



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WP(MD)No.16825 of 2019

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M.Levai Inigo

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. By its Principal Secretary to Government,
Home Department, Fort St. George,
Secretariat, Chennai-600 009.
- 2.The Director of General of Police,
Police Head Quarters,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-4.
- 3.The Director of Vigilance and Anti-Corruption,
Vigilance and Anti-Corruption,
No.293, M.K.N Road,
Alandur, Chennai-16.
- 4.The Inspector General of Police,
South Zone,
Race Course Road,
Madurai-2.
- 5.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District, Sivagangai.
- 6.The Superintendent of Police,
Ram Nagar, Devakottai,
Sivagangai District.
- 7.The Deputy Superintendent of Police,
Ram Nagar, Devakottai,
Sivagangai District.
- 8.The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai, Sivagangai District.
- 9.The Inspector of Police,
Devakottai Taluk Police Station,
Devakottai, Sivagangai District.



10.The Sub Inspector of Police,
Devakottai Taluk Police Station,
Devakottai, Sivagangai District.

11.Mr.Meenakshi Sundaram
Sub Inspector of Police,
Devakottai Taluk Police Station,
Devakottai,
Sivagangai District.

12.Mr.Rajkamal,
Sub Inspector of Police,
Devakottai Taluk Police Station,
Devakottai, Sivagangai District.

13.Mr.Selvandran,
Special Sub Inspector of Police,
Devakottai Taluk Police Station,
Devakottai,
Sivagangai District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st respondent to accord appropriate necessary prior sanction to prosecute the respondents 11 to 13 herein to the petitioner for filing private complaint on the basis of the representation of the petitioner, dated 03.12.2018 within a stipulated time fixed by this court.

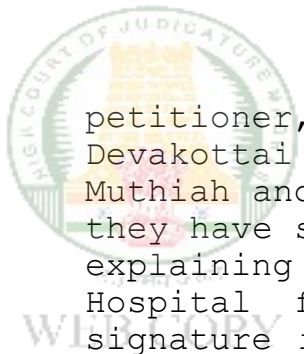
For Petitioner	:	M/s.A.Amala
For Respondents	:	Mr.R.M.Anbunithi Additional Public Prosecutor

O R D E R

This writ petition is filed seeking for direction to the 1st respondent to accord appropriate necessary prior sanction to prosecute the respondents 11 to 13 herein to the petitioner for filing private complaint, on the basis of the representation of the petitioner, dated 03.12.2018 within a stipulated time fixed by this court.

2.The case of the petitioner in brief:-

The petitioner is a registered owner of the JCB vehicle bearing registration No.TN-63-H-2208 and that was used for letting out to the 3rd parties on rental basis, on 20.09.2018. From 16.09.2018 to 20.09.2018, the above said vehicle was rented out to one Vallal Mena Hospital, for digging purpose, which was situated at Kodikottai Village, Devakottai Taluk, Sivagangai District. On 20.09.2018, after finishing the work, that vehicle was parked inside the hospital premises. At about 11.00 pm, the respondents 11 and 12 forcibly took away the above said vehicle. Later, went to the house of the

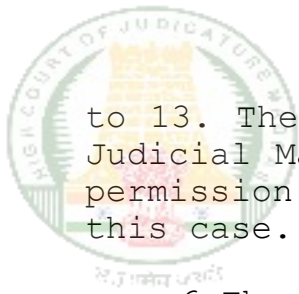


petitioner, abused him in filthy language and was taken to Devakottai Taluk Police Station along with his friend by name Muthiah and there also, they were threatened and abused stating that they have stolen the sand. But the petitioner informed and replied, explaining the position that it was leased out to one Vallal Mena Hospital for digging purpose, but they forcibly obtained the signature in blank papers. A case in Crime No.216 of 2018 has been registered against them for the offence under section 379 IPC and section 21(4) of the Mines & Minerals (Development & Regulation) Act, 1957. In the FIR, the above said Muthai name has wrongly mentioned as owner of the JCB vehicle. The 11th respondent exerted Rs.8,000/- from the petitioner and his friend Muthai and they also advised them to file anticipatory bail petition and let them off. Later, they have also filed anticipatory bail petitions before this court and it was also granted to them. Later, the 13th respondent contacted the petitioner to bring a small bucket, since JCB vehicle was only fitted with a similar bucket, which can be used only for the purpose of digging soil. So they wanted to create evidence for sustaining the FIR. Threat still continues and the vehicle was illegally detained and he was also threatened to change the bucket, otherwise that can not be released. Later, he filed a petition before this court for releasing the vehicle and that was also granted by this court. The CCTV put up in the Devakottai Taluk Police Station would show that the alleged vehicle has been kept in the police station illegally. The respondents 11 to 13 misused their official capacity, by demanding bribe and received the same. They have illegally detained the petitioner and forcibly obtained his signature in blank papers and abused in filthy language. So he filed a private complaint before the Judicial Magistrate, Devakottai, on 16.07.2021 and that was returned stating that sanction must be obtained from the competent authority. He sent a representation to the first respondent to accord sanction. Till date that was not considered. Hence, he filed a writ petition seeking for a writ of mandamus directing the 1st respondent to accord sanction under section 197 of Cr.P.C to prosecute the respondents 11 to 13, by considering the representation, dated 03.12.2018 within the time stipulated by this court.

