

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.08.2017

Pronounced on : 31.08.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.No.17873 of 2017
& CrI.OP No.13774 of 2017
and
WMP.No.19402 of 2017 &
CrI.M.P.No.8854 of 2017

S.Santhosh Kumar .. Petitioner in both W.P. & CrI.O.P.

Vs.

- 1.The Superintendent of Police,
Kancheepuram District,
Kancheepuram. .. Respondent in both W.P. & CrI.O.P.
- 2.The Inspector of Police,
B-1, Siva Kanchi Police Station,
Kancheepuram. .. Respondent in both W.P. & CrI.O.P.
- 3.The Inspector of Police,
B-5 Walajabad Police Station,
Kancheepuram District. .. Respondent in both W.P. & CrI.O.P.
- 4.The Chief Immigration Officer,
Bureau of Immigration,
Chennai International Airport,
Chennai. .. Respondent in W.P.

Prayer in W.P.:Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus forbearing the respondents from preventing the petitioner from getting his UK Visa extended for pursuing petitioner's further studies in United Kingdom.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to quash the entire proceedings in Cr.No.496 of 2017 (pending investigation) on the file of the second respondent police, the Inspector of Police, B1 Siva Kanchi Police Station.

For Petitioner :Mr.Shanmugasundaram, Sr. C
for Mr.R.Sunilkumar in W.P.
for Mr.V.Purushothaman in CrI.O.P.

For Respondents :Mr.R.Rajarathinam,
State Public Prosecutor
Assisted by Mr.P.Govindarajan, APP
& by Mr.D.Vairamoorthy, Spl. GP (WP)

ORDER

The petitioner's father has been declared to be a proclaimed offender by the learned Judicial Magistrate-I, Kancheepuram from 02.08.2016 since there are about 35 cases pending against him between the years 1999 and 2016 and in order to secure him, a Look Out Circular Notice has been issued to the Immigration Check Post in the year 2013 and the Interpol has also issued a Red Corner Notice in this regard.

2.In the year 2016, a Look Out Circular Notice was issued against this petitioner to obtain the details of the property which were purchased by his father through criminal intimidation and threat for exposing his role in those transactions. In this background, when the petitioner arrived at the International Airport

at Chennai on 08.07.2017, he was intercepted by the Special Team and his laptop and two i phones were seized. The petitioner was served with a summon requiring him to appear for an enquiry on 09.07.2017. According to the respondents, the petitioner did not co-operate with the enquiry and hence, a case was registered in Cr.No.496 of 2017 under Section 174 Cr.P.C. Challenging the FIR in Cr.No.496 of 2017, the petitioner has filed the present Criminal original petition to quash the investigation. Since the petitioner had alleged that the respondents were preventing him from getting a visa to visit the UK, the above writ petition in W.P.No.17873 of 2017 has been filed.

3.Heard Mr.R.Shanmugasundaram, learned Senior counsel for the petitioner as well as Mr.R.Rajarathinam, learned Public Prosecutor for the State assisted by Mr.P.Govindarajan, learned Additional Public Prosecutor and Mr.D.Vairamoorthy, learned Special Government Pleader.

4.Admittedly, the petitioner has been implicated in Cr.No.496 of 2017 since he has not co-operated with the respondent police in the enquiry which was for the purpose of securing information about the whereabouts of the petitioner's father. During the course of hearing in the aforesaid Criminal

Original Petition as well as the Writ Petition, this Court vide orders dated 14.07.2017, 18.07.2017 and 01.08.2017, had permitted the respondent police to enquire the petitioner from 02.08.2017 to 09.08.2017. It is revealed that during the course of such enquiry, the respondents could not get any incriminating information. However, based on the statement of one R.Jagadish Kumar, the respondent had registered a case in Cr.No.546 of 2017 dated 08.08.2017 for the alleged offences under Sections 341, 294(b), 384 & 506(i) IPC.

5.The learned Public Prosecutor appearing on behalf of the State submitted that since a criminal case has been filed against the petitioner, he should not be permitted to leave the country pending investigation.

