BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Monday, the Eighteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice K.K.SASIDHARAN

The Hon`ble Mr.Justice P.D.AUDIKESAVALU

WMP(MD) No.534 of 2019
IN
WP(MD) No.12482 of 2017

K.KATHIRESAN, ... PETITIONER/PETITIONER

Vs

Tmt.Girija Vaidyanathan I.A.S.,
W/o.Raja Vaidyanathan,
Chief Secretary to Government of Tamil Nadu,
Secretariat,
Chennai - 600 009. ... Respondent/2nd Respondent

IN THE MATTER OF

K.KATHIRESAN ... PETITIONER

VS.

1.THE UNION OF INDIA,
REP. BY THE SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI.

2 THE STATE OF TAMIL NADU ,
REP. BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, CHENNAI - 600 009.

3.THE STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT, CHENNAI - 600 009.

4.THE DIRECTOR GENERAL OF POLICE,
NO.4, DR.RADHAKRISHNAN SALAI,
MYLAPORE, CHENNAI - 600 004.

5 THIRU.T.K.RAJENDRAN IPS,
DIRECTOR GENERAL OF POLICE,
NO.4, DR.RADHAKRISHNAN SALAI,
MYLAPORE, CHENNAI - 600 004.

6 THE CHIEF COMMISSIONER OF INCOME TAX,
MG ROAD, NUNGAMBAKKAM,
CHENNAI - 600 034.

7 THE JOINT DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION SOUTH ZONE,
3RD FLOOR SHASTRI BHAVAN,
NO.26 HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI - 600 006.

8 THE DIRECTOR OF VIGILANCE& ANTI CORRUPTION (DVAC),
NO.293 MKN ROAD, ALANDUR,
CHENNAI - 600 016.

9 THE UNION PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
DHOLPUR HOUSE, SHAHJAHAN ROAD,
NEW DELHI - 110 069. ... RESPONDENTS

PRAYER IN WMP(MD).NO.534 OF 2019:-

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to conduct appropriate enquiry and consequently pass appropriate orders to cause initiation of criminal proceedings against the Respondent/2nd Respondent herein by the Honourable Jurisdictional Magistrate for the offences of committing perjury by giving and fabricating false evidence by filing a false affidavit in W.P(MD). No.12482/2017 on the file of this Honourable Court.

Prayer in WP(MD). 12482/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records pertaining to the grant of extension of service to the 5th Respondent herein in the impugned order of the 2nd Respondent in G.O.(2.D) No.184 Home (SC) Department Dated 30.06.2017 and quash the same as illegal and to direct the 7th Respondent to register the case based on the letters sent by the 6th Respondent which is now pending with the 8th Respondent and direct the 7th Respondent to constitute a Special Investigation Team to investigate the case in accordance with law under the direct monitoring of this Court.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.KANNAN, Advocate for the petitioner and of Mrs.S.SRIMATHY, Standing Counsel for the sixth Respondent and of MR.K.CHELLAPANDIAN, Additional Advocate General Assisted by Mr.A.K.BASKARA PANDIAN, Special Government Pleader for the repondents 2 to 5,7 and 8, the court made the following order:-

The petitioner in W.P.(MD) No.12482 of 2017 has come up with this miscellaneous petition to initiate criminal proceedings against Mrs.Girija Vaidhyanathan, Chief Secretary to the Government,

Government of Tamil Nadu, under Section 340 of the Code of Criminal Procedure and punish her under Section 193 of Indian Penal Code for committing perjury.

Background:-

2. The petitioner filed a Writ Petition before this Court in W.P.(MD) No.12482 of 2017, challenging the appointment of the fifth respondent as Director General of Police. The Government Order in G.O.(2D) No.184 Home (SC) Department dated 30 June 2017 was challenged primarily on the ground that his name was found in the incriminating documents seized by the Income Tax Department during the course of a search at the premises of a gutkha dealer. The petitioner contended that the fifth respondent received illegal gratification from gutkha traders and permitted them to carry on the trade in gutkha, in spite of the ban imposed by the Government. The petitioner further contended that the State deliberately suppressed documents relating to the involvement of the fifth respondent in the Gutkha Scam to favour him with the appointment as the head of Police Force.

