



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.04.2017

DELIVERED ON: 27.04.2017

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. (MD) No.5260 of 2017&W.M.P. (MD) Nos.4233 & 4234 of 2017

Abdul Basith

..Petitioner

vs.

1 The State of Tamil Nadu
represented by its Principal Secretary
Department of Public Law & Order - H
Fort St. George
Chennai

2 The District Collector
Office of the District Collector
Kanyakumari District

..Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records pertaining to the impugned Government Order in G.O. Ms.No.236, Public (Law and Order-H) Department dated 01.03.2016 on the file of the first respondent and quash the same.

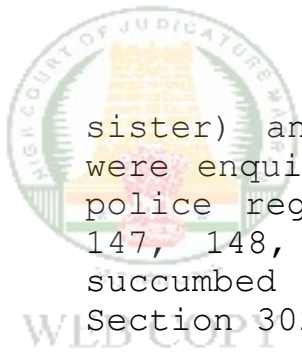
For petitioner Mr. T. Lajapathy Roy

For respondents Mr. T.S. Mohammed Mohideen
Addl. Govt. Pleader

ORDER

This writ petition has been filed impugning G.O. Ms.No.236, Public (Law and Order-H) Department dated 01.03.2016 (for brevity "G.O. Ms. No.236") issued by the first respondent.

2 The factual matrix of the case is that on 14.06.2012, around 9.30 a.m., the Kottar Police Station received an intimation from Sri Ram Hospital relating to a medico legal case, based on which, the Sub Inspector of Police of Kottar Police Station went to the said hospital and found that one Ramesh was admitted with
<https://hservices.ecourts.gov.in/hservices/> and was being treated as an in-patient. Since Ramesh was unconscious, one Rama Nadar (husband of Ramesh's



sister) and Nisha (W/o Ramesh), who were there in the hospital were enquired. On the statement given by Rama Nadar, the Kottar police registered a case in Cr. No.1017 of 2012 under Sections 147, 148, 294(b), 341, 324 and 307, IPC. A day later, Ramesh succumbed to the injuries and the case was altered to one under Section 302, IPC.

3 In the statement given by Rama Nadar which formed the basis of the First Information Report, he has stated that:

a Ramesh is a Hindu and an auto driver by profession;

b he was in love with Nisha, the sister of Syed Ali and he eloped with her and got married to her, which was not to the liking of Syed Ali and his group;

c they were insisting that Ramesh should convert to Islam, lest, they would eliminate Ramesh's family, but, Ramesh did not budge;

d he (Rama Nadar) is also an auto driver in the same auto stand and on 14.06.2012, he received information from one Vijaya that Ramesh is being assaulted and on coming to know of it, he went to the place and found Ramesh with serious injuries;

e when Rama Nadar questioned Ramesh, Ramesh is said to have told him that two persons, who can be identified, came to the auto stand and called him for a trip and when he took them in his auto, they made him stop at a place and at that time, Syed Ali, Fausi, Asif Gani and others started attacking him saying that by his act of marrying a Muslim girl and not converting to Islam, he has brought disrepute to their caste and religion and that none should ever dare to do like this in future and when Ramesh tried to escape, he was chased and repeatedly attacked by the group with deadly weapons;

f immediately, Rama Nadar took Ramesh to Sriiram Hospital where he was admitted in the Intensive Care Unit for treatment and that when the police came, he lost his consciousness.

4 As stated above, Ramesh died a day later and the case was converted to one under Section 302, IPC and during the course of investigation, it came to light that 11 persons belonging to Muslim community were involved in the gruesome murder of Ramesh.

5 After completing the investigation in Cr. No.1017 of 2012, the police found that there are materials to prosecute accused 1 to 11 for offences under Sections 120-B, 153-A, 147, 148, 294(b), 341, 324 and 307, IPC. For maintaining a prosecution under Section 153-A, IPC, a sanction under Section 196(1), Cr.P.C. is a sine qua non. Therefore, the police submitted the investigation



materials to the State Government, based on which, the Governor has accorded sanction vide G.O. Ms.No.236, challenging which, the petitioner, who has been arrayed as A9 in the case has preferred this writ petition.

6 Heard Mr. T. Lajapathy Roy, learned counsel for the petitioner and Mr.T.S. Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents.