6.The learned Senior counsel appearing for the petitioner on the other hand submitted that the FIR itself has been made with the mala-fide intention only for the purpose of preventing the petitioner from leaving the country and that no offence is made out on the basis of the first information received against him. The learned Senior counsel further submitted that though the FIR is alleged to have been registered on 08.08.2017, the same has not been taken on file by the concerned jurisdictional Magistrate and

therefore, the date of FIR has been manipulated and forged. With regard to the case in Cr.No.546 of 2017 is concerned, admittedly, the FIR has not been filed before the concerned Jurisdictional Magistrate.

7. In this background, it is pertinent to mention that in an identical circumstance, the petitioner's sister namely, S.Dhanalakshmi had come to India, she was also issued with a Look Out Circular Notice and consequently was prevented by the respondents from proceeding to London to continue her studies. When the said action was challenged, this Court by an order dated 14.03.2016 in W.P.No.7653 of 2016, had directed the respondents to refrain from preventing the petitioner's sister to leave the country. The relevant portion of the said order is as follows:

"11. It is seen from the records that the petitioner has been detained only on the ground that her father is involved in many criminal cases and his whereabouts are not known. However, in order to secure the presence of the father of the petitioner, detaining the petitioner from proceeding to abroad to pursue her higher studies is not justified. In my considered opinion, the petitioner has been detained only to ensure that her father comes out of his hideout, if she is detained from proceeding abroad. Such a

course adopted by the respondents is not in accordance with law. If the petitioner has committed any offence, she can be prosecuted. Even if the petitioner is facing any criminal proceedings, subject to certain terms and conditions, she can be permitted to go over abroad. Even such a course has not been adopted in this case. As rightly pointed out by the learned senior counsel for the petitioner, the respondents, after taking time for filing counter in this writ petition, have submitted a report to the learned Judicial Magistrate No.I, Kancheepuram on 10.03.2016 praying to implicate the petitioner also as an accused in Crime No. 117 of 2016. It is seen from the records that the learned Judicial Magistrate No.I, Kancheepuram refused to accept such a plea inasmuch as there is no materials made available to connect the petitioner also as an accused. At any rate, the filing of the report dated 09.03.2016 on 10.03.2016 before the learned Judicial Magistrate No.I, Kancheepuram to implead the petitioner also as an accused in Crime No. 117 of 2016 is certainly an after-thought invented by the respondents 3 and 4 to some how or the other prohibit the petitioner from proceeding out of India to pursue her higher studies. As regards the plea of the petitioner, the petitioner enclosed the details with regard to her pursuing B.B.A. Course with University of Essex, United

Kingdom wherein it is clearly stated that the petitioner is pursuing her last year of the B.B.A. Course during the academic year 2013-2016.

12. In the decision relied on by the learned senior counsel for the petitioner in (Arockia Jeyabalan vs. The Regional Passport Officer, Mount Road, Chennai and others) 2014 4 Law Weekly 841 this Court had an occasion to consider that validity of the lookout circular. In that case, based on the look out notice issued by the respondents therein, the petitioner therein was arrested and remanded to judicial custody. Thereafter, the petitioner therein was released on bail. Therefore, it was held that the object of the Look out Circular is to ensure the presence of a person for interrogation, trial or inquiry and when the purpose of such circular is served by interrogating the person, thereafter, such circular is non-est in the eye of law. Even in this case, the petitioner was subjected to enquiry at length by the fourth respondent and therefore, keeping the look out notice in force is impermissible.

In the light of the above, the writ petition is allowed. No costs. The respondents are directed not to prevent the petitioner from proceeding to London to continue her studies and the Look Out Circular issued by the

second respondent need not be enforced against the petitioner. However, the petitioner is directed to furnish the details such as address where she stays abroad, contact address for communication, mobile number, e-mail id, period of stay, her probable date of return etc., to the third and fourth respondents before leaving India. Consequently, connected WMP No. 6877 of 2016 is closed."

