

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2016

PRONOUNCED ON : 31.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.OP.No.29455 of 2015

Anti Corruption Movement
Rep. by its General Secretary, V.R.Chandran
55, Konnur High Road,
Ayanavaram, Chennai-23.Petitioner

Vs.

1.The Director of Vigilance and
Anticorruption (DVAC)
NCB, 21 - 28, P.S.Kumarasamy Raja Salai,
(Greenways Road), Raja Annamalaipuram,
Chennai-28.

2.The Joint Director,
Central Bureau of Investigation
South Zone, 3rd Floor, Sastri Bhavan
No.26, Haddows Road,
Nungambakkam, Chennai-6.Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code, to direct the 2nd respondent or any other police authority to register FIR and investigate the same based upon the complaint given by the complainant on 30.10.2015 and 18.11.2015 u/s.13(1)(d) r/w.13(2) of PC Act and u/s.409 and 467 of IPC as well as u/s.44 and 37 respectively of Water (Prevention of Control of Pollution) Act, 1974 and the AIR (Prevention and Control of Pollution) Act 1981 against the said Dr.K.Karthikeyan and u/s.218 of IPC against the concerned incumbent of the 1st concerned and the other police officers of 1st respondent, whose names not known, and Mr.Hans Raj Verma, IAS the Principal Secretary to Government of Tamilnadu and his staff whose names not known, and to pas further order.

For Petitioner :Mr.N.Subramaniyan
For respondents:Mr.R.Rajarathinam, PP
Assisted by R.Ravichandran,
GA for R1.
Mr.K.Srinivasan, SPP for CBI - R2.

O R D E R

This Criminal Original Petition is directed to register FIR and investigate the same based upon the complaint given by the complainant on 30.10.2015 and 18.11.2015.

2. The petitioner filed the present petition in the capacity of General Secretary, Anti Corruption Movement registered under the Tamil Nadu Societies Registration Act, 1975 bearing No.349 of 2001, filed the present petition to register the FIR based on the complaint dated 30.10.2015 and 18.11.2015. The petitioner has also filed several Public Interest Litigations before this Court in the capacity of General Secretary of the Movement.

3. The members of the movement came to read the judgment of this Court dated 23.01.2015 in WP.No.24003 of 2014 and came to understand that an enquiry was conducted by the respondent against the accused and the first respondent had found in Para 29 of the judgment that the accused Dr.K.Karthikeyan had issued consent orders to the industries for a period more than one for which consent fees were received, thereby the industries were allowed to function without getting consent order for the additional year and without paying any consent fee therefor, which is blatant violation of the law stipulated therein. Thus, the accused caused pecuniary advantage to the industries as well as loss of revenue to the TNCPB. The above facts would reveal that the accused was holding the post of District Environmental Engineer, had abused his position deliberately and caused undue pecuniary advantage to the said industries by issuing consent for the excess period without collecting the fees, which is patently a criminal misconduct defined under Section 13(1)(d) of Prevention of Corruption Act which is punishable under Section 13(2) of the Act. While concluding, the police officer, conveniently ignored the phrase "pecuniary advantage to any other person" as obtaining under Section 13(1)(d) to save the accused from the criminal prosecution. Unfortunately, the first respondent accepted the conclusion of the investigating officer by ignoring the mandatory provisions of Section 13(1)(d) of the PC Act and recommended for departmental action against the accused officer without prosecuting the accused by registering FIR. Thus, the

first respondent and the inspector who prepared the report were acted contrary to law, abusing the powers to save the accused from criminal prosecution, thereby committed an offence punishable under section 218 of IPC.

4. The above criminal offences committed by the accused are being wrapped under the carpet without prosecuting under penal laws, the petitioner forwarded detailed complaint dated 30.10.2015 stating that how the accused had committed offences. The police officers and the Secretary to the Government and others have committed the offence under Section 218 of IPC and the complaint was received by the first respondent and refused to register the FIR. Further, the petitioner had come across that similar offences committed by the accused in issuing consent orders to other industries and the same is also informed to the first respondent in the complaint dated 30.10.2015 and 18.11.2015. The judgment of this Court dated 23.01.2015, GO.(D).No.3 dated 05.01.2015 and the affidavit filed in support of WP.No.18554 of 2015 would disclose that the accused have committed the said offences and the incumbents of the first respondent and Mr.Hans Raj Verma and his incumbents have committed the offence under Section 218 IPC and it is just and necessary to register a criminal case against them and prosecute them in accordance with law.

