

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
27.04.2021	30.04.2021

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CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI

W.A.(MD) No. 903 of 2021

Dhandapani

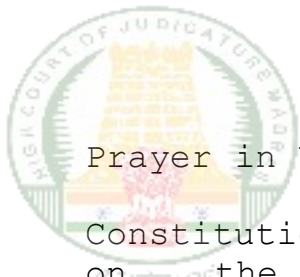
.. Appellant/Petitioner

Vs

1. The Vigilance Commissioner,
Tamil Nadu Vigilance Commission,
Secretariat, Saint George Fort,
Chennai.
2. The Director,
Vigilance and Anti Corruption Wing,
Chennai.
3. The Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Saint George Fort, Chennai.
4. The Director of Rural Development Department,
Panangalmaligai, Saidapet, Chennai.
5. The District Collector,
Trichy District, Trichy.
6. The Superintendent of Police,
Southern Range,
Vigilance and Anti Corruption Wing, Chennai.
7. The Inspector of Police,
Vigilance and Anti Corruption Wing, Trichy.
8. P. Karthick
9. Kandasamy

.. Respondents/Respondents

PRAYER : Petition filed under Clause 15 of Letters Patent Act, to set aside the order, dated 09.03.2021 in W.P.(MD) No.5417 of 2020 and thereby allow the present Writ Appeal.



Prayer in WP(MD). 5417/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records on the file of 7th respondent vide proceeding no.PE.No.11/2020/RDP/TR, dt 09/03/2020 and quash the same as illegal and devoid of merits .

For Appellant/
Writ Petitioner

: Mr.Raja Karthikeyan

For Respondents/Respondents
1 to 7

Mr.K.P.Krishna dass
Special Government Pleader

JUDGMENT

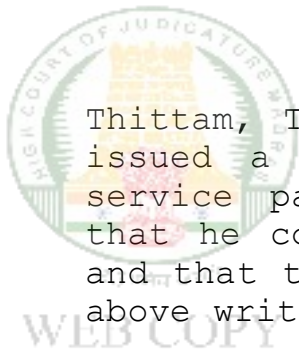
[Judgment of the Court was made by **S. ANANTHI, J.**]

This writ appeal has been preferred by the Appellant/Writ Petitioner against the dismissal order passed by the learned single Judge of this Court, dated 09.03.2021 in W.P.(MD) No.5417 of 2020.

2. The Writ Petition has been filed seeking orders to call for the records in proceeding No.PE.No.11/ 2020 /RDP/ TR, dated 09.03.2020, on the file of the 7th respondent and quash the same.

3. The petitioner is working as Assistant Director in Rural Development Department, Trichy District. According to the petitioner, there existed property dispute between him and his brother/9th respondent herein and that the 8th respondent, on the instigation of his friend 9th respondent, had filed numerous complaints against him to various authorities. The 8th respondent has filed a petition in CrI.O.P.(MD)No.30288 of 2019 before this Court under Section 482 Cr.P.C., for directing the Director of Vigilance and Anti Corruption Wing, Chennai, to take further action on the basis of the complaint, dated 15.07.2019 given by the 8th respondent herein and that this Court, after hearing the learned Additional Public Prosecutor, has passed an order, dismissing the criminal original petition with a direction to the 8th respondent to appear before the Director of Rural Development and Panchayat Raj, Chennai and to lodge a detailed complaint along with relevant documents.

4. It is the specific case of the petitioner that as per the orders of this Court, 8th respondent has filed a detailed complaint before the 4th respondent, who in turn, directed the District Collector, Trichy/5th respondent herein to conduct enquiry, who in turn appointed a Joint Director of Rural Development/ Mahalir



Thittam, Trichy as Enquiry Officer, that the Enquiry Officer has issued a notice, dated 07.02.2020, and called for the entire service particulars and property statements of the petitioner, that he conducted enquiry and inspected the petitioner's village and that the enquiry was in final stage at the time of filing the above writ petition.

5. It is further case of the petitioner that when the above enquiry is about to attain finality, to the petitioner's shock and surprise, the 7th respondent has issued the impugned proceedings, dated 09.03.2020, directing the petitioner to furnish the various particulars called for therein and that the said impugned proceeding is now under challenge.