8. The case of the petitioner is similar to that of his sister's case which has been considered by this Court in the aforesaid order and hence, the observations therein is squarely applicable to the petitioner's case. Taking into consideration the submission of the learned Public Prosecutor for the State in respect of the criminal case pending against the petitioner, this Court is of the view that the case registered in Cr.No.546 of 2017 against the petitioner is apparently foisted for the purpose of preventing the petitioner from travelling abroad. The very fact is that the respondent has not filed the FIR before the concerned jurisdictional Magistrate in time, raises a serious doubt as to whether the FIR was foisted for the purpose of detaining the petitioner without any valid materials. Moreover, from the averments in the complaint dated 24.07.2017 made by R.Jagadish Kumar, it is seen that the alleged offences have not been made out as against the petitioner. Furthermore, the complaint of R.Jagadish Kumar itself is doubtful since the

Superintendent of Police, Kancheepuram who had earlier filed status report dated 16.08.2017 before this Court, had not referred to any such complaint of R.Jagadish Kumar dated 24.07.2017. Likewise, the present status report of the Superintendent of Police, Kancheepuram dated 18.08.2017 does not also refer to the FIR in Cr.No.546 of 2017. As stated above, the respondent having not filed the FIR before the concerned Jurisdictional Magistrate and by not referring to the FIR in their status reports dated 16.08.2017 and 18.08.2017, it can only be concluded that the FIR in Cr.No.546 of 2017 ought to have been foisted subsequently, in order to implicate the petitioner in criminal case for the purpose of detaining him in India. I am, therefore, of the view that the FIR has been foisted and even assuming that there was a complaint from R.Jagadish Kumar, on a perusal of the said complaint, it is seen that no cognizable offence has been made out against the petitioner. Insofar as the case registered in Cr.No.496 of 2017 is concerned, the same has been registered only on the ground that the petitioner has not co-operated with the enquiry for a non cognizable offence. In any event, since the respondents have been given due opportunity to enquire the petitioner, pending the writ petition, the grievance of the respondents has become infructuous. In this background, the FIR in Cr.No.496 of 2017 is liable to be quashed and consequently, the petitioner should be permitted to

leave the country for the purpose of continuing his studies.

9. In the result, the Criminal Original Petition and the Writ Petition stands allowed and the investigation in Cr.No.496 of 2017 on the file of the second respondent police is quashed. Furthermore, in view of my earlier findings that the investigation in Cr.No.546 of 2017 has been improperly laid, it would not be appropriate to permit the respondent to continue with the investigation therein and in order to meet the ends of justice, it would be appropriate to invoke the inherent powers of this Court under Section 482 of Cr.P.C., to quash the investigation. Hence, the investigation in Cr.No.546 of 2017 is also quashed. Consequently, the petitioner is permitted to leave the country. However, since the petitioner's father is a proclaimed offender and who is claimed to be involved in many cases in our country, the petitioner shall furnish details of his personal contact address including his telephone numbers (land-line, mobile phone, email ID etc.) during his stay in the UK. The petitioner shall also give an undertaking that he shall co-operate with the respondents to any enquiry and if need be, come to India for the purpose of such enquiry.

10. With the above observations, the Criminal Original Petition as well as the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed.