5. The provisions under Section 154 CPC mandates that a police officer shall register FIR on receipt of information as to commission of Cognizable offence and the Supreme Court in the judgment reported in (2014) 2 SCC 1 - Lalitha Kumari V. Government of Uttar Pradesh and others have categorically declare that the police has no option except to register FIR on receipt of information disclosing commission of cognizable offence. Further, the 1st respondent has been declared as police station by the State Government, therefore, the first respondent is duty bound to register the complaint sent by the petitioner forthwith, but failed to do so for the reasons known, may be due to influence of the accused persons who are all working as high level police officer even some of the officials are working under the first respondent, the said refusal to register the FIR is nothing but contempt of the directions of the Supreme Court laid down in the Lalitha Kumari case. The respondent being the police officer and Secretary to Government failed to take action against the accused and instead gone to the extent of framing incorrect records to protect them and hence it is just and necessary for this Court to entrust the investigation to any other investigative agency or CBI for fair investigation.

6. The first respondent filed counter, the averments made in the Counter is as follows : - This petition seeks direction of to register the criminal case against Dr.K.Karthikeyan, formerly Joint Chief Environmental Engineer, Tamil Nadu Pollution Control Board (TNPCB) and presently Member Secretary and some officials of the respondent and some officers of the Government on the allegations that Dr.K.Karthikeyan had issued 'consent to operate' to some companies in violation of TNPCB resolutions, the officers of the respondent had conducted a detailed enquiry and recommended for Departmental Action instead of registering a criminal case against him and the concerned officers, who had conducted departmental enquiry and who had processed the files had prepared incorrect records leading to his exoneration by the Government. The Vigilance Commission accepted the Final Report of the first respondent dated 07.08.2014 and forwarded the same to the Government for taking departmental action against Dr.K.Karthikeyan. The issue is the subject matter of the pending civil appeal in CA.Nos.8025-8026/2015. The present petition filed by the petitioner is not maintainable at this stage, as the very same issue is to be gone into by the Supreme Court, till the disposal of the appeal, it may not be appropriate to consider the allegations made by the petitioner. Hence, the present petition is liable to be dismissed.

7. Heard the rival submissions made on both sides and perused the available records.

8. The learned counsel for the petitioner would submit that the first respondent is stressing their DVAC Manual for refusing to register the complaint of the petitioner in their report dated 08.11.2016. In both the complaints the petitioner drawn the attention of the first respondent about the decision of the Hon'ble Supreme Court reported in (2014) 2 SCC 1 - Lalitha Kumari V. Government of Uttar Pradesh and others which is binding on the first respondent as per Article 141 of the Constitution of India, the first respondent has no option except to register FIR on receiving information as to commission of cognizable offence and even if the first respondent found the allegations do not disclose commission of cognizable offence, then the petitioner ought to have been informed about the same. Whereas, the petitioner has not been informed with reference to the complaint given by the petitioner. Further, it is submitted that the guidelines given in the Lalitha Kumari case has not been duly complied with by the first respondent. Further, it is also submitted that at all levels of the Government and at all

levels of police are interested to safeguard the accused from the criminal prosecution. It is a fit case and also the rarest of the rare case, where the Court should exercise its inherent power to direct the second respondent to register the FIR based on the complaints of the petitioner dated 30.10.2015 and 18.11.2015.

