



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P (MD)No.10269 of 2020

S.Ramalingam

... Petitioner

Vs.

1.The Superintendent of Police,
Sivagangai District,
Sivagangai.

2.Palaniappan
Then Sub-Inspector of Police,
Thiruppachethi Police Station,
Sivagangai District
Now working as Sub-Inspector of Police,
(PCR Wing)
Sivagangai,
Sivagangai District.

... Respondents

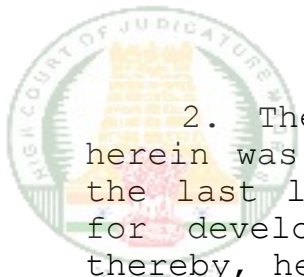
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to take appropriate action as against the 2nd respondent based on the petitioner's representation, dated 08.08.2019 made to the 1st respondent.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondents : Mr.S.Chandrasekar
(R1 & R2) Additional Public Prosecutor

O R D E R

The present Writ Petition has been filed praying for issuance of a Writ of Mandamus, directing the 1st respondent to take appropriate action against the 2nd respondent, based on the petitioner's representation, dated 08.08.2019, made to the 1st respondent.

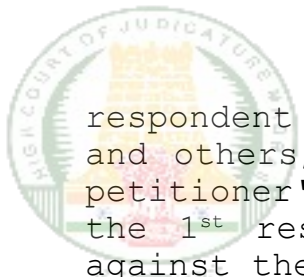


2. The case of the writ petitioner is that the petitioner herein was elected as the President of Thiruppachethi Panchayat in the last local body election under which, he rendered his service for development of people of Thiruppachethi Panchayat and thereby, he got a good book among the people of Thiruppachethi. In order to tarnish the name of the petitioner, in the area, where the petitioner is residing, the 2nd respondent herein had hand in glove with Village Administrative Officer one Murugan, by way of instigating the said V.A.O. to give a false complaint, as against the son of the petitioner, his relative and the vehicle driver. Subsequently, based on the false complaint given by the VAO, the 2nd respondent police, even after knowing that the sand was taken from the petitioner's patta land, registered a case against the petitioner's son, relative of the petitioner and the vehicle driver, in Crime No.102 of 2019, under Section 379 of IPC., and under Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, mentioning that they stolen the sand from the Government Poramboke land, bearing Survey No.60/1. Resultantly, three persons were arrested. In this regard, the 2nd respondent herein along with the V.A.O had misused their powers as against the petitioner's son, his relative and the vehicle driver for which appropriate departmental action as against the 2nd respondent herein is necessary. In this regard, the petitioner sent a representation dated 08.08.2019 to the first respondent, whereas, the first respondent is totally inert in taking departmental action, as against the 2nd respondent herein.

3. The learned counsel appearing for the petitioner would further submit that for the construction of house, the petitioner took the sand from his own land, which bearing Survey No.47/12. For the said occurrence, based on the complaint given by the Village Administrative Officer, who is the defacto complainant in Crime No.102 of 2019, the 2nd respondent foisted a false case against the petitioner's son, as he stolen away the sand in Survey No.60/1, which is a Government Poramboke. Further, the report given by the Tahsildar, Thiruppuvanam reveals the fact that the petitioner's son took the sand only from the patta land and not from the land belongs to the Government. Therefore, the second respondent foisting the false case against the petitioner's son, which is violative of G.O. (Ms)No.50, Industries (MMC-1), dated 27th April 2017 and therefore, for violating the said Government Order, appropriate action is necessary against the 2nd respondent.

4. The learned counsel would further submit that in earlier, the petitioner had submitted a letter to the District Collector, Sivagangai District, dated 10.06.2019 in which, he prayed permission to take clay soil, which was found in S.F.No.47/12 (patta no.738) which stands in the name of the petitioner. Further, the petitioner's son had also the took clay soil only from the said land. In this regard, without conducting any enquiry, based on the

[https://hcservices.eprints.in/jsp/serve/](https://hcservices.eprints.in/jsp/serve/https://hcservices.eprints.in/jsp/serve/) by the Village Administrative Officer, the 2nd



respondent herein, foisted a false case against the petitioner's son and others, under the provisions as referred above. Therefore, the petitioner's herein preferred a complaint dated 08.08.2019, before the 1st respondent for the relief to take appropriate action, as against the 2nd respondent.

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5. Mr.S.Chandrasekar, the learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that though it was alleged on the side of the petitioner that he took sand from his own patta land, even for taking the sand from the patta land it is necessary to get a permission from the district authority. Therefore, without getting a licence taking a sand or clay soil is also an offence and therefore, registering the case against the petitioner's son is not against the law contemplated. Further, the 2nd respondent, being the Sub-Inspector of Police, received the complaint from the Village Administrative Officer and registered a case against the petitioner's son. The act committed by the 2nd respondent is his official duty, for which, the petitioner herein submitted a representation to the 1st respondent, for taking disciplinary action against the 2nd respondent, which is not a reasonable request within the ambit of law and therefore, prayed for dismissal of the Writ Petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. Upon considering the arguments advanced by either side it is made clear that in the representation given by the petitioner dated 08.08.2019, in page No.2, the petitioner himself admitted that the clay soil was taken in Survey No.47/12. In this regard, though it was submitted on the side of the petitioner that an application was submitted to the District Collector on 10.06.2019, for getting permission, he has not produced the copy of the order passed by the District Collector, which is for granting permission to take clay soil or sand during the relevant point of time.

8. More than that the complaint given by the Village Administrative Officer is clear that the son of the petitioner took sand in Survey No.60/1, which is a Government Poramboke land. In this regard whether the sand was taken from the Government land or patta land the same has to be decided only at the time of investigation, more particularly, at the time of trying the offence before the Court of Law. It is not in dispute that the 2nd respondent herein is performing his official duty, further only on that score he registered a case against the petitioner's son. In the said circumstances, it is necessary to see Section 79 of IPC., which reads as follows:-

"79. Act done by a person justified, or by mistake of fact believing himself justified, by law. - Nothing is an offence which is done by any person who is justified by law, or who by reason



of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it."

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9. Apart from that, Section 27 of the Mines and Minerals (Development and Regulation) Act, 1957 reads as follows:-

"27. Protection of action taken in good faith:-- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act."

10. Therefore, in the said circumstances, the alleged First Information Report has been registered by the 2nd respondent is his official duty and not otherwise. In the representation given by the petitioner he has not indicated any specific allegation against the 2nd respondent. Mere registering the FIR as against the petitioner's son is not an offence for which, he cannot be liable for taking disciplinary proceedings. The petitioner being the responsible person even after knowing the same, filed this writ petition unnecessarily. I am of the opinion that this Writ Petition has been filed with *mala fide* intention only to harass the 2nd respondent to prevent from doing his official duty and therefore, I am of the opinion to dismiss this writ petition with heavy cost. Accordingly, the Writ Petition is dismissed with a cost of Rs.10,000/-. The petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand Only), to the Additional Registrar General i/c [The Registrar (Judicial), Madurai Bench of Madras High Court, for the improvement of amenities of this Court, within a period of one month from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Superintendent of Police,
Sivagangai District,
Sivagangai.

2.Palaniappan
Then Sub-Inspector of Police,
Thiruppachethi Police Station,
Sivagangai District
Now working as Sub-Inspector of Police,
(PCR Wing)
Sivagangai,
Sivagangai District.

Copy to:

The Additional Registrar General,
i/c The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

W.P (MD) No.10269 of 2020
31.08.2020

MPK
SDS (17.09.2020) 5P-4C