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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.O.P. (MD) No.24201 of 2015

P.Asir Jebaraj

... Petitioner

Vs.

1. The State represented by
the Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Tirunelveli District.

2. The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondents more particularly, the second respondent not to involve or interfere in the civil dispute and also administration of Kannanallur Village Panchayat which is fully in the nature of civil forthwith and also abstaining them from harassing the petitioner and his wife in this regard.

For Petitioner : Mr.B.Jeyakumar
For Respondents : Mr.P.Kandasamy
Govt. Advocate (Crl.side)

O R D E R

The Petitioner has focused the instant Criminal Original Petition praying for passing of an order by this Court in directing the Respondents more particularly, the Second Respondent/Inspector of Police, Vigilance and Anti-Corruption, Tirunelveli District not to involve or interfere in the civil dispute and also administration of Kannanallur Village Panchayat and also directing them to abstain from harassing the Petitioner and his wife in this regard.

2. According to the Learned Counsel for the Petitioner, the Petitioner is a Secretary of Kannanallur Village Panchayat, Tirunelveli District and his wife viz., Nirmaladevi is also a President of the Panchayat. Further, one Nagaponraj @ Ponraj, S/o. Vettumperumal, resident of Kannanallur Village had given a petition before the Respondents stating that one Manuvelraja, S/o. Ayyadurai was selected as beneficiary for the year 2010 - 2011 under Indira



Ninaivu Kudiyeruppu Thittam for allotting subsidy to construct a concrete house in his own land which is in Survey No.168/1 measuring an extent of 283.28 sq.ft. Moreover, he had availed subsidy of Rs.75,000/- at a later point of time from the Panchayat and constructed a house in the said Survey number for his own purpose.

3. The stand of the Petitioner is that on 17.05.2013, the said Manuvelraja had sold the said constructed house to one Abraham, S/o. Paramanantham (brother of the Petitioner) for a valid consideration and the same was registered with Sub Registrar Office. It is also alleged that the purchase of the said house which was constructed under the scheme is an illegal one and contrary to the terms and conditions of the scheme. As such, the said Ponraj is making allegation against the seller and buyer (including the witness in the sale document) that the purpose of the scheme is defeated and they should be prosecuted under criminal law.

4. The grievance of the Petitioner is that the said Ponraj/ Complainant belong to a rival party in the past election and lodged the present complaint for wreck vengeance against him and his wife to derail the administration of the Panchayat.

5. The Learned Counsel for the Petitioner proceeds to state before this Court that Manuvelraja was selected as beneficiary under the scheme by the then President and he constructed his house by availing hand loan for interest from a private individual to an extent of Rs.2 lakhs. Subsequently, the subsidy a sum of Rs.75,000/- was given by the Village Panchayat and the total expenses came around Rs.3 lakhs for constructing his house. It is also represented on behalf of the Petitioner that the Manuvelraja's avocation is butcher, he could not repay the interest for the hand loan availed from the private individual for constructing his house. Therefore, he became angry and approached one Abraham, S/o. Paramanantham (his classmate) and proposed to sell his house to him for valuable consideration to clear his private liabilities. Based on sympathetic ground, being a friend, the said Abraham came forward to help him by purchasing his house through sale deed dated 17.05.2013.

6. The premordial stand of the Petitioner is that the Petitioner is neither buyer nor seller of the house except the fact that he was a witness in the sale deed and further that the entire transaction is between two individuals based on their own will and volition and as such, the complainant is no way interested or concerned with the transaction and in short, he has no locus to prefer a complaint. If at all any deviation is found out, it is for the Department to take appropriate action.

7. Besides the above, the Learned Counsel for the Petitioner strenuously contends that there is no illegality or fraud or impersonation in execution of sale deed and there is no prima facie material available to show the commission of offence, but under the guise of 'enquiry', the Petitioner and his wife are harassed by the Respondents for helping the said Complainant for the reasons best known to them.



8. Advancing his arguments, the Learned Counsel for the Petitioner contends that all the documents are legally valid one and therefore, the Respondents have no jurisdiction whatsoever or right under any Law to interfere with the subject matter in issue. In fact, the Respondents acts must be curtailed by this Court by passing appropriate orders.