9. The learned counsel for the respondent would submit that on 08.10.2012, the Vigilance Intelligence sent a report to the Vigilance Commission seeking concurrence to initiate detailed enquiry against Dr.K.Karthikeyan and sanction was accorded on 16.10.2012. The investigating officer filed final report recommending departmental action against Karthikeyan for the lapses and for violation of conduct rules. One V.Anbalagan filed WP.19996 of 2014 seeking direction to the Government not to consider Dr.K.Karthikeyan for the post of Member Secretary, TNPCB. Dr.K.Karthikeyan was appointed as Member Secretary, TNPCB vide GO.MS.No.83, Environment and Forest (EC-2) Department, dated 25.07.2014. Final report of the first respondent was accepted and forwarded to the Government for taking departmental action against Dr.K.Karthikeyan. Once again, V.Anbalagan, filed WP.No.21397 of 2014 to call for records relating to the appointment of Dr.K.Karthikeyan as Member Secretary, TNPCB and prayed to quash the appointment, thereafter, filed another writ of quo warranto in WP.No.24003 of 2014, challenging the appointment of Dr.K.Karthikeyan as Member Secretary, TNPCB. The WP.Nos.19996 of 2014 and 21397 of 2014 were dismissed as withdrawn. On 20.09.2014, the investigating officer of the first respondent handed over the entire records to the Government for proceedings with the departmental enquiry. The Government also addressed to the first respondent stating that departmental enquiry was initiated by framing five charges, three charges out of five are proved and sought for remarks of the first respondent on the findings of the enquiry in the departmental action and to continue with the same. The recommendation of the first respondent were already covered and requested the Government to continue with the departmental action. After giving opportunity to Dr.K.Karthikeyan, the Government passed GO. (D).No.3 of Environment and Forests (EC-2) Department dated 05.01.2015.

10. In the meanwhile, this Court allowed the WP.No.24003 of 2014 by setting aside the appointment of Dr.K.Karthikeyan on the ground that the facts of pending departmental enquiry before the first respondent and the same was not brought on records before the competent authority. During the proceedings, the Draft final report was sent by the first respondent to the Government through

Vigilance Commission and the relevant communications with the Government were produced before this Court. Subsequently, Dr.K.Karthikeyan, filed WA.No.112 of 2015 against WP.No.24003 of 2014. The Government of Tamil Nadu also filed another writ appeal in WA.No.117 of 2015 against the order of WP.No.24003 of 2014. This Court on 24.04.2015, dismissed both the writ appeals in WA.Nos.112 and 177 of 2015 and upheld the order of this Court in WP.No.24003 of 2014. Thereafter, Dr.K.Karthikeyan filed SLP (Civil) No.14587 - 14588 of 2015 before the Hon'ble Supreme Court against the Common judgment of this Court made in both the writ appeals. The SLPs were converted into Civil Appeal in Appeal Nos.8025-8026 of 2015 and also stayed the judgment of this Court in writ appeals.

11. One R.Sarasavani, Environment Engineer, Tamil Nadu Pollution Control Board, filed WP.No.18554 of 2015 seeking to quash the GO.(D).3 of Environment and Forest Department, by which the Government dropped all the charges against Dr.K.Karthikeyan, this Court dismissed the said writ petition on 26.06.2015. During the pendency of the civil appeal before the Hon'ble Supreme Court, it may not be appropriate to consider the allegations made by the petitioner, on this ground alone the petition is not maintainable and the same is liable to be dismissed. The respondent had already conducted a detailed enquiry in DE.114/2012/TNPCB/CC-III, against Dr.K.Karthikeyan and recommended for departmental action against him and subsequently, departmental enquiry was conducted and further action was dropped by the Government vide GO.(D). No.3, Environment and Forest (EC 2) Department dated 05.01.2015.

12. On perusal of the records, the complaint was preferred against Dr.k.Karthikeyan and he was recommended for departmental enquiry. Writ petition was filed by one V.Anbalagan in WP.No.24003 of 2014 challenging the appointment of Dr.K.Karthikeyan as Member Secretary, Tamil Nadu Pollution Control Board. This Court allowed the writ petition in WP.No.24003 of 2014 on 23.01.2015, by setting aside the appointment of Dr.K.Karthikeyan as Member Secretary, TNPCB. Against which, both Dr.K.Karthikeyan and the Government of Tamil Nadu filed WA.Nos.112 of 2015 and 177 of 2015, respectively. By a common judgment dated 24.04.2015, this Court, dismissed both the appeals and upheld the order of this Court in WP.No.24003 of 2014. Aggrieved against the said judgment, Dr.K.Karthikeyan filed SLP (Civil) No.14587-14588 of 2015, before the Hon'ble Supreme Court. On 24.09.2015, the Hon'ble Supreme Court converted the SLPs to Civil Appeal Nos.8025-8026 of 2015 and stayed the common judgment of this Court. Now, the

subject matter is pending before the Apex Court, since the matter is relating to the same offences, though, it is challenging the appointment of Dr.K.Karthikeyan, the background for challenging the same is also the same grounds raised by the petitioner in this petition.

