



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.09.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP (MD) No.17728 of 2018
and
WMP (MD) Nos.15615 and 15616 of 2018

S.Pravin Sathya Shibu
[represented by the Holder of his General Power of Attorney
S.Sathyadas]

...Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by the Superintendent of Police,
Kanyakumari at Nagercoil,
Kanyakumari District.

2.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified mandamus calling for the records of the 2nd respondent, pertaining to his order No.Nil dated Nil, signed on 14.12.2015 on his file, forwarded by him to the petitioner under the 2nd respondent's letter No.Nil dated Nil signed on 09.02.2016, on the 2nd respondent's file, quash the same in so far as the petitioner's case is concerned thereby directing the respondents to register a First Information Report on the petition dated 21.02.2015 of the petitioner, investigate the same and file final report thereon, within a time to be fixed by this Court.

For Petitioner :Mr.K.N.Thampi
For Respondents :Mr.B.Bhagawathi
Government Advocate

ORDER

This writ petition has been filed challenging the closure report filed by the second respondent and for a consequential direction to register an FIR and transfer the case to a different agency.

2.The case of the petitioner is that his wife got acquainted with one Shakila at Nagercoil through Internet. The said Shakila informed the petitioner and his wife that she will get jobs for them at America and she will also help them in getting Visa and Flight ticket. As per the directions given by the said Shakila, the



petitioner and his wife deposited various amounts to the tune of Rs.33,11,507/- in different Banks. The said Shakila also introduced her son and her husband and they also gave directions to the petitioner with regard to the deposit of money.

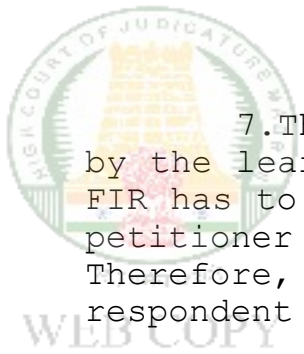
3.The further case of the petitioner is that even subsequent to the payment of money, the said Shakila, her husband and son failed to get any job to the petitioner and when the petitioner asked for return of money, he was abused and threatened. Therefore, the petitioner gave a complaint along with all the relevant documents to the respondent Police. Since no action was taken, a petition was filed before this Court in Cr1OP(MD)No.12202 of 2015. This Court by an order dated 02.07.2015, directed the second respondent to complete the enquiry and register an FIR, if any cognizable offence is made out.

4.The petitioner thereafter appeared before the second respondent for enquiry and the second respondent even without registering an FIR, had closed the complaint and the same was informed to the petitioner. Aggrieved by the same, the present writ petition has been filed.

5.The second respondent has filed a counter affidavit, wherein he has admitted the fact that there are several complaints pending against the said Shakila and others of the very same nature and FIR is pending against her and others. However, the second respondent has taken a stand that the complaint given by the petitioner is purely imaginary and the petitioner has not even met the said Shakila and the only contact was through internet and mobile phone. On this ground, the second respondent had chosen to close the complaint.

6.The act of the second respondent in closing the complaint is highly condemnable. The respondent lost sight of the fact that the petitioner has provided all the information with regard to the deposit of the money in various Bank accounts, as directed by the accused persons and the second respondent has not even taken into account the same.

It will be too much on the part of the second respondent to say that the complaint is imaginary. To say the least, the second respondent was totally insensitive to the gravity of the offence committed against the petitioner and his wife. The second respondent also lost sight of the directions given by the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353, wherein the Hon'ble Supreme Court had specifically directed that preliminary enquiry be conducted only in certain cases. The case on hand does not require any preliminary enquiry, since a reading of the complaint makes out a cognizable offence. The second respondent had proceeded with the enquiry, as if he has conducted the investigation, even without registration of FIR. The closure report filed by the second respondent is illegal.



7. This Court finds sufficient force in the submissions made by the learned Counsel for the petitioner and is satisfied that the FIR has to be registered on the basis of the complaint given by the petitioner and an independent agency has to investigate this case. Therefore, the closure reported dated 14.12.2015 filed by the second respondent is hereby set aside.

8. The petitioner is directed to give a fresh complaint to the Deputy Superintendent of Police-CBCID, Tirunelveli, within a period of two weeks from the date of receipt of a copy of this order. The Deputy Superintendent of Police shall assign the complaint to an Inspector of Police, CBCID of his choice. The case on being assigned, the Inspector of Police, CBCID shall register an FIR on the basis of the complaint and shall conduct a thorough investigation in this case and bring to book the accused persons. The Inspector of Police, CBCID shall conduct the investigation effectively and complete the same expeditiously and file a final report.

9. The writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

dsk

To

1. The Superintendent of Police,
Kanyakumari at Nagercoil,
Kanyakumari District.

2. The Deputy Superintendent of Police,
CBCID, Palayamkottai.
Tirunelveli.

3. The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

+1cc to Mr.K.N.Thampi, Advocate in SR No.82264
+1cc to Spl Government Pleader, SR No.82506