

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.25904 of 2016

S.Vaiyapuri

Petitioner

Vs.

1. The State of Tamil Nadu, rep. by
Principal Secretary to Government,
Home (Courts-I) Department,
Fort St. George, Chennai-600 009.

2. The Registrar General,
High Court, Madras,
Chennai - 600 104.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus to call for the records pertaining to G.O.(D) No.3, dated 04.01.2016 passed by the Principal Secretary to Government, Home (Courts-I) Department, quash the same and consequentially direct the Respondents to reinstate the petitioner with all other benefits as applicable to the post of Civil Judge.

For Petitioner : Mr.B.Kumar Sc,for
Mr.R.Sunil Kumar

For Respondents : Mr.P.S.Sivashanmuga Sundaram,
Spl.Govt.Pleader for R1.

Mr.S.Haja Mohideen Gisthi for R2.

ORDER

(Made by NOOTY.RAMAMOHANA RAO,J)

On 06.10.2016, a request was made by the learned counsel for the writ petitioner to adjourn the case by two weeks. Again when the matter was taken up on 20.10.2016, a request was made to list the case after four weeks. Again when the matter was taken up on 22.11.2016, a request was made to list the case after two

weeks. On 07.12.2016, a request was made to list the case after two weeks. On 21.12.2016, a request was made to list the case after Christmas Holidays. Thus, the matter is now listed today. Today, learned counsel appearing for the writ petitioner seeks adjournment on the ground that he has engaged a Senior Counsel to argue this matter. We are not inclined to grant adjournment on that ground. The learned counsel has not chosen to make any submissions.

2. The writ petitioner was formerly employed as Principal District Munsif at Villupuram. He was proceeded against, as a measure of discipline. After holding enquiry, and following the procedure prescribed by the Rules, orders have been passed by the State Government through their G.O.(D) No.3, dated 04.01.2016, imposing on the petitioner, the punishment of dismissal from service.

3. Two charges have been levelled against the writ petitioner. The first of the charges relates to a transaction involving transfer of valuable immovable property measuring 14 Acres and 75 Cents. The main limb of allegation against the writ petitioner contained in charge No.1 was that he prevailed upon the complainant, who incidentally was related to him, to sell away the land in question in favour of his own brother-in-law, on the promise that the writ petitioner would secure more money than the money offered by the original purchaser of the same immovable property, the transaction with whom ultimately led to institution of a civil suit in O.S.No.43 of 2007, in respect whereof with a view to obtain the opinion of the writ petitioner, his relative met him and thus broached the issue. It is also alleged against the writ petitioner that the same immovable property was ultimately sold to M/s Goodearth Ship Building Private Limited for a sum of Rs.59 lakhs and the sale transaction is evidenced as Document Nos.2482 and 2483 of 2008, copies of which are marked at the enquiry. The main limb of the allegation is that the writ petitioner's wife Smt.V.Shanthi has received the entire sale consideration of Rs.59 lakhs offered by the purchaser through Demand Draft bearing No.095582 dated 06.10.2008. Thus, the main theme behind Charge No.1 was that the writ petitioner not only misused his official position by prevailing upon the complainant to part with the land in dispute of a civil suit in favour of his brother-in-law, without any consideration but in fact has indulged in securing a huge financial advantage by way of receipt of Rs.59 lakhs as sale consideration of an immovable property, terming it as a gift. At the very outset, the petitioner ought not to have entertained the complainant, who visited him, in connection with a pending case, though the said case is pending in another court and later on taken full advantage of his position by securing huge financial gain out of it.

4. The defence offered was that the transfer of valuable immovable property is a matter entirely between the complainant, his son-in-law and that of the brother-in-law of the writ petitioner and hence he has no concern over it. The evidence collected during the course of enquiry has clearly brought out that Exhibit P1 sale deed dated 11.01.2008 was got registered in favour of his brother-in-law by active participation of the writ petitioner. The said sale transaction of the land could not be proved as an independent transaction by his brother-in-law, who was examined as P.W.5. The finding of fact is that no consideration was in fact passed on by the brother-in-law of the writ petitioner to the seller of the said property, who is the complainant. It is the same immovable property which was sold away later on in favour of M/s Goodearth Ship Building Private Limited. The sale consideration for this subsequent sale was reflected as Rs.59 lakhs and the entire sale consideration, which was received in the form of a Demand Draft was passed on by his brother-in-law in favour of the wife of the writ petitioner, out of love and affection which his brother-in-law has towards his wife.

5. While we may not discount the extraordinary amounts of love and affection, which a brother may have towards his own sister, but what the writ petitioner has failed to take note of is the fact that the Demand Draft bearing No.095582 dated 06.10.2008 was drawn by the purchaser namely M/s. Goodearth Ship Building Private Limited, towards consideration for the sale of land originally belonging to the complainant by way of a Demand Draft drawn in the name of the wife of the writ petitioner. That is where the lid put over the can of worms has been opened up. One can understand a purchaser paying the sale consideration amount in the form of a Demand Draft drawn in favour of the seller. But it is very strange that the purchaser has drawn the Demand Draft in the name of seller's sister, in anticipation that the seller will be gifting the said Demand Draft to his sister later on.

6. The findings of fact recorded by the Enquiry Officer are entirely based upon the material gathered at the enquiry. The Enquiry Officer's findings are reasonable, fair and acceptable. Hence, the High Court never felt any difficulty to accept the same.

7. When it came to the second charge the main theme is that the writ petitioner has allowed his wife to accept a more expensive gift of Rs.59 lakhs in the form of a Demand Draft without obtaining prior permission or intimation to the High Court and consequently Rule 7 of the Conduct Rules has been breached. The Defence offered was that accepting Gift in the form of a Demand Draft does not amount to acquisition of immovable property and hence prior permission is not required to

be obtained.

8. Even on this count, the findings recorded by the Enquiry Officer are fair and reasonable and hence they were accepted.

9. The conduct of a judicial officer is expected to be absolutely clean and above board. His conduct cannot even leave a faint scent of suspicion. He must conduct his affairs, including private affairs of his family members without giving room for any suspicion. The credibility of the institution will get eroded if judicial officers do not conduct themselves cleanly and do not leave behind any scope for suspicion. We are therefore, of the opinion that no error or miscarriage of justice had occasioned in imposing the punishment of dismissal from the service on the writ petitioner. Consequently, there is no warrant for us to interfere with the order of punishment imposed on the writ petitioner.

10. We find no merit in this writ petition and accordingly, it stands dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gr.

Copy to:

1. The Principal Secretary to Government, Home (Courts-I)
Department, Fort St. George, Chennai-600 009.

2. The Registrar General, High Court, Madras, Chennai - 600
104.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate sr.1079

+1cc to The Government Pleader sr.893

+1cc to Mr.R.Sunil Kumar, Advocate sr.637

W.P.No.25904 of 2016

lrs(co)
ss(30/01/2017)