

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.22869 of 2019
and

W.M.P.Nos.28868, 28869 & 30580 of 2019

P.Gopinathan

... Petitioner

Vs

1. The Superintendent of Police,
Salem - 636 002.
2. The Inspector of Police,
District Crime Branch,
Salem District 636 002.
3. The Secretary to Government,
Commercial Taxes Department,
Chennai - 9.
4. The Secretary to Government,
Rural Development & Panchayat Raj Department,
Chennai - 9.
5. M.C.Marappan, Partner,
MCM & Co.,
Mettupalayur PO, Mettur Taluk.
Salem District - 636 303.
6. R.Kumar, Partner,
MCM & Co.,
Mettupalayur PO, Mettur Taluk.
Salem District - 636 303.

7.Thangam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to re-open FIR.No.8 of 2016, dated 28.06.2016 and conduct a free and fair investigation by a Special Investigation Officer and the first respondent to take disciplinary and criminal action on the subordinate officers who colluded with the respondents 5, 6 & 7 for their illegalities

committed against government and misappropriated commercial tax Rs.45 lakhs, in accordance with law.

For Petitioner : Mr.P.Gopinathan
Party-in-person

For R1 to R4 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R5 to R7 : Mr.M.R.Jothimanian

O R D E R

This Writ Petition has been filed to direct the first respondent to re-open FIR registered in Crime No.8 of 2016 and conduct a free and fair investigation by appointing a Special Investigation Officer.

2 The petitioner/party in person submitted that the respondents 5 to 7 are the contractors, when the petitioner was working as a Block Development Officer(VP) in Kolathur Block, Salem District between 29.06.2015 to 20.08.2015. During the said period, the petitioner has carried out his work inspection in respect of the ongoing contractual works carried out by the respondents 5 to 7 in respect of the petitioner block, he found that roads and retaining walls were carried out without any quality as specified in the estimates and also by flouting all the norms and procedures without conducting quality control test. Therefore, the petitioner has issued notice on 31.07.2015 and 07.08.2015 to all the contractors and has proceeded disciplinary action against them. He further submitted that with the connivance of the Assistant Engineer and Panchayat President Singiripatti, respondents 5 to 7 have submitted a fabricated Cash Bill No.229, dated 02.06.2015, of M/s.Arasi Electricals, Kolathur, for a sum of Rs.30,380/-, as if the petitioner has purchased 124 cement bags for the above work.

3 On 28.03.2016, the Assistant Commissioner, Commercial Taxes Department, Omalur, furnished information to the petitioner stating that 28 form - S certificates submitted by the respondents 5 to 7 was forged and fabricated and therefore, the petitioner has filed writ petition before this Court in W.P.No.11525 of 2016 and this Court directed the Joint Commissioner, (CT) Salem and the Assistant Commissioner, (CT) Omalur, to take appropriate action against the above said contractors viz., respondents 5 to 7 herein. Likewise, the respondents 5 to 7 herein fabricated so many bills and committed the crime to the tune of Rs.45,00,00/-. Therefore, the Assistant Commissioner of Commercial Tax, Omalur, has lodged a

complaint against the respondents 5 to 7 and the same was registered in Crime No. 8 of 2016, for the offences under Sections 468, 471 & 420 of IPC. Though, there is a specific allegation made as against the respondents 5 to 7, the second respondent closed case as "mistake of fact" on 27.01.2019. Therefore, petitioner sought for re-investigation in Crime No.8 of 2016.

4 Per contra, the learned counsel appearing for the respondents 5 to 7 has filed a counter and submitted that the petitioner has suppressed the material facts and this petition has been filed with false allegations, that to, with a malafide intention against the respondents 5 to 7 herein. Because, already, on the complaint lodged by the respondent 5 to 7, a case has been registered in Crime No.9/AC/15, on the file of the Inspector of Police, Vigilance and Anti Corruption Wing, Salem, as against the petitioner, for the offence under Section 7 of PC Act, 1988. After completion of investigation, final report has been filed and it is pending for trial in C.C.No.5 of 2016, on the file of the Chief Judicial Magistrate, Salem. Therefore, without any allegations and simply by making false allegations, now the petitioner has filed this writ petition, in which, he is not the defacto complainant in Crime No.8 of 2016 and only the Assistant Commissioner of Commercial Tax is the complainant and on the complaint, the second respondent has registered the case and thereafter, conducted a detailed enquiry. On enquiry, it is revealed that no evidence is made out as against the petitioner herein. Therefore, the case was referred as "mistake of fact" on 27.01.2019. Hence, they prayed for dismissal of this petition.

5 The learned Additional Public Prosecutor would submit that on the complaint lodged by the Assistant Commissioner of Commercial Tax, a case has been registered in Crime No. 8 of 2016 for the offences under Sections, 468, 471 and 420 of IPC. After investigation, FIR has been closed as "mistake of fact". The referred charge sheet is also filed before the concerned Jurisdictional Magistrate Court.