7 The learned counsel for the petitioner submitted that the entire sanction is vitiated by non application of mind by the sanctioning authority. In support of this contention, the learned counsel for the petitioner placed strong reliance upon the judgment of the Supreme Court in Jaswanth Singh vs. State of Punjab [AIR 1958 SC 124], wherein, it was held as under:

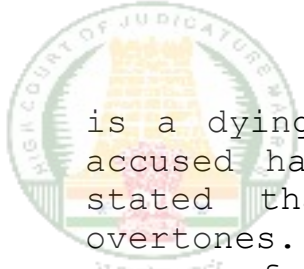
"4. The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness."

8 The learned Additional Government Pleader refuted the contention put forth by the learned counsel for the petitioner.

9 This Court gave its anxious consideration to the rival submissions.

10 At the outset, it is worth pointing out that the judgment in Jaswant Singh (supra), relied upon by the learned counsel for the petitioner pertains to a case in which the accused was convicted and sentenced by the Trial Court after a full-fledged trial and while appreciating the evidence adduced by the prosecution to prove the sanction, the Supreme Court found that no sanction was given in respect of one part of the offence under the Prevention of Corruption Act, i.e., sanction was given for only one part of the offence, viz., receipt of bribe of Rs.50/- by Jaswant Singh, the appellant therein from one Pal Singh and no sanction was given to prosecute the appellant therein in respect of habitually receiving bribes. In fact, in the said judgment, the Supreme Court held that just because sanction has not been given for one part of offence, it does not mean that the sanction will stand vitiated in toto. In the case at hand, on a reading of the sanction order, it is evident that the facts leading to the offence have been narrated, which, by itself, shows that there has been application of mind by the sanctioning authority.

11 As regards the contention of the learned counsel for the petitioner that for a stray incident of murder, the provisions of IPC cannot be invoked to make it look as if it was a murder on communal lines. It is pertinent to point out that the statement that is said to have been given by Ramesh to Rama Nadar



is a dying declaration, wherein, he has clearly stated what the accused had said while attacking him. Therefore, it cannot be stated that this is a stray murder case without communal overtones. At this juncture, it may be profitable to extract a passage from a Division Bench judgment of the Andhra Pradesh High Court in Inguva Mallikarjuna Sharma vs. The State of Andhra Pradesh and another [1978 Cri. L.J. 392], wherein, the judgment of the Privy Council in Gokulchand Dwarkadas Murarka vs. the King [1948 Cri. LJ 261 (PC)], has been relied upon and the same reads as follows:

"5. ... What all was held in Gokulchand Dwarkadas Murarka case 1948 Cri.LJ 261 (PC) is that the sanction order must show that the sanctioning authority knew the facts alleged to constitute the offence. It was not held therein that there should be legal evidence before the sanctioning authority for sanctioning a prosecution under Section 196, Cr.P.C. The object of Section 196, Cr.P.C. is to ensure prosecution only after due consideration by the appropriate authority so that frivolous or needless prosecutions are avoided. Sanction of a prosecution must be expressed with sufficient particularity to indicate clearly the matter which is to be the subject of the proceeding and it should be apparent from the order of sanction that the authority applied its mind to the facts constituting the offence or offences. In according or withholding sanction under the Section, the Government acts purely in an executive capacity and not in a judicial capacity. The sanction need not be based, on any legal evidence nor is it necessary that the authority should give reasons for sanctioning the prosecution or for withdrawing the prosecution... "

12 Tested on the anvil of the law laid down by the Privy Council in the aforesaid case, the impugned sanction order cannot be said to suffer from legal vice.

13 Further, the murder in this case had taken place in the year 2012 and charge sheet has been filed in P.R.C. No.25 of 2016 before the jurisdictional Court. The petitioner/A9, instead of facing the trial and challenging the sanction order in the course of trial, is adopting dilatory tactics by challenging the sanction order in writ proceedings, which cannot be countenanced. It is ~~advised by the court~~ the petitioner to assail the sanction order on facts and law before the Trial Court. It is made clear that the observations made in this order are only for the limited extent of



deciding this writ petition and the grounds of challenge of the impugned sanction order are still open to the petitioner to be urged before the Trial Court.

WLB COPY In the result, this writ petition is dismissed as being devoid of merits. Costs made easy. Connected W.M.Ps. are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1 The Principal Secretary
Department of Public Law & Order - H
Government of Tamil Nadu
Fort St. George
Chennai
- 2 The District Collector
Office of the District Collector
Kanyakumari District

order in
W.P. (MD) No.5260 of 2017
27.04.2017
1/2

cad
MS/BS/SAR-4/10.05.2017/5P.3C