



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE B.GOKULDAS

Crl.O.P. (MD).No.2282 of 2016

M.Anbuchelvan

.. Petitioner

Vs.

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Dindigul,
Dindigul District.

2.The Inspector of Police,
Vigilance and Anti Corruption Dindigul,
Dindigul District.

... Respondents

Prayer:- Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to direct the 2nd respondent to register a case/F.I.R. on the basis of the complaint given by the petitioner, dated 19.01.2016 and investigate the same in accordance with law.

For Petitioner : Mr.T.C.S.Rajachocklingam
R.Boopathy

For Respondents :Mr.Kandasamy (Criminal Side)
Government Advcoate

Orders Reserved on	15.11.2016
Orders Pronounced on	16.03.2017

ORDER

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to direct the 2nd respondent to register a case/F.I.R. on the basis of the complaint given by the petitioner, dated 19.01.2016 and investigate the same in accordance with law.

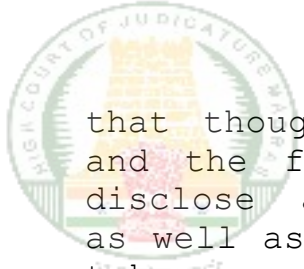
2. The petitioner is having a small cement hallow block bricks manufacturing unit at Alathuranpatti Village, Kannivadi Post, Dindigul District and the said manufacturing unit is run by the petitioner for the past 10 years. In the said unit certain employees belong to State of Uttar Pradesh were working. While so, the Inspector of Police, Kannivadi Police Station, Dindigul District, namely, Mr.Thiruvanantham, called upon the petitioner as well as the employees of the brick unit to the Kannivadi Police Station for enquiry with regard to a case in Cr.No.109 of 2014 towards missing of girl in that locality. In that regard it is



alleged that the above said inspector demanded a sum of Rs.2,00,000/- towards the expenses for tracing of the missing girl in Uttar Pradesh.

3. It is further alleged by the petitioner that on 09.10.2015, at about 07.15 p.m. the above said Inspector of Police told the petitioner over phone to accompany with him along with his subordinates in order to go to the State of Uttar Pradesh for verification of missing girl. For that, the petitioner replied that he will send one of his supervisors, who also belongs to State of Uttar Pradesh. However, the above said Inspector of Police, threatened the petitioner that if he is not ready to accompany with him, he will foist a false case of Murder, Dacoity and Ganja against the petitioner. Pursuant to the same, it is also alleged that the said Inspector of Police harassed the petitioner and his family members. The petitioner further alleged that neither the petitioner nor his family members and his employees arrayed as accused in the girl missing case in Cr.No.109 of 2014. Therefore, under the guise of investigation in the girl missing case, the Inspector of Police, Kannivadi Police Station, Dindigul District and his subordinates visited the petitioner place on 09.10.2015 and attacked the petitioner and also his family members, only in order to extract illegal gratification from the petitioner. Adding salt to the wound, a case was registered against the petitioner in Crime No.364 of 2015 initially for the offence under Sections 294(b), 341 332, 353 and 506(ii) IPC. On 10.10.2015, the petitioner was remanded to Judicial custody for the above said case. Thereafter, the police officials altered the FIR in Crime No.364 of 2015 on 12.10.2015 by including the offence under Section 307 IPC. Though the petitioner's original complaint dated 07.11.2015 and further additional complaint, dated 19.02.2016 clearly disclose a cognizable offence of various provisions under the Indian Penal Code as well as prevention of corruption Act, the respondent police have not taken any steps to register the petitioner's complaint. Hence the petitioner is before this Court for the relief as stated earlier.

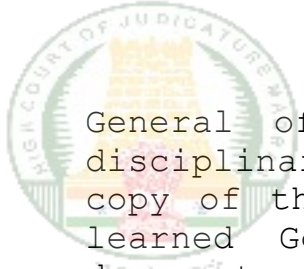
4. The learned counsel for the petitioner after reiterating the above sequence of events submitted that neither the petitioner nor his employees were involved in the case registered with regard to girl missing in Cr.No.109 of 2014 on the file of Inspector of Police, Kannivadi, Dindigul. The petitioner and his family members have suffered a lot for no fault on them. Though the petitioner's wife lodged a complaint dated 15.10.2015 to register appropriate criminal case and to initiate departmental action against one Thiruvanandam, Inspector of Police and one Raja Marthandam, Special Sub Inspector of Police, Knanivadi Police Station, Dindigul District, for committing police excess by misusing their authority, the Deputy Superintendent of Police, Ottanchathram reported that the allegations levelled by the petitioner are baseless. The learned counsel further contended



that though the petitioner original complaint, dated 07.11.2015 and the further additional complaint, dated 19.01.2016 clearly disclose a cognizable offence of various provisions under the IPC as well as prevention of corruption Act, the respondents have not taken any steps to register the petitioner's complaint, which is nothing but a dereliction of duty on the part of the respondents. The learned counsel further submitted that in spite of sufficient eye witnesses as well as documentary evidence to prove the alleged demand of illegal gratification as well as receipt of bribe, the respondents neither take any steps to enquire the proposed accused persons nor registered any case in this regard. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in (2014) 1 SCC (Cri) 254 (Lalita Kumari v. Govt. of U.P.).

