



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

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**THE HON'BLE MR.JUSTICE P.N.PRAKASH**Crl.O.P.(MD) No.23998 of 2016  
& Crl.M.P.(MD) No.12727 of 2016

P.Anbunathan

... Petitioner/Accused

**-vs-**State rep. by its  
The Inspector of Police,  
Velayuthampalayam Police Station,  
Karur District.  
(Crime No.218 of 2016)

... Respondent/Complainant

**Prayer:** Petition filed under Section 482 of Code of Criminal Procedure to call for the records in Crime No.218 of 2016 dated 23.04.2016 on the file of the respondent police and quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the above case.

|                 |   |                                                                  |
|-----------------|---|------------------------------------------------------------------|
| For Petitioners | : | Mr.K.M.Vijayan, Senior Counsel<br>For M/s.K.M.Vijayan Associates |
| For Respondent  | : | Mr.K.Anbarasan<br>Govt. Advocate (Crl.Side)                      |

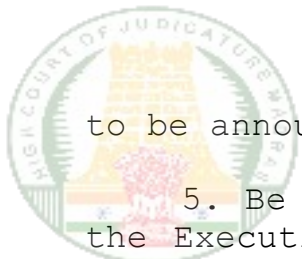
**O R D E R**

This petition has been filed to call for the records in Crime No.218 of 2016 dated 23.04.2016 on the file of the respondent police and quash the same.

2. On the complaint lodged by one Jegadeesan, Block Development Officer, Panchayat Union Office, the respondent police registered a case in Crime No.218 of 2016 on 23.04.2016 for offences under Sections 417, 420, 484 IPC and Section 5 of The Emblems and Names (Prevention of Improper Use) Act, 1950 against the petitioner, challenging which, the petitioner is before this Court.

3. Heard the learned Senior Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

4. It is common knowledge that Election to the Tamil Nadu State Legislative Assembly was notified by the Election Commission of India sometime during the 1st week of April, 2016 and results were



to be announced sometime during the 3rd week of May, 2016.

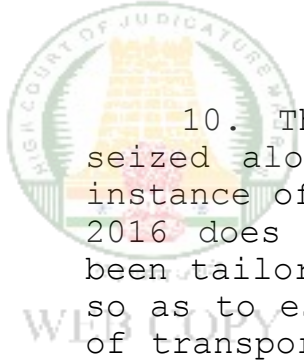
5. Be that as it may, when election notification is issued, all the Executive Authorities would come directly under the control of Election Commission of India in accordance with Article 324 of the Constitution of India. The defacto complainant in this case was the BDO of Panchayat Union and was a member of the Flying Squad constituted by the Election Commission of India to check and prevent electoral offences. On intelligence, the Flying Squad headed by the defacto complainant found an Ambulance in the house of the petitioner and noted that the Ambulance carried the Government of India Emblem with words "National Rural Health Mission" thereon. The house of the petitioner was searched and cash of Rs.10,33,820/-, cash counting machine, voter list etc. were recovered from there. On further verification, it was found that the Ambulance does not belong to "National Rural Health Mission" and that the Government of India Emblem has been put there on the Ambulance to camouflage its true activities. The attendant circumstances under which the Ambulance was found, coupled with the seizure of huge cash from the house of the petitioner together with voter list gave a reasonable belief to the defacto complainant that the Ambulance was being used by the petitioner for transport of cash for the purpose of distribution to voters. Therefore, on the complaint given by the defacto complainant, the respondent police registered a case in 218 of 2016 as stated above, in respect of the ambulance alone.

6. As regards the seizure of cash in the godown of the petitioner, a separate case in Crime No.262 of 2016 has been registered, about which we are not concerned with in this quash petition.

7. Learned Senior Counsel appearing for the petitioner submitted that the Ambulance was produced before the learned Judicial Magistrate No.II, Karur and one Mohanraj appeared before the Magistrate and filed an application under Section 451 Cr.P.C., contending that he is the owner of the said ambulance. It is also seen that the learned Magistrate has given interim custody of the ambulance to the said Mohanraj by order dated 07.09.2016. Under such circumstances, it is the contention of the learned Senior Counsel that when Mohanraj has been handed over the custody of the ambulance, the petitioner cannot be mulcted with criminal liability for the aforesaid offences.

8. Per contra, learned Government Advocate (Crl.Side) submitted that investigation conducted so far reveals that one Sagaya Alwin was the owner of the ambulance and that he had sold it to Mohanraj and that Police are proceeding with the investigation to find out the involvement of this petitioner in the aforesaid offences with Mohanraj and Sagaya Alwin.

9. This Court gave its anxious consideration to the rival submissions made on either side.



10. The circumstances under which the ambulance came to be seized along with cash, counting machine and voter list, at the instance of the defacto complainant by the Police in Crime No.218 of 2016 does arise a strong suspicion that the ambulance could have been tailor-made to look as if it belongs to the Government of India so as to escape the attention of Election Officials for the purpose of transporting cash for distribution. Therefore, at this juncture, the FIR cannot be quashed.

11. As regards the contention of the learned Senior Counsel for the petitioner that the ambulance was handed over to Mohanraj, in the considered opinion of this Court, the Magistrate was required to follow the law laid down by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **(2002) 10 SCC 290**, wherein the Hon'ble Supreme Court had issued a general direction to all Courts not to keep vehicles in the Court campus or Police Station and hand over interim custody to the person claiming them. Therefore, giving interim custody of ambulance will neither give any special right to Mohanraj nor would absolve the petitioner from criminal liability and only during investigation, the entire facts can be unraveled.

12. Under such circumstances, this petition is dismissed with a direction to the respondent police to complete the investigation in Crime No.218 of 2016 within six months from the date of receipt of a copy of this order and to either file a closure report or charge sheet as the case may be. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

**To:**

1. The Inspector of Police,  
Velayuthampalayam Police Station,  
Karur District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 CC TO Mr.K.M.VIJAYAN, ADVOCATE IN SR No. 15651

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TE/SKN-RSK : 10/04/2017 : 3P/4C