6. The petitioner has raised two main grounds to sustain the above petition.

(i) During enquiry in CrI.O.P(MD)No.30288 of 2019, it was represented on behalf of the 2nd respondent that the complaint received by them was forwarded to the 4th respondent and that only after receiving the report from the 4th respondent, further action will be taken. Thereafter only, this Court has passed an order, directing the 8th respondent to give a detailed complaint to the 4th respondent, that accordingly, a detailed complaint was given to the 4th respondent, who in turn directed the 5th respondent to conduct enquiry, who in turn appointed an Enquiry Officer and that when the enquiry was about to attain finality, the 7th respondent has commenced preliminary enquiry and issued the impugned proceedings, which is very much against the order of this Court and that the initiation of de-nova enquiry and that too 20 days prior to the petitioner's superannuation is arbitrary and is not permissible and is very much against the order of this Court.

(ii) As per Section 17-A of Prevention of Corruption Act, the police officer has to get previous approval to conduct any enquiry or inquiry or investigation, that the Vigilance and Anti Corruption Wing had not obtained any previous approval from the Government to conduct any enquiry against the petitioner herein and that therefore, very initiation of enquiry proceedings is void.

7. As per order in CrI.OP(MD) No.30288 of 2019 the 8th respondent preferred a complaint to 4th respondent on 08.01.2020 regarding purchase of property which are disclosed to the Government and also not properly accounted for the same. After receiving the complaint, a preliminary case was registered on 02.03.2020 and investigated the matter. The First Information Report also registered in Cr.No.8 of 2020 for the offences under Section 13(2) r/w 13(1)(b) of Prevention of Corruption Act.



Investigation is also pending. Though the 5th respondent sent a report stating that the complaints against the petitioner were not proved, there is no bar or prohibition for the 2nd respondent to pass an order for conducting enquiry. Further, 8th respondent preferred the complaint to 4th respondent and he has passed an order for enquiry.

8. The second objection of the appellant is that the enquiry of 2nd respondent, without getting prior permission from the Government is invalid and illegal under Section 17(A) of the amended Prevention of Corruption Act. The ingredients of Section 17(A) of Prevention of Corruption Act.

"17 A. 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 person who is or was employed, at the time when the offence was alleged to have been committed, in connections with the affairs of the Union, of that Government;

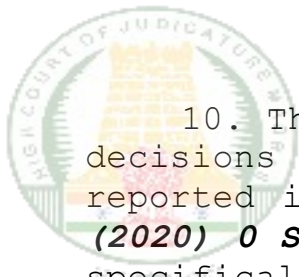
(b) in the case of person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his officer, 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 months."

9. In the case on hand, the complaint is not during discharge of his official duties. The First Information Report also registered for disproportionate assets.



10. The learned Single Judge of this Court has referred to the decisions of the Delhi High Court and Chhattisgarh High Court reported in **2019 (1) Crimes (HC) 726 (Devender Kumar Vs. CBI and (2020) 0 Supreme (CHH) 149, Sathish Pandey Vs. Union of India**, has specifically held that Section 17(A) of Prevention of Corruption Act cannot be made applicable to those cases where the act of the public servant that amounts to an offence, appears on the face of it lacking in good faith. Considering the above provision and the above decision, it is clear that Section 17 (A) has been inserted only to give protection to the honest officers, but when the act of a public servant amounts to or constitutes an offence by itself, prior sanction or approval from the Government would not be necessary. Viewing from this angle also, I hold that Section 17 (A) of Prevention of Corruption Act has no application to the case on hand. As already pointed out, since FIR has already been registered and is pending investigation, the relief sought for by the petitioner has become infructuous.

11. In the case of **Ranjib Ranjan Vs. R.Vijayakumar, reported in 2015(1)SSC 513**, the Apex Court held that in paragraph No.18, *"while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges criminal misconduct such misdemeanour on his part is not to be treated as an act in discharging of his official duties"*.

12. In the case on hand, the First Information Report was registered against the appellant for disproportionate assets and investigation is pending. Therefore, Section 17(A) of Prevention of Corruption Act, is not applicable to the appellant. The learned Single Judge of this Court has rightly observed this point. The appellant/writ petitioner has to face the criminal case. This Court has no valid reason to interfere with the findings of the Writ Court.

13. In the result, the Writ appeal stands dismissed. The order, dated 09.03.2021 in W.P.(MD) No.5417 of 2020 passed by the learned Single Judge of this Court, is hereby confirmed. No Costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

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

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7. The Inspector of Police,
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Trichy.

+1 CC to SGP (SR-18406[F] dated 03/05/2021)

Judgment in
W.A. (MD) No. 903 of 2021
30.04.2021

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