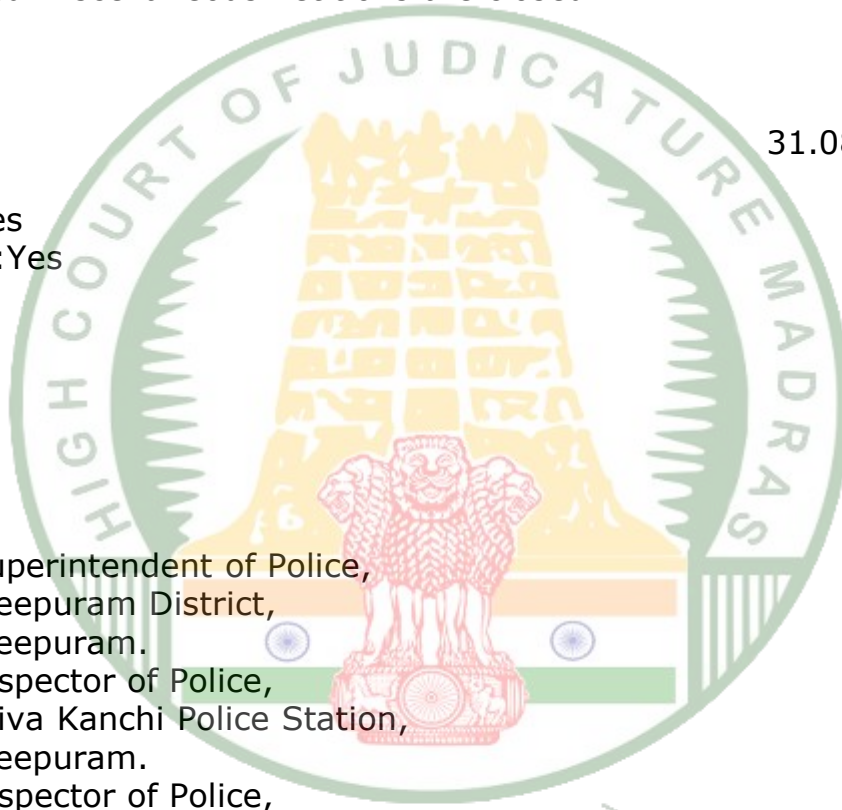
31.08.2017

Index:Yes
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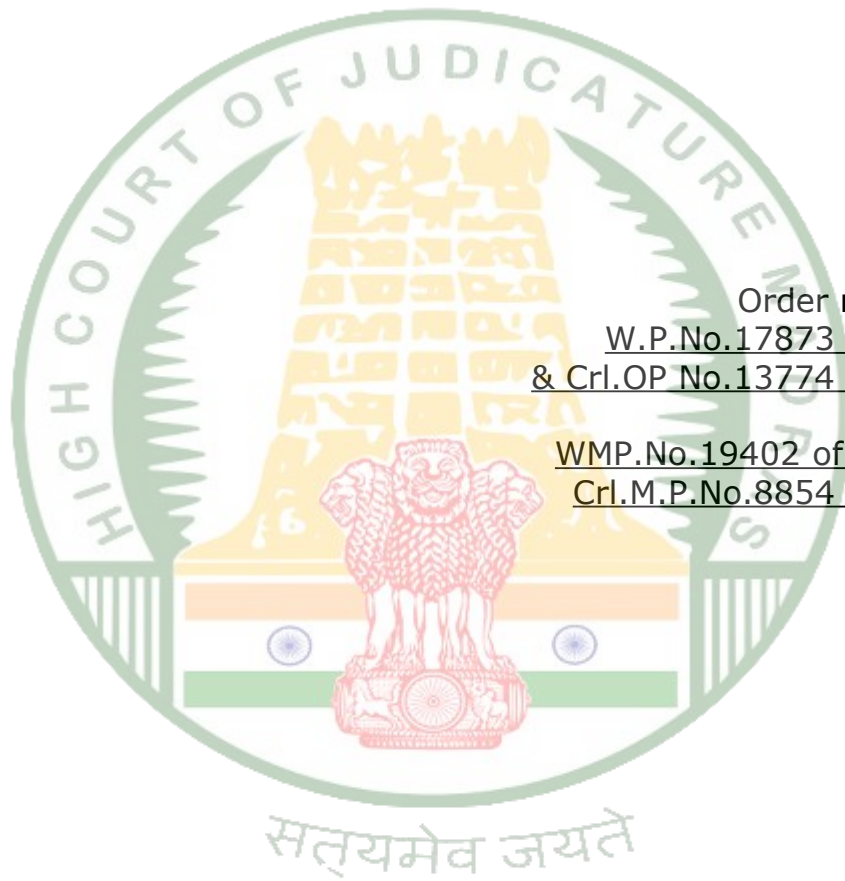
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M.S.RAMESH.J,

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