

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.OP.No.7491/2019

and

CrI.MP.10608/2019

G.Kumaresan

..Petitioner

Vs

1.The Chief vigilance Officer,
Southern Railway,
CAO Office Building,
7th Floor, Egmore,
Chennai 600 008.

2.The Central Vigilance Commissioner,
A-Block, GPO Complex,
Satarkala Bhavan, INA,
New Delhi, Delhi-110023.

...Respondents

(R2 impleaded as per order
dated 01.04.19 made in CrI.MP
4637/19 in CrI.OP.7491/18)

Prayer:- Petition filed under section 482 Cr.P.C., to
direct the respondent to take steps to register a case on the
complaints given by the petitioner dated 26.02.2019 and
12.03.2019 and proceed against the accused persons in accordance
with law.

For Petitioner : Mr.S.Doraisamy

For Respondents: Mr.P.T.Ramkumar for R1
: Mrs.T.P.Savitha for R2

ORDER

The criminal original petition has been filed by the
petitioner to direct the respondents to take steps to register a
case on the complaint given by the petitioner dated 26.02.2019
and 12.03.2019 and proceed against the accused persons in
accordance with law.

2. The petitioner has preferred complaints dated
26.02.2019 and 12.03.2019 against the Chief Administrative
Officer, Mr. L.Sudhakar Rao, the chief Engineer/S&RB, Mr.S.Ashok
Kumar, the Deputy chief Engineer, Mr. S.Jeyasankar, Executive

Engineer, Mr. N.Jeyaraman for having colluded and conspired with M/s.Mars Construction for calling the tender for the same work which has been allotted to the petitioner in order to make payment and share between themselves. Since the acts of the accused persons amounted to commission of offences punishable u/s.120-B r/w 420, 468 r/w 471 of IPC, Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. By the complaints dated 26.02.2019 and 12.03.2019 the petitioner had requested the respondent to register a case and proceed against the erring officials in accordance with law. Since no proper action was taken, the petitioner had approached this Court seeking for a direction.

3. Mr. S.Doraisamy, the learned counsel appearing for the petitioner would submit that the acts of the accused constituted of offences punishable under the provisions of the Indian Penal Code and the Prevention of Corruption Act. The petitioner had filed a complaint against them as early as however no action has been taken by the respondent, he had approached this Court.

4. The respondents have filed a counter wherein, it had been stated that the complaints dated 26.02.2019 and 12.03.2019 were received in the office of the respondent 28.02.2019 and 13.03.2019 respectively and while the petitioner was contemplating taking action, the petitioner has filed this petition on 18.03.2019 within a period of six days.

5. It had been further stated that the respondent is bound by the instructions contemplated in Indian Railway Vigilance Manual (IRVM), 2018 for taking any action on the complaint received against Railway Officials. Further as per para 513 of Indian Railway Vigilance Manual (IRVM), the complaints are chronologically recorded in the computerized database i.e. the Indian Railway vigilance Information System (IRVINS) and in this case, both the complaints sent by the petitioner have been registered vide file No.VC/E/2019/03/00823/CMS and VO/E/2019/03/02094/CMS and as per para 508.1 of IRVM, every complaint is required to be verified for genuineness before conducting enquiry by addressing the complainant through a registered letter asking the complainant to confirm within the period of 15 days to ascertain whether he had sent the complaint. Accordingly the letter along with confirmation slips for verification of genuineness were sent to the complainant on 13.03.2019 and 25.03.2019 respectively and that the confirmation slips have been received by the complainant on 28.03.2019 and 05.04.2019.

6. It had been further stated that thereafter the vigilance check was conducted at the work site on 20.03.2019 and investigation has been initiated as per procedure involving

preventive checks as per para 406 of IRVM and that thereafter file No.VO/PC/E/2019/03/02159/CMS has been created for this purpose. Further two soil samples have been taken from the site for conducting laboratory tests and sent to Government approved laboratory for analysis and clarification had been obtained from 3 field officials as per guidelines mentioned in para 520 of IRVM. It had been further stated that the Chief Vigilance Inspector has been nominated by the Competent Authority to investigate the allegations made in the complaint and that the said Chief Vigilance Inspector has collected the records pertaining to the contract and that he is in the process of conducting enquiry and that conclusions can be arrived on the allegations made in the complaint only after completion of enquiry following the due procedure contemplated in Indian Railways Vigilance Manual, 2018. The allegations that no steps have been taken by the Vigilance Organisation has been denied. It had been further stated that in the complaints dated 26.02.2019 and 12.03.2019, the petitioner has not made any allegations against the Chief Administrative Officer and the Chief Engineer whereas contrary to the facts allegations have been deliberately made against the officials concerned in the criminal original petition. It had been further stated that the Vigilance Organisation of Railways is empowered to take action only as per the provisions of Indian Railway vigilance Manual (IRVM) and thereafter recommend suitable departmental action as per the Railway Servants (Discipline and Appeal) Rules, 1968 against the erring Officials after the outcome of Vigilance enquiry and that the respondents is not vested with the powers for invoking action under the Indian Penal Code and Prevention of Corruption Act against any officials and thereby the criminal original petition is not maintainable.

7. The learned counsel for the 1st respondent would submit that action has been taken by the respondents and preliminary enquiry has been initiated as per due procedure contemplated under the Indian Railways Vigilance Manual, 2018, and if it is found that the officials have committed any illegality appropriate action will be taken as per law. He would further submit that Vigilance Organisation of Railways is empowered to take action only as per the provisions of Indian Railways Vigilance Manual and recommend suitable department action as per the Railway Servants (Discipline and Appeal) Rules, 1968 against the erring Officials after the outcome of Vigilance enquiry and that the respondents is not vested with the powers for invoking action under the Indian Penal Code and Prevention of Corruption Act against any officials and thereby the petition is not maintainable. However, he would submit that the respondents will complete the enquiry as expeditiously as possible and conclude it at the earliest.

8. Heard both sides.

9. In this case, the complaints have been preferred on 26.02.2019 and 12.03.2019, the respondents have initiated action as per the instructions contemplated in the Indian Railways Vigilance Manual (IRVM), 2018 and that file No.VC/E/2019/03/00823/CMS and VO/E/2019/03/02094/CMS has been created for these complaints. It is seen from the counter affidavit that preliminary enquiry has been initiated and it is going on.

10. The learned counsel for the respondent had submitted that due and proper enquiry will be conducted and if it is found that any illegality has been committed, suitable and appropriate action will be taken against the erring officials. Further, it has also been stated that the respondents will complete the enquiry as expeditiously as possible and conclude the enquiry at the earliest.

11. In view of the above, a direction is issued to the respondents to complete the enquiry within a period of three months from the date of receipt of the copy of this order and a copy of the report of the conclusion arrived in the enquiry shall be furnished to the petitioner.

12. With the above observations, this petition stands closed. Consequently, connected miscellaneous petition is closed.

jrs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief vigilance Officer,
Southern Railway,
CAO Office Building,
7th Floor, Egmore,
Chennai 600 008.

2. The Central Vigilance Commissioner,
A-Block, GPO Complex,
Satarkala Bhavan, INA,
New Delhi, Delhi-110023.

+1cc to Mr.P.T.Ramkumar, Advocate, SR.No.75216
+1cc to Mr.S.Doraisamy, Advocate, SR.No.74835

CrI.OP.No.7491/2019
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Kak(13/09/2019)



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