3. The first respondent pursuant to the direction issued by this Court, filed an affidavit in W.P.(MD) No.12482 of 2017 indicating that her office was not in receipt of the communication dated 9 July 2016 from the Income Tax Department as alleged by the petitioner. According to the first respondent, there was no records in her office to confirm the receipt of the letter in question.

4. The subsequent raid conducted by the Income Tax Department revealed that the Chief Secretary to the Government and the Director General of Police actually received communication and it was found at Vedha Nilayam, Poes Garden, the residence of the former Chief Minister.

5. The petitioner contended that the first respondent deliberately made a false submission before this Court and the falsity of the averments in the affidavit is now proved by the report submitted by the Principal Director, (Investigation), Income Tax Department, before the Principal Bench of this Court. The petitioner therefore seeks direction to prosecute the first respondent.

Submissions :-

6. The learned counsel for the petitioner contended that the Principal Director (Investigation), Income Tax Department, after the search, submitted a report to the then Chief Secretary and the Director General of Police, citing their attention to the incriminating documents seized during the course of the search at the premises of the gutkha traders. Those documents were with the Chief Secretary. According to the learned counsel, in order to mislead this Court, the Chief Secretary has filed a false affidavit to make it appear as if there was no such documents with her office. The learned counsel contended that subsequent search conducted by

the Income Tax Department at the premises of Mrs.V.K.Sasikala, at Poes Garden revealed that those documents were actually received by the Chief Secretary and the Director General of Police and it was sent to the Poes Garden, the residence of the then Chief Minister. The learned counsel submitted that the first respondent at all point of time acted in collusion with the fifth respondent, to favor him with the post of Director General of Police. The Chief Secretary must be prosecuted for filing a false affidavit in a judicial proceeding.

7. The learned Additional Advocate General contended that the subsequent seizure of documents during the search at Vedha Nilayam, Poes Garden, would not go to show that the Chief Secretary was in possession of the documents. According to the learned Additional Advocate General, the Chief Secretary filed an affidavit taking into account the query raised by the Court on the basis of the contention taken by the petitioner. Since the affidavit was filed with correct particulars, she is not liable for prosecution.

The issue:-

8. The core question is as to whether there are materials available on record to show that the first respondent deliberately filed a false affidavit before this Court with incorrect particulars so as to attract the offence under Section 340 of Cr.P.C.

Discussion:-

9. The petitioner filed a Writ Petition in W.P.(MD) No.12482 of 2017, challenging the appointment of the fifth respondent. The Government Order in G.O.(2D) No.184 Home (SC) Department dated 30 June 2017, appointing the fifth respondent as the Head of the Police Force in the State of Tamil Nadu was challenged on multiple grounds, the primary one being his involvement in the Gutkha Scam.

10. The petitioner, during the currency of the Writ Petition, has taken up a contention that the Principal Director (Investigation), Income Tax Department, met the Chief Secretary and the Director General of Police in person and handed over a letter indicating the names of tainted officers.

11. The petitioner made a request to the Court to direct the Chief Secretary to produce the communication received by the Chief Secretary and the Director General of Police, sent by the Principal Director (Investigation). We therefore directed the Chief Secretary to produce the documents.

12. The Chief Secretary to the Government, filed an affidavit dated 17 July 2017. The affidavit reads thus :-

> I, Girija Vaidhyanathan, w/o Thiru.Raja Vaidhyanathan, aged about 58 years, serving as Chief Secretary to Government, Secretariat, Chennai, since 23.12.2016, do solemnly affirm and sincerely state as follows:

2. I submit that I am aware of the facts and circumstances of the case from the available records.

3. The above matter was heard by this Hon'ble Court today. During the course of hearing it was represented by the counsel for the petitioner that the Income Tax Department had addressed a communication on 09.07.2016 to my office indicating the involvement of the police officials in the gutkha scam.

4. It is respectfully submitted that verification has been made from the records maintained by the relevant Departments on behalf of my office and it is found that no such communication dated 9.7.2016 has been received from the Income Tax Department, as alleged.

5. It is submitted that under the above circumstances, it is humbly prayed that this Hon'ble Court may be pleased to accept this affidavit and pass suitable orders as deemed fit and proper and thus render justice.

13. The petitioner has come up with this miscellaneous petition for initiation of criminal proceedings against the Chief Secretary, primarily on the ground that a false affidavit was filed in a judicial proceeding before this Court.