13. In this regard, it is relevant to refer the main relief sought for in this petition is that directing the second respondent or any other police authority to register FIR and investigate the same based upon the complaint given by the complainant on 30.10.2015 and 18.11.2015 under Section 13(1)(d) r/w.13(2) of PC Act and u/s.409 and 467 of IPC as well as u/s.44 and 37 respectively of Water (Prevention of Control of Pollution) Act, 1974 and the AIR (Prevention and Control of Pollution) Act 1981 against the said Dr.K.Karthikeyan and u/s.218 of IPC against the concerned incumbent of the 1st concerned and the other police officers of 1st respondent, whose names not known, and Mr.Hans Raj Verma, IAS the Principal Secretary to Government of Tamil Nadu and his staff whose names not known.

14. The objection raised by the respondent is that the petitioner had sent two complaints on 30.10.2015 and 18.11.2015 demanding registration of criminal cases against Dr.K.Karthikeyan, after the Hon'ble Apex Court had granted leave to Special Leave Petition (SLPs) filed by Dr.K.Karthikeyan against the order of this Court quashing his appointment on the ground that the pendency of the departmental enquiry and the enquiry by the respondent were not brought to the notice of the appointing authority and after the Hon'ble Apex Court had 'stayed' the impugned order of this Court. It is also further submitted that complaint seeking registration of a criminal case against Dr.K.Karthikeyan were sent to this respondent and the complaint seeking direction to register a criminal case against Dr.K.Karthikeyan has been preferred after the said Dr.K.Karthikeyan has taken a plea in the SLPs filed by him that no criminal case has been registered against him.

15. The complainant has preferred complaints on 30.10.2015 and 18.11.2015 based on the judgment of this Court dated 23.01.2015 in WP.No.24003 of 2014. On perusal of the material documents reveal that against the order of this Court Dr.K.Karthikeyan filed Writ Appeal in WA.No.112 of 2015 on 27.01.2015 and the Government of Tamil Nadu also filed Writ Appeal in WA.No.177 of 2015 on 04.02.2015, before this Court and both the appeals were dismissed by this Court vide its Common Order on 24.04.2015. Against the said common order Dr.K.Karthikeyan had filed special leave petition in SLP (Civil) No.14587 - 14588 of 2015

before the Hon'ble Apex Court. The first respondent has been arrived as fifth respondent in the SLP. The Hon'ble Apex Court in its order dated 24.09.2015 granted leave and stayed the operation of the Common Order. When the stay is in force, the complainant has filed the above said two complaints. The subject matter of the detailed enquiry is also part of the proceedings in the pending Civil Appeal Nos.8025-8026 of 2015, before the Hon'ble apex Court.

16. Hence, this criminal original petition is not maintainable at this stage. The petitioner is at liberty to approach the respondents only after outcome of the pending Civil appeal before the Hon'ble Supreme Court. Since, the matter is sub-judice with the Hon'ble Supreme Court, the present petition is liable to be dismissed and the same is hereby dismissed.

17. In fine, the criminal original petition is dismissed, with the above said direction.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Vigilance and Anticorruption (DVAC)
NCB, 21 - 28, P.S.Kumarasamy Raja Salai,
(Greenways Road), Raja Annamalaipuram, Chennai-28.

2. The Joint Director, Central Bureau of Investigation
South Zone, 3rd Floor, Sastri Bhavan
No.26, Haddows Road, Nungambakkam, Chennai-6.

3. The Public Prosecutor,
High Court, Madras.

CR1.OP.No.29455 of 2015

sk[co]

srg 14/2/2017