



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

W.P. (MD) No.13991 of 2018

Muthuesakki ... Petitioner

Vs.

1.The Bar Council of Tamil Nadu and Pudhucherry,
Rep.by its Secretary,
Madras High Court Campus,
Chennai 600 104.

2.The Chairman,
Enrolment Committee,
Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus,
Chennai 600 104.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to enrol the petitioner within a stipulated time.

For Petitioner : Mr.M.Sakthi Kumar
For Respondents : Mr.Niranjan S.Kumar

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

By consent, Writ Petition itself, is taken up for final disposal. Mr.Niranjan S.Kumar, learned standing counsel takes notice for respondents.

2.This Writ petitioner seeks to issue a Writ of Mandamus, directing the respondents to enrol the petitioner.

3.It is brought to notice that registration of FIR in Crime No.213 of 2017 on the file of Inspector of Police, Thisiyanvilai Police Station under Section 107 Cr.P.C., is cause for denying petitioner's enrolment as an Advocate.

4.In order of this Court dated 26.06.2018 in W.P.(MD) No.12774 of 2018, it has been observed as follows:



"5.Learned Standing Counsel for the respondents drew our attention to the petitioner that a Full Bench of this Court in W.A.Nos.1590 and 1670 of 2015 confirmed the finding of a learned Single Judge passed in S.M.Anantha Murugan V. The Chairman, Bar Council of India, New Delhi (2015(6) CTC 22) to the following effect:

"3.Bar Council of India shall direct the State Bar Councils not to enrol any law graduate with pending criminal cases except bailable cases attracting punishment upto three years and compoundable offences involving matrimonial, family and civil disputes, till the changes are brought in the Advocates Act & Bar Council of India Rules."

6.We would without hesitation inform our reservations. Given the present day social fabric many a deserving candidate might be delayed / denied right to enrol as an Advocate on false implication. We might unwittingly be making room for police power / play. Hon'ble Supreme Court in Armesh Kumar Vs. State of Bihar & another (2014(8) SCC 273) observed that power of arrest is one lucrative source of police corruption. Would we be wrong in stating that threat of false implications towards disenabling enrolment as an advocate would be another. However, the present case does not invite consideration of the decision of the Full Bench."

5.Section 107 Cr.P.C. is a provision, which does not deal with any specific offence but informs of procedure to be followed towards avoiding commission of an offence. In the decision of this Court in CrI.O.P.No.7591 of 2017 (Rajkumar Vs. State Rep. by Inspector of Police, Dharapuram Police Station, Tiruppur District) dated 21.04.2017, it has been informed:

"The First Information Report Book is meant for recording information of cognizable offences in keeping with Section 154 Cr.P.C. The likelihood of commission of offence is not to be entered therein. It would be appropriate that whenever the police receive information which might necessitate action by an Executive Magistrate under Sections 107 to 110 Cr.P.C., the same be entered in a separate register and requisition for action thereupon be made to the Executive Magistrate.'

6.This Court is in no doubt that enrolment as an Advocate is unjustly being denied to petitioner. There shall be a direction to the respondents to enrol the petitioner as an Advocate on the roll of Bar Council of Tamil Nadu and Pondicherry in the enrolment exercise of 30.06.2018.



7. This Writ petition shall stand allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
The Bar Council of Tamil Nadu and Pudhucherry,
Madras High Court Campus,
Chennai 600 104.

2. The Chairman,
Enrolment Committee,
Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus,
Chennai 600 104.

+1cc to M/S.M.Sakthi Kumar, Advocate SR.No. 70455

W.P. (MD) No. 13991 of 2018
29.06.2018

nbg
JM/SKN RSK/SAR 4/29.06.2018/3P/4C