3.A detailed counter affidavit has also been filed by the respondents repudiating the allegations that has been made by the petitioner in the petition.

4.Heard both sides.

5.It is a case of misuse of power for getting bribe and abusing the petitioner in filthy language and foisting case, illegally detaining the petitioner and his vehicle etc., According to the petitioner, the respondents 9 to 13 acted in their official capacity and misused their official capacity for committing the above said forgery. So according to the petitioner, sanction under section 197



to 13. Therefore, a private complaint has been presented before the Judicial Magistrate and that came to be returned stating that prior permission must be obtained. This is the factual circumstances of this case.

6.The matter was heard twice before this court for the purpose of ascertaining the stage of the case, which has been registered against the petitioner and others in Crime No.216 of 2018. The entire CD was required to be submitted by the respondents, but that was not produced. But now whatever it may be the position that the case has been registered against the petitioner and his friend for the offence under section 379 IPC and section 21(4) of the Mines & Minerals (Development & Regulation) Act, 1957 and it has been taken in its legal conclusion. Now according to the petitioner, this case has been falsely foisted upon him. Whether, it is a false case or not cannot be a matter for consideration in this petition. Since, registration of the case, investigating the matter is a part and parcel of the routine and usual official duty of the respondents 9 to 12, the petitioner wants sanction to be accorded by the first respondent to prosecute them. No doubt, in the facts and circumstances of the case, for the purpose of prosecuting the respondents 9 to 13, prior sanction is required.

7.It is also seen that the petitioner also sent a representation as early as 03.12.2018. The fate of the representation is not known. Before filing this petition and the private complaint, it appears that the petitioner also gave a complaint before the Vigilance Department for taking action against the respondents 9 to 13. But in the factual circumstances, by letter, dated 17.12.2018, it has been stated that no enquiry can be undertaken as per the contents of the complaint.

8.At the time of argument, the learned counsel for the respondents would submit that based upon the above said representation, dated 07.10.2018, 3.12.2018, WP(MD)No.24377 of 2018 was filed before this court seeking for direction to the respondents 1 to 9 to take appropriate action against the respondents 11 to 13 and that was dismissed by this court, by order, dated 28.01.2020 observing that the representation made by the petitioner was not considered and that was closed. It is further observed that the petitioner has also involved in a murder case and proceedings have been initiated in MC No.4757 of 2016 by the Revenue Divisional Officer and he was imposed a fine amount of Rs.1,29,440/- and the complaint given by the petitioner is only with a view to threaten the police officials. So this is the next attempt made by the petitioner, but that also failed. Now the motive of the petitioner is very clear. He wants the official respondents 13 to 19 to be punished for their discharge of duty on the ground that the complaint has been falsely registered.



9.It is the case of the respondents 14 to 19 that the petitioner got bad antecedents, involving in sand and illegal mining activities as well as the murder case. Now whatever it may be the contention of the rival parties, those need not be taken into account.

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10.A short point arises for consideration is whether a writ can be issued that too in the positive way. No doubt, writ can be issued to the competent authority to consider the representation made by the petitioner seeking sanction for prosecuting the respondents 9 to 13. But the issuance of positive mandamus is illegal.

11.In similar circumstances, the Hon'ble Supreme Court in the case of Masukahar Vithaldas Chauhan Vs. State of Gujarat (AIR 1997 SCC 3400), even though it is a case under the Prevention of Corruption Act, sanction was under dispute, the analogy can be extended to this nature of these cases also. The reason being that for the purpose of prosecuting the Government Official, the complainant approached the State Government for granting sanction. That petition was pending consideration. So, the complainant filed a writ petition before the Gujarat High Court under Article 226 of the Constitution of India, directing the State Government to grant sanction. Sanction was granted in pursuance of the order that has been passed by the Gujarat High Court. So that was challenged in the Hon'ble Supreme Court. The relevant paragraphs are as follows:-

"22.Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the Statute in which the "duty" has been set out. Even if the "Duty" is not set out clearly and specifically in the Statute, it may be implied as co-relative to a "Right".

23.In the performance of this duty, if the authority in whom the discretion is vested under the Statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion.



24. In *The Vice-chancellor, Utkal University and Ors. v. S.K. Ghosh and Ors.* [1954] 1 SCR 883, this Court pointed out that in a proceeding for mandamus, the Court cannot sit as a Court of Appeal or substitute its own discretion for that of the authority in which the Statute had vested the discretion. It was pointed out:

(18). We also think the High Court was wrong on the second point. The learned Judges rightly hold that in a 'mandamus' petition the High Court cannot constitute itself into a Court of appeal from the authority against which the appeal is sought, but having said that they went on to do just what they said they could not. The learned Judges appeared to consider that it is not enough to have facts established from which a leakage can legitimately be inferred by reasonable minds but that there must in addition be proof of its quantum and amplitude though they do not indicate what the yard-stick of measurement should be. That is a proposition to which we are not able to assent.

