

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24971 of 2017

Dr.V.Alaguraju ... Petitioner/Accused

Vs.

State rep.by its
The Deputy Superintendent Police,
Vigilance and Ant-Corruption Wing,
No.1164, Thendral Nagar Main Road,
Vengikkal,
Thiruvannamalai – 606 604. ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the F.I.R. filed by the respondent police in F.I.R/Crime No.7 of 2017 dated 04.07.2017, pending on the file of the Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, Thiruvannamalai and quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for M/S.P.K.Rajesh Praveen Kumar
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

* * * * *

ORDER

This Criminal Original Petition is filed to call for the records relating to the F.I.R. filed by the respondent police in F.I.R/Crime No.7 of 2017 dated 04.07.2017, pending on the file of the Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, Thiruvannamalai and quash the same.

2. Normally, Court never use to entertain petition to quash the First Information Report unless there is a flagrant violation of law and the material which has given rise to register the complaint is patently an out come of *mala-fide*. This Court finds that this is one such case where the Court interference is required.

3. Dr.V.Alaguraju, former Designated Officer in Food Safety and Drug Administration Department, Thiruvannamalai is the petitioner herein. The case against him was registered by the respondent police alleging that the petitioner herein while he was functioning as Designated Officer during the year 2014-2015, inspected Hotel Ashok, owned by Mr.Jaisankar, on 16.02.2015, pursuant to his application for renewal of his hotel license. Having

found certain lapses and violation, he directed the proprietor of Hotel Ashok to rectify the lapses.

4. Despite carrying out the instruction given by the petitioner herein and duly intimating to the authorities by way of compliance report dated 26.02.2015, the petitioner alleged to have demand bribe of Rs.50,000/- for renewal of hotel licence. Hence, Jaisankar had given a bribe against the petitioner alleging demand of this complaint received by the police on 01.11.2016 and F.I.R. is registered on 04.07.2017. Meanwhile, the petitioner herein had attained superannuation on 30.04.2017 and retired from service.

5. From the records, this Court finds that Hotel Ashok, Tiruvannamalai had applied for extension of renewal of his hotel licence which likely to expire on 21.10.2015. The renewal application dated 13.01.2015 has been acted upon by the petitioner, by inspecting his hotel and recorded certain lapses. While the renewal of licence is pending, the hotel management has approached the Commissioner of Tamil Nadu Food Safety and Drug Administration, Chennai and the Commissioner had directed the petitioner herein to renew the hotel licence. The said order does not disclose why the superintendent

power of the commissioner being exercised without ascertaining the fact whether the lapses and defects in maintaining hygiene of the hotel rectified or not.

6. However, the records also reveals that the petitioner herein in response to the direction of the Commissioner of the Food Safety has send a reply to the commission vide letter dated 09.07.2015, informing the Commissioner that on 09.01.2015, Mr.Jaisankar of hotel Ashok, Tiruvannamalai applied for renewal of his licence for five years through online. He inspected the hotel on 13.02.2015 and found various deviation in Food Safety measures. Listing out of such deviation, he has informed the hotel management to rectify the lapses. The management, vide its letter dated 11.03.2013, informed him that all the mistakes have been rectified. Therefore, again he inspected the hotel on 13.02.2015 and found no improvement in the defects pointed. Hence, he rejected the request of renewal of licence vide letter dated 27.03.2015. Unless, the applicant make the defects cured and improve the hygiene of hotel, renewal of licence cannot be granted.

7. It is pertinent to note that the Commissioner of Food

Safety and Drug Administration, vide its letter dated 20.04.2015, has just taken a note of the complaint given by the Hotel Ashok, Thiruvannamalai that the licence not been renewed and had issued direction to renew the licence with trace of threat that if the petitioner fails to renew licence, the department will take action against him. Despite, the threat, the officer has stood by his foot that the hotel lacks hygiene and licence cannot be renewed.

8. The learned Senior Counsel appearing for the petitioner also brought to the notice of the Court that the defacto complainant failed in influencing the higher official, so to get his licence renewed by way of public interest litigation, W.P.No.36511 of 2015 was filed. Wherein one Chinnayan claiming himself as public litigant had sought for action against the petitioner herein. However, this Court has found the foul play of the defacto complainant and has dismissed the public interest litigation with a note that the petition is only a proxy litigation and initiated at the behest of third party which is restaurant / hotel claiming licence which has not been granted and seeking to pressurise the officer concern through the process of this private interest litigation.

