

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.38419 of 2002

Avinashi Amudhasurabi Finance
Depositors Association
65, Parameswaran Pillai Lay out
Pappanaicken Palayam
Coimbatore 641 037
represented by President Mr.P.Haridoss ... Petitioner

Vs

1.State represented by Secretary to Government,
Home Department,
Fort St.George, Chennai -9.

2.Deputy Superintendent of Police
Economic Offences Wing
Coimbatore City.

3.Inspector General of Police
Economic Offences Wing
Government Estate, Chennai.

4.Competent Authority under TNPID Act
Commissioner for Land Administration
Chepauk, Chennai - 600 005.

5.Palanisamy ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the third respondent to transfer the case taken as LP No.36/2002 on the file of the second respondent, to any other independent police officer not below the rank of Superintendent of Police, so as to register the same under Sec.5 of the TNPID Act, to proceed with the investigation of the said case including the arrest of the persons responsible for the offence and also to impound their passports.

For petitioner : Mr.Srinath Sridevan

For respondents : Mr. K.Ravikumar for R1 to R3

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the third respondent to transfer the case taken as LP No.36/2002 on the file of the second respondent, to any other independent police officer not below the rank of Superintendent of Police, so as to register the same under Sec.5 of the TNPID Act, to proceed with the investigation of the said case including the arrest of the persons responsible for the offence and also to impound their passports.

Heard Mr.Srinath Sridevan, learned counsel appearing for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents 1 to 3.

2.The learned counsel appearing for the petitioner would submit that, as of now the petitioner has not given any instruction as to the current position of the issue raised in this writ petition.

3.However, the learned Additional Government Pleader appearing for the respondents 1 to 3, has produced a copy of the order in C.C.No.80 of 2008 dated 15.02.2016, passed by the learned Special Judge, Special Court Under TNPID Act Cases, Coimbatore.

4. By relying upon this order, the learned Additional Government Pleader would submit that after investigation of the case a final report under TNPID Act was filed before the concerned Court and that Court after trial, by the said order dated 15.02.2016, has acquitted the accused and also given finding that the entire amount has already been settled and there cannot be a default within the meaning of Section 5 of TNPID Act. The relevant portion of the said order is reproduced here under:

" iii) Under those circumstances, as per the TNPID Act Sec.5(A) there is a provision to settle the amount. But, in view of the fact that the entire amount has been settled, there cannot be a default within the meaning of Sec.5 of TNPID Act. Since the entire amount has been settled and only if the amount has not been settled and when the financial institution fails to repay the amount, then only the Sec.5 of TNPID Act will come into play. In view of the fact that the entire amount has been settled and the case of the Prosecution that the Accused has committed the offence U/S.5 of TNPID Act, which has been established by the Prosecution is not

sustainable and in view of the above discussions, the prosecution fails to establish the case against the Accused. Hence, the benefit of doubt is given to all the accused and this court found that the Accused are not guilty U/s.5 of TNPID Act U/s.248(1) of Cr.P.C. Accordingly, I answered the point.

8) In the result and in view of the my above discussion, i find the Accused is not guilty U/s.5 of TNPID Act 1997 and acquitting the Accused U/S.248(1) of Cr.P.C. Since no property has been recovered, there is no order as to property."

5. In view of the above, the learned Additional Government Pleader would submit that, nothing survives in this writ petition as the prayer sought for to transfer the investigation to some other agencies has already been infructuous.

6. By recording the aforesaid facts, this court is of the view that there is no need to have any further adjudication in this writ petition. Therefore, the writ petition is dismissed as infructuous.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mp/rts

To

1. The Secretary to Government,
Home Department,
Fort St.George, Chennai -9.
2. Deputy Superintendent of Police
Economic Offences Wing
Coimbatore City.
3. Inspector General of Police
Economic Offences Wing
Government Estate, Chennai.

4.Competent Authority under TNPID Act
Commissioner for Land Administration
Chepauk, Chennai - 600 005.

+1cc to Mr.Srinath Sridevan, Advocate sr.no.61696
+1cc to Government Pleader sr.no.61740

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sr(co)
nr 28/09/2018



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