14. The Chief Secretary, in her affidavit dated 17 July 2017, submitted that verification has been done in the relevant Departments and it was found that no such communication dated 9 July 2016 has been received from the Income Tax Department, as alleged.

15. The seizure of the letters during raid at Poes Garden made the petitioner to allege that a false affidavit has been filed to mislead the Court.

16. In order to address the issue raised by the petitioner, we summoned the records from the office of the Director of Income Tax, (Investigation), Chennai.

17. The records produced by the Income Tax Department indicates that the Principal Director (Investigation), Chennai, sent a letter dated 13 August 2016 to the Chief Secretary to Government, Government of Tamil Nadu, wherein there was a reference about the meeting held on 12 August 2016. There is an endorsement made by the office of the Chief Secretary that one selected cover from Shri.B.R.Balakrishnan, Principal Director of Income Tax, Investigation, Chennai, addressed to the Chief Secretary to Government of Tamil Nadu, was received by the office. Similarly, the Principal Director of Income Tax, Investigation, Chennai, forwarded a letter to the Director General of Police, dated 11 August 2016 and it was received by the Private Secretary to the Director General of Police on 12 August 2016.

18. The Income Tax Investigation Wing, conducted a search at the premises at Vedha Nilayam, Poes Garden, on 17 November 2017. During the course of search, the Income Tax Department seized the letter sent by the Income tax Department to the Chief Secretary, Government of Tamil Nadu, and the Director General of Police and a semi-official letter sent by the Director General of Police to the Hon'ble Chief Minister in the very same matter.

19. The seizure of the documents by the Income Tax Department during the search at Vedha Nilayam, is the ground taken by the petitioner to contend that the Chief Secretary has filed a false affidavit in a judicial proceeding.

Search at Poes Garden and seizure of documents - Supports the case of the Chief Secretary:-

20. The documents seized by the Director of Income Tax (Investigation) during the search at Poes Gaden, supports the stand taken by the Chief Secretary. The documents were seized only from the residence of the then Chief Minister at Vedha Nilayam. Therefore, it is clear that the documents referred to in the affidavit filed by the Chief Secretary were not available with her office. It was very much available at Vedha Nilayam. The Chief Secretary was therefore correct in her affidavit that no such communication has been received from the Income Tax Department, as alleged and those facts were revealed on verification. The availability of the documents in the office of the Chief Secretary would arise only in case those documents were still there. The search conducted by the Income Tax Department clearly revealed that the documents were not available with the office of the Chief Secretary or the Director General of Police. The documents were all found at the residence of the then Chief Minister. Therefore, it is very clear that there was no act of perjury.

21. The correctness of the affidavit filed by the Chief Secretary is now proved by the report submitted by the Income Tax Department and the seizure of the documents during the search at Vedha Nilayam, Poes Garden.

22. We are therefore of the view that the petitioner has not made out a case for initiating criminal proceedings against the first respondent.

23. In the upshot, we dismiss the miscellaneous petition, without any liability to pay cost.

sd/-
18/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SECRETARY TO GOVERNMENT OF INDIA,
   THE UNION OF INDIA,
   MINISTRY OF HOME AFFAIRS, NEW DELHI.

2 THE CHIEF SECRETARY TO GOVERNMENT,
THE STATE OF TAMIL NADU ,
SECRETARIAT, CHENNAI - 600 009.

3.THE SECRETARY TO GOVERNMENT,
THE STATE OF TAMIL NADU
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8 THE SECRETARY,
UNION PUBLIC SERVICE COMMISSION,
DHOLPUR HOUSE, SHAHJAHAN ROAD,
NEW DELHI - 110 069.

9.THE PRINCIPAL DIRECTOR(INVESTIGATION),
108, MG ROAD,
INCOME TAX DEPARTMENT,
NUNGAMBAKKAM, CHENNAI-600 034.

+1. C.C. to Mr.A.KANNAN Advocate SR.No.54795
+1. C.C. to Mrs.S.SRIMATHY, Advocate SR.No.54537

ORDER
IN
WMP(MD) No.534 of 2019
IN
WP(MD) No.12482 of 2017
Date :18/03/2019

MSI/PN/SAR 3/02.04.2019/7P-12C