9. Unrattled by the condemnation of the first bench of this Court, the proxy had however manage to influence the investigating agency to register the complaint after lapse of more than two years from the date of alleged occurrence. By that time the officer has attained superannuation and allowed to retire. To enhance his falsehood, the said Jaishankar has taken the company of his colleague. Another hotel owner, who is the secretary of hotel owner's association, to say that the petitioner received Rs.10,000/- as bribe to renew his hotel licence during the year 2015 and he had no other go but to run his hotel business, so he gave bribe of Rs.10,000/-. Based on the allegation of Jaishankar, President, Tiruvannamalai Town Hotel owners' association and the statement of one Chinnayan, Secretary of the association and proprietor of Hotel Kannan, the present F.I.R. has been registered on 04.07.2017.

10. The learned Additional Public Prosecutor referring the counter filed by the respondent and submitted that one C.Thamaraiselvi approached this Court by way of criminal original petition under Section 482 Cr.P.C., CrI.O.P.No.10083/2016, claiming herself as the Secretary, Naadi Varuvoorkku Oodi Sendru Uthavaum Pothu Nala Sevai Maiyam. Wherein, she has sought direction of this

Court to register the complaint against the petitioner herein who alleged to have demanded Rs.50,000/- bribe from the management of Hotel Ashok for renewal of licence. This petition was taken up for consideration by this Court and order was passed on 05.07.2016.

11. Therefore, pursuant to this development, the prosecution has taken up the complaint and after preliminary enquiry, F.I.R. has been registered on 04.07.2017.

12. In view of the above submission made by the learned Additional Public Prosecutor, this Court perused the order passed by this Court in CrI.O.P.No.10083/2017 dated 05.07.2016. From that order, this Court would infer that the complaint has been given to the Directorate of Vigilance and Anti-Corruption by Thamaraiselvi on 14.03.2016. Based on this complaint direction petition has been filed in this petition. She has alleged that the petitioner herein demanded Rs.50,000/- as bribe from the management of Hotel Ashok. When the owner of Hotel Ashok had not come forward to give any complaint about the demand of bribe, at that point of time, how this Thamaraiselvi claiming herself as Naadi Varuvoorkku Oodi Sendru Uthavum Pothu Nala Sevai Mayam, came to know about this and

wanted criminal law into set the motion is not great secret because the person Chinnayan who moved the public interest litigation is none other than the husband of Thamaraiselvi. The proxy of the first Division Bench, while disposing the writ petition filed by Chinnayan has rightly pointed out that the said petition is filed by proxy for third party which is restaurant/hotel claiming licence. So it very palpable from the records, the complaint of Jaishankar proprietor Hotel Ashok, Tiruvannamalai is out come of malice and to wreck vengeance on the petitioner herein, who wanted the said defacto complainant to maintain his hotel in hygiene condition. Having failed in his attempt to get his hotel licence renewed by pressurising the petitioner herein through the Commissioner Food Safety and Drug Administration, the petitioner had been transferred from Tiruvannamalai to some other place before his retirement and the said Jaishankar has got his licence renewed from the new incumbent. Thereafter, he has filed the public interest litigation through one Chinnayan but failed. After dismissal of the writ petition filed under grab of public interest litigation, through the wife of Chinnayan under criminal jurisdiction petition has been filed to register the complaint dated 14.02.2016, that petition was also dismissed. Recording the statement of the respondent made in the counter affidavit that they will take necessary action after receiving the

complaint.

13. Reading the records placed before this Court by the petitioner as well as the respondent police, this Court finds no *prima facie* material to proceed against the petitioner herein. From the reading of F.I.R. this Court finds that there are two persons alleged to have been aggrieved by the demand made by the petitioner. One is Jaisankar, proprietor of Hotel Ashok and other one is Mr.N.Chinnayan, proprietor of Hotel Kannan. Neither of them had filed complaint before the appropriate authority immediately or within reasonable time. The complaint alleged to have been received for registering the F.I.R. is dated 01.11.2016. This is much after they failed in their attempt through public interest litigation and petition for direction through third party. The very registration of the criminal case bristles with malice, therefore liable to be quashed.

14. Accordingly, the criminal original petition allowed. The F.I.R.No.7 of 2017 on the file of respondent is hereby quashed.

15.12.2017

AT
Index: Yes/No

Dr.G.JAYACHANDRAN,J.

AT

To

1. The Deputy Superintendent Police,
Vigilance and Ant-Corruption Wing,
No.1164, Thendral Nagar Main Road,
Vengikkal,
Thiruvannamalai – 606 604.
2. The Public Prosecutor,
High Court, Madras.

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