Pushpakantha in the power of attorney is obviously different from her photograph that is enclosed in the typed set of papers. These documents, which are *prima facie* available on record, did shock the conscience of this Court and therefore, this Court directed the learned Additional Public Prosecutor to get instructions from the police.

9. The complaint of the complainant, viz., the second petitioner herein, has been closed on two flimsy grounds, which have been stated in paragraph no.5 above. Even in the complaint, the complainant has stated that the original documents relating to the property are with one of his sisters, with whom, his mother Pushpakantha was staying until her death. Allegations have also been made against that sister. Thus, it is obvious that the documents that are sought by the police are with the opposite party.

10. The other ground on which the police have closed the the complaint is that the complainant has not produced any legal heirship certificate. The fact remains that Pushpakantha died on 14.11.2004 which is obvious from the death certificate. But, the power of attorney is dated 08.02.2016, which, by itself, is *prima facie* enough for the police to conduct a thorough investigation.

11. Under such circumstances, even without going into the disputed question, it is obvious to the Court that a dead person has executed a power of attorney and the closure of the second petitioner's complaint by the police on trivial grounds, does require the intervention of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. Accordingly, the closure report dated 02.09.2016 is set aside and this Court directs the second petitioner/complainant to appear before the respondent police and submit all the records, within a period of two weeks from the date of receipt of a copy of the order and the respondent police is directed to once again conduct the enquiry and proceed with the case in accordance with law, by registering an FIR, if it is found during enquiry, that there has been impersonation, as alleged in the complaint.

With the above direction, the writ petition is disposed of. No costs.

-sd-

Assistant Registrar

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Sub Assistant Registrar

gya/cad

To

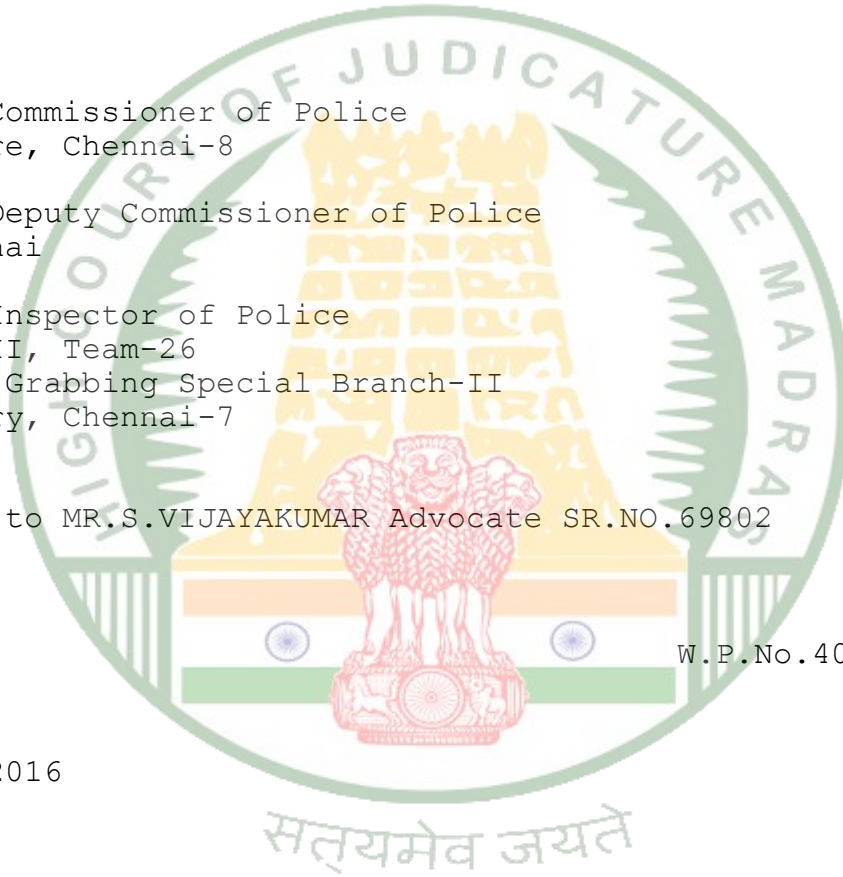
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C.C. to MR.S.VIJAYAKUMAR Advocate SR.NO.69802

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CO-SR

VS 29.12.2016



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