

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.34188 of 2017
and
W.M.P.No.38070 of 2017

Varaaki

...Petitioner

Vs.

- 1) State rep by
The Commissioner of Police,
Greater Chennai,
Chennai.
- 2) The Inspector of Police,
Central Crime Branch, Team - 2,
Vepery, Chennai.
- 3) South Indian Artistes Association,
G-1, Nanda Apartments,
Old No.7, New No.21,
Habibullah Road,
T.Nagar, Chennai 600 017.
Rep., by its General Secretary,
Vishal

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to forthwith prevent the office bearers of the South Indian Artists Association from conducting a Star Night and cultural programme which was proposed to be held on 06.01.2018 in the Bukit Jalil National Stadium, Kuala Lumpur, Malaysia till the investigation is completed in respect of the petitioner's complaint dated 01.10.2016 in compliance with the order passed by this Court in Crl.O.P.No.20152 of 2017 dated 22.09.2017.

For Petitioner : Mr.B.Janakiram

For RR 1 & 2 : Mr.D.Raja,
Additional Govt., Pleader

O R D E R

The prayer sought for in the writ petition is to issue a writ of Mandamus directing the second respondent to forthwith prevent the office bearers of the South Indian Artist Association from conducting the Star Night and cultural programme which was proposed to be held on 06.01.2018 in the Bukit Jalil National Stadium, Kuala Lumpur, Malaysia till the investigation is completed in respect of the petitioners complaint dated 01.10.2016 in compliance with the order passed by this Court in Crl.O.P.No.20152 of 2017 dated 22.09.2017.

2. Heard M.B.Janakiram, learned counsel appearing for the petitioner and Mr.D.Raja, Additional Government Pleader appearing for the respondents.

3. With the consent of both sides, this writ petition is taken up for final disposal in the admission stage itself.

4. It is claimed by the petitioner that he is an Editor of a magazine viz., Indian Reporter and the founder and President of one Indian Makkal Mandram, a forum for readers of the said magazine which is being run for about 1.5 decades. The petitioner also claimed that he is a member of the South Indian Artistes Association (hereinafter called as Association) and his membership No., is 8361. The petitioner narrated about the elections conducted on 18.10.2015 to elect the office bearers of the said Association and subsequent to the same, new office bearers were selected.

5. The petitioner further averred in the affidavit filed in support of the writ petition that, the office bearers of the Association had acted inappropriately, at the time of conducting the Star cricket. It comes to know that, they have not come out with proper account statements, on perusal of the expenditure accounts given by the office bearers of the Association. According to the petitioner, it reveals certain shocking factors. The sum and substance of the said averment made by the petitioner against the office bearers of the Association is that, they have mismanaged or misappropriated the funds of the Association and in order to investigate the same, the petitioner seems to have given a complaint to the second respondent police on 1.10.2016.

6. It is further averred by the petitioner that, since the said complaint was not investigated, the petitioner has approached this Court by filing Crl.O.P.No.20152 of 2017,

wherein this Court by order dated 22.09.2017 has given a direction to the respondent police to have a preliminary inquiry of the matter, pursuant to the complaint given by the petitioner, and act accordingly in accordance with law.

7. It is the further grievance of the petitioner that, though direction was rendered in the CrI.O.P.No.20152 of 2017, the respondent police had not shown any considerable progress in the investigation. In this regard, the petitioner states that, though materials had been submitted by the petitioner, instead of framing charges against the persons against whom such a complaint has been given, and completing the investigation, the respondent police issued summons to the petitioner once again to produce those documents which are available with him in connection with the complaint.

8. In this regard, the learned counsel appearing for the petitioner would submit that, the petitioner would be ready and willing to appear before the respondent police to produce those documents, which in fact, had been already submitted to the respondent police, and atleast thereafter, let the respondent police complete the investigation at the earliest and come out with the truth.

9. The learned counsel appearing for the petitioner has further submitted that, there are serious allegations made against the office bearers of the Association in respect of star cricket which they have conducted earlier, without proper accounting details, the very same office bearers of the Association shall not proceed further to conduct any such programme like the one which was proposed to be held on 06.01.2018 at Kuala Lumpur, Malaysia, called "Star Night". Therefore, inorder to prevent further mismanagement of the funds of the Association, the petitioner has approached this Court by filing this writ petition, with the aforesaid prayer, seeking an order restraining the Association and its office bearers from conducting the proposed Star Night cultural programme on 06.01.2018 at Kuala Lumpur, Malaysia.

10. I have heard Mr.D.Raja, learned Additional Government Pleader appearing for the respondents. On instructions, he would submit that, pursuant to the directions issued by this Court in CrI.O.P.No.20152 of 2017, preliminary inquiry have been conducted by the respondent police and in this regard, summon has been served on the petitioner directing him to produce relevant documents in support of the complaint, to complete the investigation in this matter. In this regard, it is submitted by the Additional Government Pleader for the respondents that, the petitioner has not appeared.

11. Once the petitioner appears before the respondent police and submits whatever documents available with him, which were not already submitted to the respondent police to proceed further for enquiry/ investigation, accordingly, the final decision would be taken by the respondent police, after the completion of investigation upon the complaint given by the petitioner as directed by this Court in its earlier order made in Crl.O.P.20152 of 2017 as referred above.

12. The learned Additional Government Pleader appearing for the respondents also submitted that, after completion of the preliminary enquiry, for the further investigation of the evidences submitted, a further period of two months time to be granted, so as to complete the investigation.

