



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P. (MD)No.12131 of 2020

and

W.M.P. (MD)No.10439 of 2020

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G.Mathanagopal,
Managing Trustee,
Srimathi Renganayaki and Sri Sriramulu Educational
and Public Charitable Trust [Regd.],
No.9, Agraharam, Ayyampettai,
Papanasam Taluk,
Thanjavur District.

... Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur District,
District Police Office,
Thanjavur.

2.The Deputy Superintendent of Police,
District Crime Branch,
Thanjavur.

3.The Inspector of Police,
District Crime Branch,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order vide No.Nil, dated 20.07.2020, passed by the third respondent, quash the same as illegal and consequently, direct the first respondent to take proper action against the respondents 2 and 3 for not following the mandatory provisions of law and pass order on the petitioner's representation dated 12.08.2020, by transferring the petitioner's complaint to some other Police under his jurisdiction to direct them to register the case and to conduct proper investigation in accordance with law.

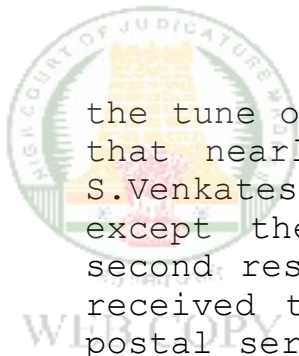
For Petitioner	: Mr.C.Arul Vadivel @ Sekar
For Respondents	: Mr.A.P.G.Ohm Chairma Prabhu Government Advocate (Crl. side)

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 20.07.2020, passed by the third respondent, quash the same as illegal and consequently, direct the first respondent to take proper action against the respondents 2 and 3 for not following the mandatory provisions of law and pass orders on the petitioner's representation dated 12.08.2020, by transferring the petitioner's complaint to some other Police Officer under his jurisdiction and direct them to register the case and to conduct proper investigation in accordance with law.

2.The petitioner is the Managing Trustee of Srimathi Renganayaki and Sri Sriramulu Educational and Public Charitable Trust. In the above said Trust, apart from the petitioner, there are three more Trustees, viz., S.Kaliyamoorthy, S.Thiruvenkadam and G.Srinivasan.

3.The grievance of the petitioner is that one of the above said Trustees viz., Thiruvenkadam committed malpractice in the School accounts and did not maintain the books of accounts, receipts, vouchers etc. For the said malpractice, he was temporarily suspended from the Trusteeship, by the Resolution dated 21.12.2019. Before that, one S.Venkatesan was appointed as Principal of the School by the said Thiruvenkadam and thereafter, they maintained two accounts for the School i.e., one in the name of the Correspondent of the School and another one in the name of the Principal of the School, which is exclusively meant for receiving funds from the Government of Tamil Nadu towards the Tuition fees for the Students studying under the Right of Children to Free and Compulsory Education Act, 2009. The said Venkatesan misappropriated the fund from the Indian Overseas Bank Account with the connivance of the said Thiruvenkadam. A sum of Rs.6,97,070/- was received from the Government of Tamil Nadu on 05.05.2020, by way of transfer to the account maintained in the School. The said Venkatesan issued a cheque for a sum of Rs.6,95,000/- in the name of T.Sangeetha, wife of Thiruvenkadam, and allowed her to take the money from the School account and thereby, committed criminal breach of trust. In respect of the same, the petitioner lodged a complaint before the first respondent on 06.07.2020, for taking appropriate action. Pursuant to the said complaint, the second respondent issued a notice to the petitioner under Section 41-A Cr.P.C. to appear before him for enquiry on 20.07.2020 at 10.00 a.m. with relevant records. As directed by the second respondent, the petitioner went to the Office of the second respondent and narrated the facts and also produced the copies of the statement of accounts, written statement and oral statement about the misappropriation of funds by the said S.Venkatesan and S.Thiruvenkadam on various dates to

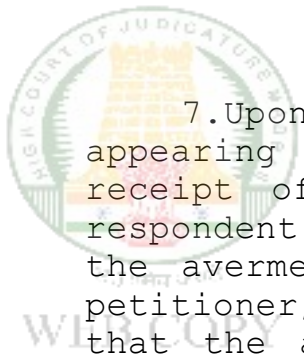


the tune of Rs.19,51,858/-. The petitioner also gave a statement that nearly about Rs.4 Crores was misappropriated by the said S.Venkatesan, S.Thiruvankadam and T.Sangeetha. In this regard, except the petitioner, no other persons were examined by the second respondent on that day. In the meanwhile, the petitioner received the impugned written communication dated 20.07.2020, by postal service on 03.08.2020 from the third respondent, in which, it is stated that the further action on the complaint given by the petitioner was dropped. Aggrieved over the same, the petitioner is before this Court for the relief stated supra.

