IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31282 of 2018 and W.M.P.Nos.36468, 36470 and 36472 of 2018

T.S.Kumarasamy .. Petitioner

-vs-

1. The Director General of Income Tax (Inv), Tamil Nadu & Pondicherry, New No.46, Old No.108 MG Road, Nungambakkam, Chennai-34.

2. The Principal Director of Income Tax (Inv), Investigation Wing, New No.46, Old No.108 MG Road, Nungambakkam, Chennai-34.

3. B.Jayaragavan, The Additional Director of Income Tax Investigation, Unit-3, New No.46, Old No.108 MG Road, Nungambakkam, Chennai-34.

4. K.Rohan Raj, The Deputy Director of Income Tax Investigation, Unit-3(2) New No.46, Old No.108 MG Road, Nungambakkam, Chennai-34.

5. Press Council of India, Soochna Bhavan, 8-C.G.O. Complex, Lodhi Road, New Delhi-110 003. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, restraining the respondents, their men and agents from in any manner disclosing to any media including press, TV Channels and print and electronic media any information relating to the search and seizure and other consequential proceedings concerning the petitioner, except in a manner permissible under the Central Civil Services (Conduct) Rules, 1964 and directives issued thereunder and conduct an enquiry and identify and take appropriate departmental action against the Income tax officials who have made the statements reported in the 'The Hindu' dated 24.11.2018 under the headline 'Politicians, officials figure in T.N.Noon meal scam-S.Vijay Kumar.

For Petitioner :: Mr.G.Masilamani,
Senior Counsel for
Mr.R.Parthasarathy

For Respondents :: Mr.A.P.Srinivas and
Mr.A.N.R.Jaya Prathap,
Standing Counsel for R1 to R4

ORDER

The petitioner has come to this Court seeking a direction restraining the respondents from in any manner disclosing to any media including press, TV Channels and print and electronic media any information relating to the search and seizure and other consequential proceedings except in a manner permissible under the Central Civil Services (Conduct) Rules, 1964 and directives issued thereunder and to conduct an enquiry and identify and take appropriate departmental action against the Income tax officials.

2.Mr.G.Masilamani, learned senior counsel appearing for the petitioner submitted that since the respondents in their counter affidavit have taken a stand that they were not responsible for any information relating to the investigation conducted in the petitioner's premises with regard to search and seizure, the interim order dated 27.11.2018 passed by this Court in W.P. Nos.31282 and 31291 of 2018 may be made absolute and the writ petition may be disposed of.

3.Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents 1 to 4, reiterating the stand taken in the counter affidavit filed by the second respondent, would submit that the petitioner cannot make any false allegation stating that the respondents were responsible for leaking out any information relating to search and seizure to the media. A counter affidavit filed by the second respondent shows that none of the respondents have divulged any information to the media and it is relevant to extract page 5 as under:

'It is brought to notice of this Hon'ble Court that a very shocking allegation has been made against the respondents by the petitioner by stating that the respondents have leaked the details of investigation to the media. It is painstakingly and emphatically reiterated that none of the respondents have divulged any information to the media, let alone the 'The Hindu' newspaper. ...'

4.At the time of entertaining the writ petition, while considering the claims and the counter claims, the interim order dated 27.11.2018 was passed by this Court in W.P. Nos.31282 and 31291 of 2018 which is reproduced as under:

'5. It is necessary to refer to Rule 11 of the Central Civil Services (Conduct) Rules, 1964 as well as the relevant observations made by the Hon'ble Apex Court in the judgment in Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1, which are extracted hereunder:-

"Rule 11. Provided that no government servant shall, except in accordance with any general or special order of the government or in performance in good faith of the duties assigned to him, communicate directly or indirectly, any official document or any part thereof or classified information to any government servant or any other person to whom he is not authorised to communicate such document or classified information."

"Role of the media and press

297. There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court.

298. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs

> in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.
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> 299. In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the court in taking any different view. The freedom of speech protected under Article 19 (1)(a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in the matters sub judice before the courts.
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> 302. In the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial, defence of the accused and non-interference with the administration of justice in matters sub judice."

6.In the light of the aforesaid observations made by the Apex Court as well as Rule 11 of the Central Civil Services (Conduct) Rules, since the respondent-Department cannot directly or indirectly communicate and provide any information on the pending enquiry to any government servant or any person more particularly, in sub judice matters, the respondents are directed not to divulge any information or undertake media trial with regard to the investigation and the enquiry being conducted against the petitioner, till further orders. Post after three weeks for filing counter affidavit.'

5.After passing the interim order, the respondents have filed counter affidavit denying the allegation made by the petitioner and they have also stated that they have not divulged any information relating to search and seizure to the media. Since the respondents have taken a stand in their counter affidavit that none of the respondents have divulged any information to the media, the interim order dated 27.11.2018 passed by this Court in W.P. Nos.31282 and 31291 of 2018 is made absolute and the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Director General of Income Tax (Inv),
   Tamil Nadu & Pondicherry, New No.46, Old No.108,
   MG Road, Nungambakkam, Chennai-34.

2. The Principal Director of Income Tax (Inv),
   Investigation Wing, New No.46, Old No.108
   MG Road, Nungambakkam,Chennai-34.

3. The Additional Director of Income Tax Investigation,
   Unit-3, New No.46, Old No.108
   MG Road, Nungambakkam, Chennai-34.

4. The Deputy Director of Income Tax Investigation,
   Unit-3(2) New No.46, Old No.108
   MG Road, Nungambakkam, Chennai-34.

5. The Press Council of India,
   Soochna Bhavan, 8-C.G.O. Complex,
   Lodhi Road, New Delhi-110 003.

+2cc to Mr.R.Parthasarathy, Advocate, S.R.No.5017
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.4981

W.P.No.31282 of 2018 and W.M.P.Nos.36468, 36470 and 36472 of 2018

GP(CO)
CS/29/01/2019