13. I have considered the said submissions made by both sides. Admittedly, there is a direction issued by this Court on 22.09.217 in Crl.O.P.No.20152 of 2017, whereby operative directions were given which are extracted here under:

" 4. The respondents are not justified in having received the complaint and keeping it unattended without any further action. In view of the same, the petitioner has made out a case for this Court to invoke its inherent powers under Section 482 of the Criminal Procedure Code Hence, the 2nd respondent is directed as follows:

1) If the information received by the 2nd respondent discloses commission of a cognizable offence, then, the same shall be forthwith registered.

2) If an information received does not disclose a cognizable offence, the 2nd respondent shall conduct a preliminary inquiry to ascertain whether cognizable offence is disclosed therein or not and such inquiry shall be completed within a period of seven days from the date of information.

3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered, if not already registered or closed.

4) If the preliminary inquiry ends in closing the complaint, the disclosure report must be recorded along with the reasonings and a copy of the same shall be furnished to the complainant within one week.

5) All information relating to cognizable offences whether resulting in registration of FIR or leading an inquiry must be reflected in the general diary/station diary/daily diary of the 2nd respondent's police station."

14. Pursuant to the said directions, it is claimed by the learned Additional Government Pleader appearing for the respondents that, preliminary enquiry has been started by giving summons to the petitioner to submit the available documents to proceed further with the investigation.

15. In respect of the same, it is submitted by the learned counsel for the petitioner that, the petitioner is ready and willing to appear before the respondent police at any time at any date. In respect of the earlier summons issued, he clarified that, in the summons, the date was fixed in 2015 instead of 2017 which case may be of typographical error. Once the petitioner appears before the respondent police and submits the documents which are available with him, the same will be helpful for the respondent police to proceed further in this matter and complete the investigation within a period of two months, was the contention made by the learned Additional Government Pleader appearing for the respondents.

16. When the investigation process pursuant to the direction rendered above is in progress, the elected office bearers of the Association viz., South Indian Artists Association, in the opinion of this Court cannot be restrained from conducting any programme like the one proposed to be held on 06.01.2018 at Kuala Lumpur. Therefore, the prayer sought for in this writ petition cannot be granted for the reasons and discussions made above.

17. However, in the interest of justice, this writ petition is disposed of with the following directions:-

(i) that the respondent police shall issue a fresh summon to the petitioner fixing the date and time for the appearance, with relevant documents before the respondent police. The petitioner on receipt of such summon shall appear before the respondent police with all available materials and documents in respect of the complaint and produce the same to the respondent police and also give a statement that those are all the only documents available with him and no further documents are available with the petitioner.

(ii) On receipt of such documents from the petitioner, the respondent police shall proceed further to complete the investigation within a period of two months from such receipt of documents from the petitioner. In the process of investigation, if the respondent police wants to summon any office bearer of the said Association, they can be summoned by issuing a notice or summons and at any rate, investigation shall be completed within a period of two months, as indicated above.

18. It is further made clear that, once the respondent police come out with a conclusion after the investigation, the

parties should abide by the same and respondents can proceed in accordance with law. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

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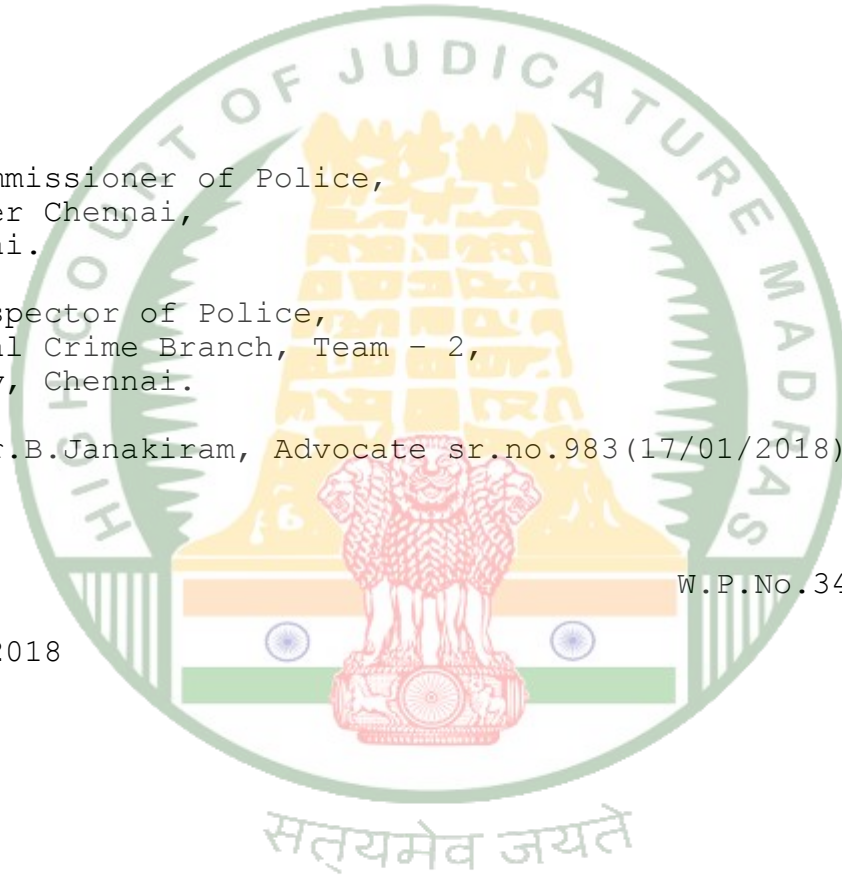
To

- 1) The Commissioner of Police,
Greater Chennai,
Chennai.
- 2) The Inspector of Police,
Central Crime Branch, Team - 2,
Vepery, Chennai.

+3cc to Mr.B.Janakiram, Advocate sr.no.983(17/01/2018)

Order in
W.P.No.34188 of 2017

NR 08/01/2018



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