4.The first and foremost submission made by the learned counsel appearing for the petitioner is that before registering the case, the second respondent had issued summons to the petitioner under Section 41-A Cr.P.C., which is in violation of the Code of Criminal Procedure, 1973.

5.In respect of the said submission, of course, it is true that it is not necessary to send summons to the petitioner under Section 41-A Cr.P.C., since the petitioner is the complainant to the alleged occurrence and further, the summons had been issued before registering the case, i.e., during the time of enquiry. Therefore, this Court finds some force in the contention raised by the learned counsel appearing for the petitioner. Instead of sending summons under Section 160 Cr.P.C., the second respondent had issued the summons under Section 41-A Cr.P.C., which is nothing but violative of Chapter V of the Code of Criminal Procedure, 1973. However, only with an aim to examine the petitioner/complainant, the said summons had been issued and therefore, the said mistake committed by the second respondent alone cannot be a ground for allowing this Writ Petition.

6.The second submission made by the learned counsel appearing for the petitioner is that the representation given by the petitioner would clearly disclose cognizable offence and therefore, it is the duty of the second respondent to register the case immediately upon receipt of the complaint given by the petitioner. But, here it is a case, where instead of registering the case, the second respondent made an enquiry and summoned the petitioner, which is against the principles laid down by our Hon'ble Apex Court in the case of **Lalita Kumari Vs. State of Uttar Pradesh and others** reported in **2014 (2) SCC 1** and therefore, it is his submission that it is necessary to direct the first respondent to call for the impugned enquiry report given by the second respondent and also direct to take action against the said Officer.



7. Upon considering the submissions made by the learned counsel appearing for the petitioner, it is true that immediately, after receipt of the complaint given by the petitioner, the second respondent herein not registered the case. Now, on going through the averments found in the copy of the complaint given by the petitioner, it is seen that the petitioner had specifically stated that the alleged accused viz., T.Thiruvankadam and T.Venkatesan had misappropriated a sum of Rs.6,97,070/-, which was sanctioned by the Government towards the Tuition fees for the Students studying under the Right of Children to Free and Compulsory Education Act, 2009. In the said circumstances, it is necessary to see whether the enquiry ordered by the second respondent is in accordance with law or not.

8. In the case of **Lalita Kumari Vs. State of Uttar Pradesh and others** reported in **2014 (2) SCC 1**, our Hon'ble Apex Court in Paragraph 120.6, has held as follows:-

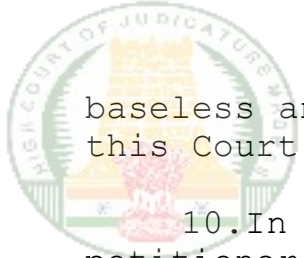
'120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.'

9. Now, applying the above said principles set out by our Hon'ble Apex Court to the case on hand, I am of the view that the petitioner, who is the Managing Trustee of Srimathi Renganayaki and Sri Sriramulu Educational and Public Charitable Trust, has given a complaint against one another Trustee, who was already suspended from the Trusteeship. In respect of the same, Civil Suits in O.S.Nos.130 of 2019 and 49 of 2020 are pending before the Principal Sessions Court, Thanjavur. Therefore, in the said circumstances, it cannot be said that the complaint given by the petitioner, does not warrant any enquiry. More than that, the alleged occurrence had happened on 21.12.2019 itself, for which, the complaint has been given by the petitioner is only on 06.07.2020 i.e., after six months from the date of occurrence. Therefore, due to delay in lodging the complaint by the petitioner, it is necessary for the second respondent, for ordering preliminary enquiry. Therefore, the allegation levelled against the second respondent for not registering the case is



baseless and it does not call for any interference at the hands of this Court.

10. In the said circumstances, the only option available to the petitioner is to follow the procedure laid down by the Division Bench of this Court in the case of **G.Prabakaran Vs. The Superintendent of Police, Thanjavur District and another** reported in **2018 (5) CTC 623**, wherein it has been held as follows:-

'' 35.

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the compliant or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition



without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

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(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint.

The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one.''

11. Instead of following the above said procedure laid down by the Division Bench of this Court, the petitioner herein has straightaway approached this Court not only for recalling the impugned enquiry report of the second respondent, but also wanted to take action against the respondents 2 and 3 for not following the mandatory procedures. Therefore, I am of the considered opinion that the Writ Petition filed by the petitioner, is devoid of merits and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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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,
Thanjavur District, District Police Office, Thanjavur.

2.The Deputy Superintendent of Police,
District Crime Branch, Thanjavur.

3.The Inspector of Police,
District Crime Branch, Thanjavur.

+1 CC to M/s.C. ARUL VADIVEL @ SEKAR, Advocate (SR-17754[F] dated
22/09/2020)

W.P (MD) No.12131 of 2020
21.09.2020

avs (CO)

TR(30.09.2020) 7P 5C