9. Rebelling the contentions of the Petitioner, the Learned Government Advocate (Crl.side) for the respondents 1 and 2 submits that one V.Nagaponraj @ Ponraj, S/o.Vettumperumal, 54-B Kaspas, Kannanallur, Radhapuram Taluk addressed a petition to the Director, DVAC, Chennai-28 containing an allegation against the Petitioner and his wife Nirmaladevi, President, Kannanallur Village and one Mr.P.Abraham (own brother of the Petitioner) and on the said petition, the Director of Vigilance and Anti-corruption, Chennai vide PE 382/15/RDP/HQ ordered to conduct a preliminary enquiry into the allegations contained in the petition. Continuing further, the Learned Counsel for the Respondents proceeds to take a stand that a preliminary enquiry was registered on 15.10.2015 and in the meanwhile, the Petitioner filed Crl.O.P.No.19953 of 2015 before this Court seeking direction to DVAC to investigate the matter. On 15.10.2015, this Court had observed the following:

"the learned Government Advocate (Crl.side) would submit that the petition is already under enquiry. If the enquiry discloses any commission of cognizable offence, the dictum laid down in the judgment of the Hon'ble Supreme Court in Lalita Kumari vs. Government of U.P. & others (2013(4) Crimes 243 (SC)], will be followed"

and disposed of the said petition. Only in the aforesaid circumstance, a preliminary enquiry was conducted and witnesses and documents to the allegations were contacted and collected and ultimately, a preliminary enquiry report was finalised. Moreover, based on the result of preliminary enquiry, the Director of Vigilance and Anti-Corruption, Chennai 28 in Reference No.PE382/2015/RDP/HQ, had ordered to register a case and pursuant thereto, a case in Tirunelveli V&AC Crime No.1/16 under Section 13/2 r.w.13(1)(d) of Prevention of Corruption Act, 1988, under Sections 406 and 109 of I.P.C. r/w. Section 13(2) r/w. Section 13(1)(d) of the PC Act was registered on 04.01.2016. As on date, the investigation is under progress.

10. The forceful stand of the Respondent is that examining the Petitioner and other connected investigation is part of a preliminary enquiry and collection of documents also is a continuation of this preliminary enquiry process and as such, the same cannot be characterised in any way as torture or harassment and as the case may be.

11. While winding up it is the submission of the Learned Government Advocate (Crl.side) for the respondents that the relief sought for by the Petitioner in the main Criminal Original Petition is devoid of merits and prays for dismissal of the petition in limine.



12. This Court has heard the Learned Counsel for the Petitioner and the Learned Government Advocate (Crl.side) for the respondents.

13. As far as the present case is concerned, a preliminary enquiry in PE382/2015/RDP/HQ was ordered to be conducted in regard to the allegations contained in the petition of one V.Nagaponraj (Complainant) and also the Petitioner has approached this Court in Crl.O.P.No.19953 of 2015, seeking for issuance of necessary direction to DVAC to investigate the matter and accordingly on 15.10.2015, this Court had *inter alia* stated that the petition was already under enquiry and if the enquiry discloses any cognizable offences, thus dictum of the judgment of the Honourable Supreme Court (**Lalita Kumari vs. Government of U.P. & others** reported in **(2013 (4) Crimes 243 (SC)**) would be followed and disposed of the Criminal Original Petition in those lines. Furthermore, the preliminary enquiry was conducted and based on the conclusion of preliminary enquiry report, a case in Tirunelveli V&AC Crime No.1/2016 was registered on 04.01.2016 under Sections 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 etc., and that the investigation of the said case is reportedly under progress.

14. In the light of the above, it is latently and patently evident that the registration of a case in Tirunelveli V&AC Crime No.1/16 under various Sections of Prevention of Corruption Act, 1988 and other relevant Sections of I.P.C., r/w. P.C. Act, 1988, referred to supra cannot be by any means termed as one of either harassment or torture as the case may be.

15. In the considered opinion of this Court, even the examination of the Petitioner and other connected persons will be an integral part of a preliminary enquiry and gathering of necessary documents/collection of documents is only an act of continuation of a preliminary enquiry.

16. Viewed in that perspective and looking at from any angle and also this Court on an overall assessment of the facts and circumstances of the present case in a conspectus fashion, comes to an irresistible and inevitable conclusion that the relief sought for by the Petitioner in the Criminal Original Petition viz., for issuance of directions to the Respondents more particularly, the Second Respondent not to involve or interfere in the civil dispute etc., cannot be acceded by this Court. Resultantly the Criminal Original Petition sans merits.

17. In fine, the Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar



To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Tirunelveli District.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+lcc to Mr.B.Jeyakumar, Advocate Sr.No.893

akm/22.01.2016/ 5p- 5c/AAL/MPA

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