



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.07.2021
PRONOUNCED ON : 29.07.2021
CORAM

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P. (MD)No.2549 of 2021
and W.M.P. (MD)No.4315 of 2021

WEB COPY

J.Chenthil Rajan : Petitioner

Vs.

1.The Director,
Vigilance and Anti-Corruption,
Chennai-16.

2.The Additional Superintendent of Police,
Head Quarters,
Vigilance and Anti-Corruption,
Chennai.

3.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

4.The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the communication made by the second respondent vide Petn.No.9825/2020/POL/KK, dated 13.11.2020 and quash the same and consequently, to direct the first and second respondents to investigate the petitioner's complaint, dated 21.10.2020 and proceed with the same in the light of the provisions contained in Prevention of Corruption (Amendment), Act 2018.

For Petitioner : Mr.R.Anand
For Respondents : Mr.T.Senthilkumar
Government Advocate (crl.side)

ORDER

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the communication of the second respondent, dated 13.11.2020 and to direct the 1st and 2nd respondents to investigate the petitioner's complaint, dated 21.10.2020 and proceed with the same in the light of the provisions contained in Prevention of Corruption (Amendment) Act, 2018.



2. Heard Mr.R.Anand, learned Counsel for the petitioner and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) appearing for the respondents.

3. Mr.R.Anand, learned Counsel for the petitioner, submitted that on 21.05.2021, a mob consisting of twelve persons, had barged into the unit run by the petitioner, namely, M/s.V.V.Marine Products. The inmates of the unit were detained illegally. After threatening the inmates, they left. The reasons to threat is a family dispute between the petitioner's father and father's elder brother, Vaigunda Rajan. At the instance of the elder brother of the father, the mob had come. Similar act was done by the mob on the other unit. The units are situated in two different places in Tuticorin. Unit-I, M/s.V.V.Marine Products situated at Door No.1/69, Agaram Village, Palayakayal, Eral Taluk, Thoothukudi and the Unit II, M/s.V.V.Marine Cold Storage, situated at Door No.205, Theri Road, Sevaikaranmadam, Thoothukudi District. The Manager, Mr.Royston Kagoo rushed to Eral Police Station and met the Inspector of Police, Mr.Pattani and filed a complaint. Unfortunately, Pattani has avoided to register FIR saying one or other reasons. Therefore, the manager of the units sent an online complaint on 26.05.2020 to the Director General of Police, Tamil Nadu, for which a reference was assigned vide CCTNS Reference No.RDR20051218.

4. On the very same day, yet another untoward incident happened at 01.30 pm in the other firm, namely, M/s.V.V.Marine Cold Storage, there also, the same mob entered into with deadly weapons and threatened the inmates. The manager, had gone to the Sawyepuram Police Station and placed a complaint as against the assailants. He was redirected by them to contact the Deputy Superintendent of Police. Having no other alternative, again a complaint was sent online to the Director General of Police vide CCTNS Reference No.RDS20151216.

5. On 29.05.2020, the public servant, Deputy Superintendent of Police, and Inspector of Police came to the office of M/s.V.V.Marine Products, where, the petitioner's father was available. They straightaway forced the petitioner's father to accept the terms that is being derived by the petitioner's father's elder brother for which they had selected a place, called as RVS firm, where, they can discuss the settlement and that they would receive their commission. Also, they threatened that unless the family dispute is not settled, they would foist false case like Mariappan, against whom already false case was foisted.

6. On 16.06.2021, by around 01.00 pm, one Rajesh and three others purposely entered into M/s.V.V.Marine products and gave a threaten to the Manager, Royston Kagoo. They have threatened the inmates of the unit under fear and life threat and they stole



Rs.15,000/-, which was in the possession of one employee, Pulikesi. Again, a complaint was lodged with Earal Police Station. Since the public servant had purposely avoided to register a complaint and investigate the case, the petitioner had engaged a Counsel and approached the Court of the learned Judicial Magistrate, Srivaikundam, Thoothukudi District and filed CrI.M.P.No.721 of 2020, dated 06.07.2020 and CrI.M.P.No.753 of 2020, dated 22.07.2020 and they got orders under Section 156(3) Cr.P.C., with regard to the registration of FIR by Earal Police Station in Cr.No.389 of 2020 and Sawyepuram Police Station FIR in Cr.No.343 of 2020.