5. Mr.Kandasamy, learned Government Advocate (Criminal Side) filed counter affidavit and submitted that pursuant to the complaint of the petitioner, dated 19.01.2016 to the first respondent, the Director of Vigilance and Anti-Corruption, Chennai ordered to conduct a preliminary enquiry in P.E.34/2016/POL/DL. He further submitted that since there was no substantial documentary evidence in the preliminary enquiry to prove the allegations against the accused officers before the Court of law, with the available oral evidence, departmental disciplinary proceedings were recommended against the Tr.G.Thiruvanantham, Inspector of Police and Tr.P.Kamaladoss, Head Constable 488, Kannivadi Police Station, Oddanchatram Sub Division Dindigul District, by the first respondent. The said recommendation was accepted by the Vigilance Commission and the same was forwarded to the Principal Secretary to the Government, Home (Pol.IV) Department, Secretariat, Chennai-9 for taking further action. When the matter stood thus, the petitioner filed W.P.(MD).No.15903 of 2016 for a Mandamus directing the respondent therein to forthwith file a final report based on the preliminary enquiry conducted by the third respondent therein. On 26.09.2016, the copy of the same was furnished to the petitioner. On 27.09.2016, the writ petition was dismissed as withdrawn.

6. The learned Government Advocate further submitted that the petitioner filed another writ petition in W.P.No.34222/2016 before the Principal Bench of this Court to direct the Principal Secretary to the Government, Home Department, Secretariat, Chennai-9 (1st Respondent in W.P.No.34222/2016), to implement the recommendation of Departmental action as forwarded by the Vigilance Commission, Chennai in its communication, dated 06.09.2016 made in U.O.NO.3819/VC.III/2016-1 as recommended by the Director of Vigilance and Anti-Corruption, Chennai dated:11.08.2016 in P.E.34/2016/POL/DL against the Delinquent Officer. With regard to the prayer of the petitioner in the above said writ petition, the Government already issued an order in G.O.(2D) NO.442, dated 26.09.2016 directing the Director



General of Police, Tamil Nadu, Chennai, to take departmental disciplinary action against the delinquent police officials. A copy of the above said Government Order is also produced by the learned Government Advocate. Since there was no substantial documentary evidence in the preliminary enquiry to prove the allegations against the police officers, the complaint of the petitioner was closed as baseless. The respondents with the available oral evidence, rightly initiated the department disciplinary proceedings against the delinquent police officials. Hence, the present petition to register a case is unwarranted, since already a preliminary enquiry conducted and closed. He prays for dismissal of the petition.

7. I have carefully considered the rival submissions made by the learned counsel on either side and also perused the materials available on record.

8. Admittedly, the entire episode starts after registration of the girl missing case in Crime No.109 of 2014 on the file of Kannivadi Police Station, under the guise of investigation. Be that as it may, the learned counsel for the petitioner filed a memo, dated 20.02.2017, vide USR No.648, wherein a order copy in HCP(MD).No.1236 of 2014, dated 14.02.2017 has been enclosed. It is pertinent to note that the father of the missing girl, namely Sermalai has filed the above-said HCP before this Court. At paragraphs 5 and 6 of the order passed in H.C.P.(MD).No.1236 of 2014, dated 14.02.2017 it is stated as follows:-

5. When we enquired the detenu, she said that since she was not interested in studies, she left the home voluntarily and when she was standing in the Pollachi Police Station, she was taken to the afore-said Home. She further said that she has been in the afore-said Home for the past two years and taking care of the orphans and age-old people. She also said that for attaining majority, another four more months are left. However, she assertively said that she is not interest in going with her parents, who are present before us. Along with the detenu, one Poogudi, an assistant from the said Home also appeared before us. She said that she will take care of the detenu. Eventually, on our enquiry, it is revealed that the detenu would like to go to only to Saranalayam, Kneethaukadavu, Coimbatore.

6. In view of the afore-said statement made by the detenu and she is not in illegal custody as alleged by the respondents and she expressed her willingness to go to Saranalayam, Kneethukadavu, Coimbatore, we are of the opinion, no more detention is necessary in this Habeas Corpus Petition and accordingly, we close this Habeas Corpus Petition."



9. A bare reading of the above order would go to show that neither the petitioner and his family members nor his employees is involved in Cr.No.109 of 2014 with regard to missing girl. The first respondent filed counter affidavit to the effect that pursuant to the complaint given by the petitioner, the Government already issued a Government Order in G.O.(2D) No.442, dated 26.09.2016 directing the Director General of Police, Tamil Nadu, Chennai, to take departmental disciplinary action against the delinquent police officials. On the other hand the petitioner alleged that under the guise of enquiry with regard to the crime No.109 of 2014, the petitioner and his family have suffered a lot and the petitioner further alleged that a false case has also been foisted against him. The petitioner filed number of documents including the phone call list to support his case. Therefore, it is not fair on the part of the police officials, to simply close the complaint of the petitioner without registering a case. For the argument sake, if the allegation of the petitioner is found to be true after enquiry, the initiation of disciplinary action against the delinquent officials alone would not meet the ends of justice.

10. In view of the foregoing discussion and reason, the respondent police are directed to register a case on the basis of the complaint given by the petitioner, dated 19.01.2016 and investigate the same on merits and in accordance with law and thereafter, file final report as expeditiously as possible. The criminal original petition is ordered accordingly. It is needless to state that the disciplinary action initiated against the delinquent officers would be decided without influenced by the order of this Court in this petition.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Dindigul, Dindigul District.

2.The Inspector of Police,Vigilance and Anti Corruption Dindigul,
Dindigul District.

3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+5CC to M/S.J.C.S.Rajachockalingam,Advocate, SR.No. 15334

Cr1.O.P.(MD).No.2282 of 2016

16.03.2017