



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.16441 of 2019
and
W.M.P. (MD)13118 of 2019

P.Saravanan

... Petitioner

Vs.

1.The Director of Vigilance and Anticorruption,
No.293, M.K.N.Road Alandur,
Chennai-600016.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Pudukottai.

3.The Inspector General of Registration,
Chennai.
(R3 is suo motu impleaded
vide Court order dated 25.07.2019
in W.P. (MD)No.16441 of 2019)

4.G.Mahalakshmi
(R4 is impleaded vide
Court order dated 21.08.2019
in W.M.P. (MD)No.14620 of 2019)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to take action against the erring officials of the Registration Department based on the petitioner's complaint dated 03.06.2019.

For Petitioner : Mr.M.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

For R1 & R2 : Mr.A.Robinson
Government Advocate (Crl.side)

For R3 : Mr.M.Murugan
Government Advocate



For R4

: Mr.S.Parthasarathy
for Mr.V.Malaiyendran

ORDER

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The petitioner is employed as Manager in the Mount Zion Christian Educational Trust, Pudukottai. A document dated 08.03.2019 was executed by the said Trust in favour of another trust by name Mount Zion Trust. The said document was presented for registration. The registration formalities were duly concluded. But then, the document was not returned.

2. The case of the petitioner is that the Registering Officer namely one G.Mahalakshmi demanded illegal gratification for returning the document. In this regard, a complaint dated 16.05.2019 was submitted to the Deputy Superintendent of Police, V&AC, Pudukottai. Since no action was taken thereon, this writ petition came to be filed.

3. The learned Senior Counsel appearing for the writ petitioner submitted that even though the prayer in the writ petition has been worded rather widely, he would confine his prayer to the extent of directing the second respondent to register an FIR on the writ petitioner's complaint.

4. This Court suo motu impleaded the Inspector General of Registration, Chennai as the third respondent and called upon the learned Government Advocate to take instructions in the matter. The Inspector General of Registration is the Authority who is competent to remove the Sub Registrar from office. He has filed a detailed counter stating that he has already taken departmental action against the said G.Mahalakshmi and that, she has also been suspended from service and there is no need for holding any enquiry or investigation by the V&AC Police.

5. This Court called upon the learned Government Advocate (Crl.side) to clarify as to why no further action has been taken by the Deputy Superintendent of Police, Vigilance and Anticorruption, Pudukkottai. The stand taken by the second respondent is that without getting a formal sanction from the Inspector General of Registration, Chennai-28, it would not be open to the second respondent to register an FIR on the petitioner's complaint. At this stage, the concerned official namely Mrs.G.Mahalakshmi, filed W.M.P.(MD)No.14620 of 2019, for getting herself impleaded as fourth respondent in this writ petition. Even though as per the law laid down by the Hon'ble Supreme Court in Anju Chaudhary Vs. State of Uttar Pradesh (2013) 6 SCC 384, the said Mahalakshmi is not entitled to any right of hearing as such, this Court nevertheless heard Mr.S.Parthasarathy, learned counsel appearing for the fourth respondent. The only question that arises for consideration is



whether the second respondent herein namely, Deputy Superintendent of Police, Vigilance and Anticorruption, Pudukottai, has to get green signal from the Inspector General of Registration before taking action on the writ petitioner's complaint. The second respondent appears to be under impression that Section 17(A) of the Prevention of Corruption Act, 1988, would come in the way of taking action straight away. Section 17(A) of the Prevention of Corruption Act, 1988, reads as under:-

"17(A). (1) No Police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union of that Government.

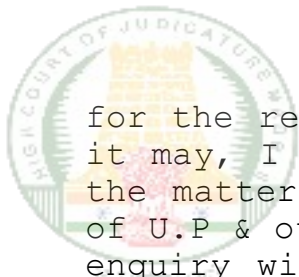
(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government.

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person

Provided further that the concerned authority shall convey its decision under this Section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

6. The above provision will come into play only where the alleged offence is relatable to any recommendation made or the decision taken by a public servant in discharging of his official functions or duties. In this case, according to the writ petitioner, the Sub Registrar had demanded illegal gratification to release the pending document. Therefore, the alleged offence cannot be said to relate any recommendation made or decision taken. The said provision cannot have any application in cases where the decision is yet to be taken or the recommendation is yet to be made. However, as rightly pointed out by the learned counsel appearing for the Sub Registrar, while the occurrence is alleged to have taken place on 13.03.2019, the complaint was made for the first time only on 24.04.2019. Therefore, it is obvious that the writ petitioner did not approach the Sub Registrar immediately. He had chosen to wait for full 41 days



for the reason which he will alone be able to explain. Be that as it may, I am consciously refraining from going into the merits of the matter. The Hon'ble Supreme Court in Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC), held that the preliminary enquiry will have to be conducted in certain cases. The case on hand involves allegation of demand of bribery. That apart, the complaint has been made belatedly. Therefore, in the very nature of things, the second respondent will have to hold a preliminary enquiry. All that this court clarifies in this writ petition is that the prior sanction of the appointing authority/competent authority is not required for holding the preliminary enquiry or for investigation or registration of FIR on the petitioner's complaint. Merely because, this Court had answered the legal issue in favour of the writ petitioner, it shall not be construed as casting any reflection on the defence of the said Mahalakshmi.

7. With this clarification and observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Director of Vigilance and Anticorruption,
No.293, M.K.N.Road Alandur, Chennai-600016.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Pudukottai.

3.The Inspector General of Registration, Santhome, Chennai.

+1 CC to M/s.V. MALAIYENDRAN, Advocate (SR-82709[F] dated 21/08/2019

+1 CC to M/s.VEERAASSOCIATES, Advocate (SR-82922[F] dated 22/08/2019

+1 CC to M/s.SPL GP (SR-83236[F] dated 22/08/2019)

W.P. (MD)No.16441 of 2019
21.08.2019

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