7. Even after the FIR was registered, the Deputy Superintendent of Police and Inspector of Police, Earal Police Station, intentionally started manipulating the records in order to help the accused. During the first of week of July, 2020, the petitioner received a call from the Office of Suresh Kumar. Responding to the same, the petitioner appeared before him in office. At that time, the Deputy Superintendent of Police had revealed upon the petitioner to settle the dispute between the petitioner's father and his elder brother. Instead settle the matter by paying Rs.75,00,00,000/- by the petitioner's father to his elder brother, the Deputy Superintendent of Police offered that he will conduct panchayat and things will be settled, for which he needed commission. Unless, the petitioner's family heed his words, he would exercise his power, when the law and order issue arise and investigate the case.

8. Therefore, the petitioner felt that Mr. Pattani and Mr. Sureshkumar have wantonly evaded to register the complaint. The Honourable Supreme Court had mentioned in recent judgments that the Officers, who refused to register FIR, inspite of the availability of materials attracting cognizable offence, they shall not only be proceeded departmentally, but also be penalised under the law. The same ratio was upheld in **Lalithakumari vs State of Uttar Pradesh**, reported in **(2014) 2 SCC 1**. The petitioner, therefore, was forced to sent a complaint to the Directorate of Vigilance and Anti Corruption, as the conduct of Suresh Kumar, Deputy Superintendent of Police and Pattani, Inspector of Police, Pattani, attracting the provisions of Prevention of Corruption Act.

9. The learned Counsel for the petitioner invited the attention of this Court to the reported rulings of the Honourable Supreme Court in Lalithakumar's case, wherein, the Honourable Supreme Court had issued guidelines, in which, instead of straightaway registering a FIR, they can conduct preliminary enquiry. Also, the learned Counsel for the petitioner invited the attention of this Court to the manual of the Directorate of Vigilance and Anti Corruption issued by the Government of Tamil Nadu vide G.O.(3D)No.2, Personal and Administrative Reforms (Personnel-N) Department, dated 06.01.1993. Rule 14 of Manual reads as follows:



"14. Nature of Enquiries/Investigations

The Directorate of Vigilance and Anti-Corruption undertakes enquiries/investigations into complaints/information about specific acts bribery or corruption and allied malpractices in the exercise of official authority by Public Servants under the control of the State Government and also employees of Public Undertakings, Corporations set up by the State Government. Usually, the first enquiry into a complaint/information is in the nature of a Preliminary Enquiry. If the Preliminary Enquiry discloses material which merits an open probe, a Detailed Enquiry is taken up. If the material thrown up in a Preliminary Enquiry or a Detailed Enquiry makes out a prima facie case for criminal prosecution, a Regular case is registered under Section 154 of the Code of Criminal Procedure, 1973, and investigation taken up in terms of relevant provisions of the Code of Criminal Procedure, 1973. When specific information is received that a particular Public Servant is demanding money for discharge of his official duty in a specified instance. A "Trap" is also attempted."

10. Section 17(A) of the Prevention Corruption Act, 1988 extracted hereunder:

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties :-

(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.

11.Also, Mr.R.Anand, learned Counsel for the petitioner relied on the order passed by the learned Single Judge of this Court regarding Section 17(A) of the Prevention of Corruption Act, 1988, in W.P.(MD)No.15845 of 2020. The learned Counsel for the petitioner relied on the following observation of the learned Single Judge:

In my view, for registering a case in this regard, no prior approval is required and Section 17A will not have any application. As held by the Hon-ble Delhi High Court in the decision reported in 2019 (1) Crimes (HC) 726 Devender Kumar vs. CBI, the purpose of Section 17A is only to provide protection to officers/public servants who discharge their official functions and/or duties with diligence, fairly and in an unbiased manner, without any motive for their personal advantage or favour. However, when the act of a public servant is ex-facie criminal or constitutes an offence, prior approval of the Government would not be necessary. This was followed by the High Court of Chhattisgarh in Sathish Pandey vs. Union of India (2020 0 Supreme (CHH) 149. Respectfully following the aforesaid decisions, I hold that Section 17A of the Prevention of Corruption Act cannot be made applicable in those cases where the act of the public servant that amounts to an offence appears on the face of it lacking in good faith. Issuing public building license and no objection certificates for the 11th respondent cannot be said to be acts done in good faith. Where the performance of public function is grossly improper, the safe conclusion at least at the initial stage can be that it was in anticipation of or in consequence of accepting an undue advantage from the beneficiary.

7.I therefore direct the 13th respondent to register a case against unnamed public servants under Section 7 (c) of the Prevention of Corruption Act, 1988 for having issued public building license and no objection certificates and extending recognition after 2016 in favour of the 11th respondent. The 13th respondent will conduct proper investigation and file final report before the jurisdictional court within a period of five months



from the date of receipt of copy of this order. I make it clear that the observations made herein are only for the purpose of triggering a prosecution and they shall not foreclose anybody's defence. The investigation shall be carried on with an open mind. It is open to the petitioner to place further materials before the investigation officer. I also direct the Special Government Pleader to communicate this order to the concerned Heads of the Departments so that they can initiate appropriate departmental proceedings.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

12.It is the submission of the learned Counsel for the petitioner that inspite of the complaint preferred by him to the Directorate of Vigilance and Anti Corruption, they had not taken steps or atleast afforded an opportunity of being heard to the petitioner. Since there was no follow up action for the petition filed by the petitioner with the Directorate of Vigilance and Anti Corruption, the petitioner had come before this Court by filing this Writ Petition seeking to quash the impugned communication, dated 13.11.2020 and to direct the first and second respondents to investigate the complaint of the petitioner, dated 21.10.2020 and proceed with the same in the light of the provisions contained in Prevention of Corruption (Amendment), Act, 2018.

13.The contents of the petition give raise to the demand of corruption by the said Suresh Kumar, Deputy Superintendent of Police and Pattani, Inspector of Police. Also, the learned Counsel for the petitioner invited the attention of this Court to the counter affidavit filed by the Additional Superintendent of Police, to this Writ Petition, and paragraph No.5 of the counter affidavit reads as follows:

"5.I respectfully submit that the said allegations were carefully perused. The contention and allegations of petitioner in his petition is that the Investigation Officers are trying to refer the case in favour of the accused is frivolous in nature and based on mere assumption. It is admitted by the petitioner that two FIRs were already registered for the complaints given by the petitioner. The claim of the petitioner is that the settlement between their requires Rs.75 crores appears to be highly exaggerated and invented for the purpose of this petition. However, in order to ensure proper investigation in the above said cases, the petition was forwarded to the Inspector General of Police, South Zone, who is in a better position to secure impartial investigation. Further, the above said forward was



effected as per the instructions issued in Govt.Memo No,1356/64/2, Public (Services-B), dated 08.04.1964 and incorporated in Para 10(3) of the Manual of DVAC."

14.Inspite of the conduct of the above persons, Saravana Kumar, Deputy Superintendent of Police and Pattani, Inspector of Police, who are vested with the power to take cognizance of an offence and not exercising their lawful authority in registering a case, conducting of investigation, taking the investigation to its logical conclusion by filing a final report before the Competent Court. They had acted contrary to their lawful duty and demanded the petitioner and his father to settle the family dispute between the petitioner's father and his elder brother to the terms and conditions, which they dictated and demanding the father of the petitioner to pay Rs.75,00,00,000/- and for assisting the family to arrive at a settlement, demanding the petitioner and his father to pay a percentage of the same as commission to the Deputy Superintendent of Police amounts to corrupt practice, not using the power lawful authorities vested in them and instead, misusing the official position by threatening them with false case, if they do not settle the family dispute, as per the terms stated by Vaigunda Rajan through the Deputy Superintendent of Police. Therefore, the contents of the counter affidavit filed by the Additional Superintendent of Police, Vigilance and Anti Corruption, is found to be without the knowledge of the Directorate of Vigilance and Anti Corruption. They are attempting to throw the ball in the other Court and not initiating steps, that are expected from them.