6 Heard the petitioner/party-in-person and learned counsel appearing for the respondents and perused the materials placed on records.

7 On a perusal of the records, it is seen that while the petitioner was working as Block Development Officer, he found some irregularities and also found forged documents submitted by the respondents 5 to 7. Therefore, he has filed a writ petition before this Court and on the direction issued by this Court, the Assistant Commissioner of Commercial Tax has lodged a complaint before the second respondent and the same has been registered in

Crime No. 8 of 2016 for the offences under Sections 468, 471 and 420 of IPC as against the respondents 5 to 7. After investigation, the second respondent dropped the further enquiry on 07.01.2019, in Crime No.8 of 2016 and a closure report has also been filed before the concerned jurisdictional Magistrate. The learned Additional Public Prosecutor has also filed a counter and submitted that the respondent police after examination and re-examination of witnesses found that the petitioner has not produced any valid documents to substantiate the allegations levelled against respondents 5 to 7 and hence referred the case as "further action dropped" and the RCS notice was also served on the petitioner and the same was also acknowledged by him on 04.03.2019. and the same was also filed before the Jurisdictional Magistrate Court.

8 Admittedly, the petitioner is not a complainant herein. On the complainant lodged by the respondents 5 to 7, a case has been registered in Crime No. 9 of 2015, under the Prevention of Corruption of Act, 1988 against the petitioner. After completion of the investigation, the petitioner has been charged for the offences under Sections 7 of Prevention of Corruption Act, 1988 and the same has been taken cognizance in C.C.No.5 of 2016, on the file of the learned Chief Judicial Magistrate, Salem and the same is pending for the trial. Therefore, only to harass the respondents 5 to 7 herein, the petitioner has filed this writ petition for reinvestigation. Therefore, the writ petition is devoid of merits and liable to be dismissed.

9 Accordingly, the Writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Superintendent of Police,
Salem - 636 002.

2.The Inspector of Police,
District Crime Branch,
Salem District 636 002.

WEB COPY

3. The Secretary to Government,
Commercial Taxes Department,
Chennai - 9.

4. The Secretary to Government,
Rural Development & Panchayat Raj Department,
Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

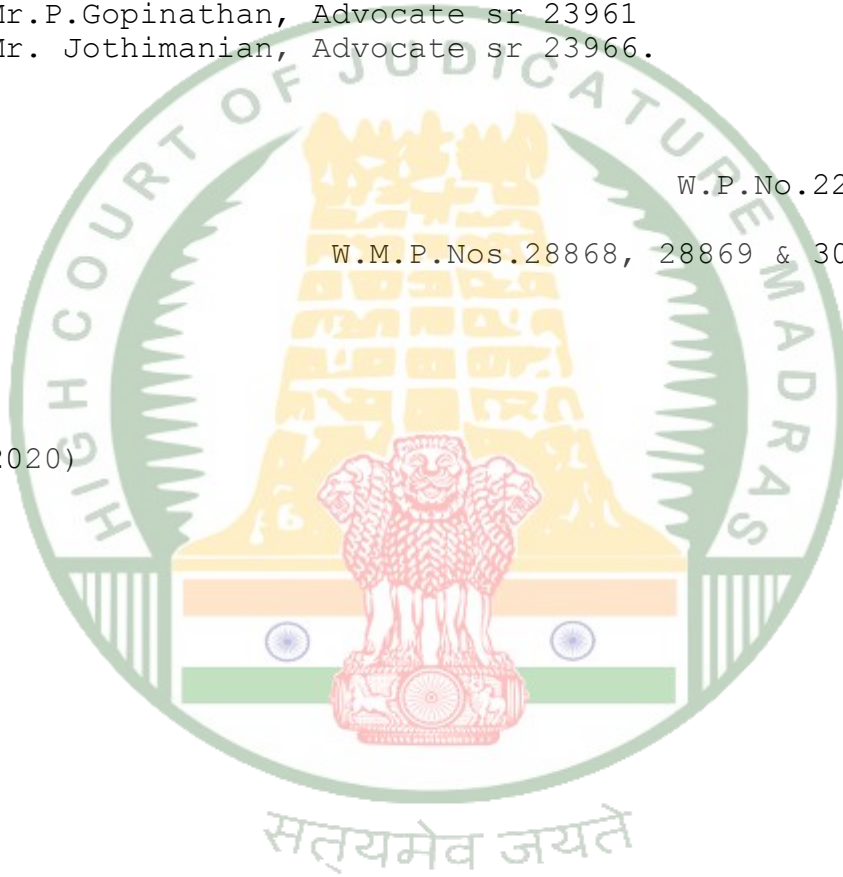
+1 CC to Mr.P.Gopinathan, Advocate sr 23961

+1 CC to Mr. Jothimanian, Advocate sr 23966.

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LN(CO)
SP(17/07/2020)



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