

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.26456 of 2018
and WMP No.30739 of 2018

P.Palani @ Thileeban

... Petitioner

vs.

1. The District Collector,
District Collector Office,
Vellore, Vellore District.

2. The Revenue Divisional Officer,
Ranipettai,
Vellore, Vellore District.

3. The Tahsildar,
Nemeli Taluk,
Vellore District.

4. Meiyazhagan,
The Assistant Engineer,
Public Works Department,
Panapakkam,
Vellore District.

5. The Inspector of Police,
Banavaram Police Station,
Vellore District.

6. Shankar

7. Arumugam

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the respondents from 1 to 3 take action against the respondents 6 and 7 pursuant to the petitioners representation dated 13.08.2018.

For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.E.Manoharan (for R1 to R5)
Additional Government Pleader

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Contending inter alia that 100 neem trees in Kadaivasal Keezhveethi in Perapper Village lake, have been indiscriminately cut and removed by one Mr.Shankar, S/o.Kannan and Arumugam, S/o.Govindappa Reddy, who has been doing Kudi Maramatthu Pani in Kadaivasal Keezhveethi in Perapper Village lake, petitioner is stated to have made a representation dated 13.08.2018 to the District Collector, Vellore and the Revenue Divisional Officer, Ranipet, Vellore District, to take action.

2. The petitioner, is stated to have made a separate complaint dated 27.08.2018 to the Inspector of Police and Banavaram Police Station, Nemili Taluk, Vellore District to investigate and take action. In his complaint, he has also alleged that Assistant Engineer, Public Works Department, Panapakkam, Vellore, has not given proper answer, as regards cutting and removal of the trees. According to the petitioner, no permission has been granted to cut and remove the trees.

3. Contending inter alia that despite receipt of the representation dated 13.08.2018, both the District Collector and Revenue Divisional Officer, Vellore have not taken any action, and that though the Inspector of Police, Banavaram Police Station, Vellore, has acknowledged the complaint dated 27.08.2018, no action has been taken and therefore, the writ petitioner is constrained to prefer the instant public interest writ petition, for a mandamus, to direct the respondents from 1 to 3 to take action against the respondents 6 and 7 pursuant to his representation dated 13.03.2018.

4. Added further petitioner has also enclosed a news item published in Daily Thanthi dated 02.08.2018, which states that the officials have not lodged any complaint. Photographs have been enclosed.

5. On the aspect on newspaper reports, being the basis of Public Interest Writ Petitions, we deem it fit to consider few decisions.

(i) A Hon'ble Division Bench of this Court in A.S.M.Kumar v. State of Tamil Nadu reported in 2008 (5) MLJ 399, to which, one of us, is a party, has considered the following judgments,

"8.The question of admissibility of the newspaper reports came up for consideration in Samant N.Balkrishna and another Vs.George Fernandez and other

reported in 1969 (3) SCC 238 at paragraph 26, the Apex Court observed that

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

9. As regards nature and admissibility of a newspaper report, the Supreme Court in Lakmi Raj Shetty and another Vs. State of Tamil Nadu reported in 1988 (3) SCC 319, opined that

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

10. In Quamarul Islam Vs. S.K.Kanta reported in 1994 (1) SCC 452, the question as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein came up for consideration. The Apex Court at Paragraph 48 of the judgment held that,

"48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under

the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

11. The Supreme Court dealing with a "pro bono publico" litigation in B.P. Singhal Vs. State of Tamil Nadu and others reported in 2004 (13) SCC 673, wherein the petitioner sought for a transfer of an investigation from Tamil Nadu State Police to the Central Bureau of Investigation, opined that:

"the petition is lacking in material particulars. All the averments made in the petition are based, by and large, on news reports and not on personal knowledge. The petition does not state that the petitioner

has taken any care to verify himself the correctness of the averments made."

12. In yet another decision in *Dr. B. Singh Vs. Union of India (UOI)* and others reported in 2004 (3) SCC 363 dealing with a public interest litigation, challenging the propriety of the third respondent therein for being considered for appointment as a Judge, the Supreme Court while expressing its anguish found that:

"the petitioner has nowhere stated that he has personal knowledge of the allegations made against R3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some other paper cuttings of news items. It is too much to attribute authenticity or creditability to any information or fact merely because, it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence."

13. In matters relating to public interest litigation, the Supreme Court has time and again cautioned that the Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. Reference can be made to the recent decision of the Apex Court in *Holicow Pictures Pvt., Ltd., Vs.*

Prem Chandra Mishra and others reported in 2008 (1) CTC 711 (Para 20)."

(ii) After considering the decisions of the Hon'ble Apex Court, at Paragraph 16, the Hon'ble Division Bench has observed as follows:

"It is now well settled that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. Though the parameters of public interest litigation have been indicated by the Supreme Court in large number of cases, yet unmindful of the real intentions and objectives, the petitioner, without verifying the authenticity or otherwise of the news items, has chosen to resort to the extra ordinary jurisdiction. The Public Interest Litigation intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. Before maintaining a cause before the Court one should prove that there is concrete and credible basis, not withstanding the credentials claimed of the person moving the courts."

6. Prayer sought for is for a mandamus to direct respondents 1 to 3 to take action against respondents 6 and 7, pursuant to the representation of the petitioner dated 13.08.2018. Respondents 6 and 7 are private parties, against whom allegation of cutting and removal of trees, has been made. Though, petitioner is stated to have lodged a complaint dated 27.08.2018 with the Inspector of Police, Banavaram Police Station, Vellore, Respondent No.5, and in normal circumstances, this Court, would only advice the writ petitioner to take recourse permissible under law, as confirmed by the Hon'ble Full Bench of this Court in G.Prabakaran Vs. Superintendent of Police (Crl.O.P.(MD) Nos.1368/2017 etc., batch) dated 20.09.2018, considering the averments of the petitioner that even the authorities, did not lodge any complaint to the police, for taking appropriate action and when attention of this Court was invited in the form of the instant public interest writ petition, we are of the view that it is suffice to direct the District Collector, Vellore and Revenue Divisional Officer, Vellore, respondents 1 and 2 respectively, to look into the representation dated 13.08.2018 and take appropriate action, if required. Further, Inspector of Police, Banavaram Police Station, Respondent No.5, has acknowledged the complaint. He is duty bound to enquire into the averments made in the complaint and if a prima facie case is made out, take action in accordance with law. Thus, respondents 1, 2 and 5 respectively are directed to implement the directions

of this Court in letter and spirit, within a period of one week from the date of receipt of a copy of this order.

7. With the above directions, the instant writ petition is disposed of. No costs. Consequently, the connected Writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The District Collector,
District Collector Office,
Vellore, Vellore District.

2. The Revenue Divisional Officer,
Ranipettai,
Vellore, Vellore District.

3. The Tahsildar,
Nemeli Taluk,
Vellore District.

4. The Inspector of Police,
Banavaram Police Station,
Vellore District.

+lcc to Mr.R.Thirumoorthy, Advocate, S.R.No.77540(19/11/2018)

+lcc to the Government Pleader, S.R.No.70302

WP.No.26456 of 2018
and WMP No.30739 of 2018

RSV(CO)

GSP(02/11/2018)

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