15.Mr.T.Senthil Kumar, learned Government Advocate (Crl.side), by way of reply, objected to the submissions of the learned Counsel for the petitioner. Stating that for the incidents, that have been alleged by the petitioner and for refusal of the Inspector of Police to register the case in Eral and Sawyarpuram Police Stations and they had engaged a Counsel filed private complaint under Section 156 Cr.P.C., and the learned Judicial Magistrate had acted upon by issuing direction to register the FIR in the respective police stations. Still, the attempt of the petitioner to wreck vengeance of the officials, who were serving there and now having been transferred after the result of the General Election. The officers, who were serving in the earlier post had been transferred. Therefore, the contents of the Writ Petition has no relevance and the petition may be dismissed, since the new Deputy Superintendent of Police and Inspector of Police had taken charge of the respective Police stations.

16.Also, the learned Government Advocate submitted that if the contents of the petition had been proved, what prevented the petitioner from filing a complaint immediately after the demand was made. He had waited for four months for lodging a complaint regarding the Prevention of Corruption Act, against Suresh Kumar

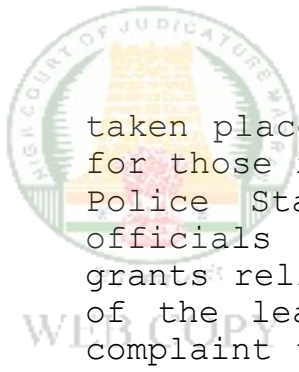


Deputy Superintendent of Police, and Pattani, Inspector of Police. Not only that, as per the Vigilance Manual, when complaints are received against any officials, the same complaint are to be referred to the Head of the department for their domestic enquiry. Likewise, the petition filed by the petitioner herein had been referred to the Inspector General of Police (Southern Zone), as the officials against whom, the complaint had been lodged, were serving in the southern districts under the Inspector General of Police (Southern Zone). Therefore, it is for him to conduct the enquiry and act accordingly. If the enquiry report is against the said officials, the Inspector General of Police (Southern zone) can order a vigilance probe. Before that, the petitioner had approached this Court. Therefore, nothing survives in this petition and the same is to be dismissed.

17.Mr.T.Senthil Kumar, learned Government Advocate, also submitted that the reliance place upon by the learned Counsel for the petitioner on the order passed by the learned Single Judge of this Court, had been stayed by this Court by the Honourable Division Bench of this Court consisting of Mr.Justice M.M.Sundarsh and Mrs.Justice J.Ananthi. Therefore, that part of the argument putforth by the learned Counsel for the petitioner will not hold good. Not only that, if this petition is allowed, then for every complaint, that the citizens of this country approach the Police Station, when the discretionary vested in the Inspector of Police or Sub Inspector of Police, is not not only exercised according to their whims and fancies, then they will follow similar procedure to approach this Court seeking direction for registering the case against them under the Directorate of Vigilance and Anti Corruption and this Court will be flooded with cases.

18.Mr.R.Anand, learned Counsel for the petitioner, by way of rejoinder to the submissions made by the learned Government Advocate, submitted that what prevented the Director of Vigilance and Anti Corruption to hold an enquiry by summoning the petitioner and his father, when materials are available with them. In spite of the complaint having been received by the Directorate of Vigilance and Anti Corruption, they had not responded to the petitioner till the filing of this Writ Petition. Only in the counter filed by the Additional Superintendent of Police, Vigilance and Anti Corruption, had mentioned this fact as though the petitioner has cooked up a case, exaggerated case. That is not the case. Therefore, instead of dismissing this petition, Mr.R.Anand, learned Counsel for the petitioner submitted that this petition may be allowed by directing the Vigilance and Anti Corruption to hold an enquiry by affording an opportunity to the petitioner and his father before the enquiry by the Director of Vigilance and Anti Corruption.

19.On consideration of the rival submissions, it is found that the petitioner's main grievance is that the occurrence that had

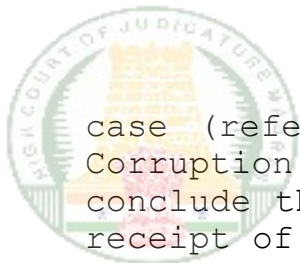


taken place in M/s.V.V.Marine Products and M/s.V.V.Cold Storage and for those incidents, the Inspector of Police of Sawyerpuram and Eral Police Stations had not registered the case. If the police officials do not register the case, the Code of Criminal Procedure grants reliefs to the citizen of this country to approach the Court of the learned Judicial Magistrate concerned by filing a private complaint under Section 156 of Cr.P.C., seeking registration of the case and to proceed with the investigation. Therefore, the relief regarding the same had already been granted. When that be case, the approach of the petitioner to institute a complaint before the Director of Vigilance and Anti Corruption is found with an ulterior motive to wreck vengeance in the police officials.

20.As pointed out by Mr.T.Senthil Kumar, learned Government Advocate, if each and every citizens file similar petitions against the police officials for their refusal to register a complaint, then Single Bench of this Court will be flooded with Writ Petitions of a similar nature, wherein, the Directorate of Vigilance and Anti Corruption has to register cases for every refusal by the Station House Officer of the Police Station concerned in the southern districts, which are under the territorial jurisdiction of this Court. The demand of Rs.75,00,00,000/- and threat extended to the petitioner and his father by Suresh Kumar, Deputy Superintendent of Police and Pattani, Inspector of Police and the petitioner having filed a petition to the Directorate of Vigilance and Anti Corruption, it ought to have summoned this petitioner and ought to have hold an enquiry, as observed by the Honourable Supreme Court in Lalitha Kumari's case. Instead, they have not summoned the petitioner till the date of filing of this Writ Petition. That part of the grievance of the petitioner is to be accepted.

21.Therefore, in the above circumstances, the contends of the counter affidavit filed by the Additional Superintendent of Police, Vigilance and Anti Corruption claims that the petitioner had exaggerated the issue and the petition is frivolous, which cannot at all be accepted. Before ever filing this Writ Petition, the Directorate of Vigilance and Anti Corruption had been ceased of the matter and they had summoned the petitioner and his father and had afforded them an opportunity of being heard, they would not have taken the trouble of approaching this Court and filing this Writ Petition.

22.Therefore, in the above circumstances, the Directorate of Vigilance and Anti Corruption is directed to hold preliminary enquiry by affording the petitioner and his father an opportunity of being heard. While summoning them, the petitioner and his father shall furnish all relevant materials to the Directorate of Vigilance and Anti Corruption, based on which, Directorate of Vigilance and Anti Corruption can conduct a preliminary enquiry, as per the guidelines issued by the Honourable Supreme Court in Lalithakumari's



case (referred to supra). The Directorate of Vigilance and Anti Corruption is directed to conduct the preliminary enquiry and conclude the enquiry within a period of two months from the date of receipt of a copy of this order. The report of the enquiry shall be furnished to this Court through Office of the Additional Public Prosecutor and the copy of the finding of the enquiry instituted on the complaint of the petitioner shall also be furnished to the petitioner.

23. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1. The Director,
Vigilance and Anti-Corruption, Chennai-16.
2. The Additional Superintendent of Police,
Head Quarters,
Vigilance and Anti-Corruption, Chennai.
3. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption, Tirunelveli.
4. The Inspector of Police,
Vigilance and Anti Corruption, Tirunelveli.

COPY TO

The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.
(to watch the enquiry report)

order made in
W.P. (MD)No.2549 of 2021
29.07.2021

sj (CO)

TR(06.08.2021) 10P 6C