(19). We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts for ourselves as a Court of appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the Syndicate we are compelled to observe that we do not feel they are justified. The question was one of urgency and the Vice-Chancellor and the members of the Syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judges indicate, but it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

25. This principle was reiterated in *Tata Cellular v. Union of India* (AIR1996SC11), in which it was, inter alia, laid down that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision. If a review of the



administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:

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1. Whether a decision-making authority exceeded its powers?

2. committed an error of law;

3. committed a breach of the rules of natural justice;

4. reached a decision which no reasonable Tribunal would have reached; or

5. abused its powers.

26. In this case, Lord Denning was quoted as saying:

Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the Courts will not themselves take the place of the body of whom Parliament has entrusted the decision. The Courts will not themselves embark on a rehearing of the matter : See *Healey v. Minister of Health* (1955) 1 QB 221.

27. Lord Denning further observed as under:

If the decision-making body is influenced by considerations which ought not influence it; or fails to take into account matters which it ought to take into account, the Court will interfere : see, *Padfield v. Minister of Agriculture, Fisheries and Food*, 1968 AC 997.

28. In *Sterling Computers Ltd. v. M & N Publications Ltd. and Ors.* AIR 1996 SC 51, it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the



decision-making process? In this case, the following passage from Professor Wade's Administrative Law was relied upon:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended.

29. It may be pointed out that this principle was also applied by Professor Wade to quasi-judicial bodies and their decisions. Relying upon the decision in *The Queen v. Justices of London*, (1895) 1 QB 214, Professor Wade laid down the principle that where a public authority was given power to determine a matter, mandamus would not lie to compel it to reach some particular decision.

30. A Division Bench of this Court comprising of Kuldip Singh and B.P. Jeevan Reddy, JJ. in *U.P. Financial Corporation vs M/s, Gem Cap (India) Pvt. Ltd. and Ors.* [1993] 2 SCR 149, observed as under:

The obligation to act fairly on the part of the administrative authorities was evolved to ensure the Rule of Law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-Judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A.K. Kraipak v. Union of India* [1970] 1 SCR 457. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the



matter of administrative action, it is well-known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in Secretary of State for Education v. Tameside Metropolitan Borough Council - 1977 AC 1014. The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene.

12. It is further observed that in para 32 and 33 is as follows:-

"32. By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of Harshadrai of illegal gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Govt. that the firm had been black-listed once and there was demand for some amount to be paid to Govt. by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court.

33. The High Court put the Secretary in a piquant situation. While the Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to an action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order



passed by the Secretary and not that of the High Court. This is a classic case where a Brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot be held to be wholly erroneous having been passed mechanically at the instance of the High Court.

13. So reading of this judgment will throw more light upon the issue that has been raised by the petitioner in this matter. As mentioned earlier, a writ of mandamus that too in a positive manner cannot be granted by this court directing the first respondent to accord sanction to prosecute the respondents 9 to 13. As mentioned above by the Hon'ble Supreme Court the power of granting sanction must be exercised by the competent authority independently and without being influenced by any of the higher or other agencies. So this is the defect, which came to be noticed by this court during the process of hearing. So it was listed twice for clarification. But instead of that, this point was not clarified by the parties. As per the Supreme Court, no positive direction can be issued to the 1st respondent to accord sanction. But at the same time, another important point must also be taken into consideration. Suppose, if the sanction is refused, according to this court, in the judgment of the Badrinath Vs. The Government of Tamil Nadu and another (AIR 1986 Madras 3), direction is justifiable. So for that purpose, the petitioner must establish that sanction has been wrongly refused by the authorities. The only course available to the petitioner is to take appropriate action, subsequent to the order that has been passed by the competent authority on his representation. Even though the petitioner has submitted several judgments, because of representation sent, the crucial point that has been addressed by this court has not been clarified..

14. Now the next question is who is the competent authority to prosecute the respondents 11 to 13 the police officials.

15. As per PS063, no criminal prosecution against the police official for having in his official capacity can be instituted without sanction of the officer not below the rank of Superintendent of Police. So as per PS063, the Superintendent of Police, is the competent person to accord sanction. So in the facts and circumstances, the representation made by the petitioner, dated 03.12.2018 be forwarded to the 6th respondent herein and he is directed to consider the same on merits and pass orders within a period of four weeks from the date of receipt of the entire file, by summoning the petitioner and the respondents 11 to 13. Depending upon the orders to be passed by the 6th respondent, further action must be taken by the petitioner. The Registry is directed to send a copy of the petition enclosed in the typed set of papers to the 6th respondent along with this order.



16. With above said directions, this petition stands **disposed of**. No costs.

Sd/-

Assistant Registrar (Records)

// 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

1. The Principal Secretary to Government,
Home Department, Fort St. George,
Secretariat, Chennai-600 009.
2. The Director of General of Police,
Police Head Quarters,
Dr. Radhakrishnan Salai,
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Ramanathapuram District,
Sivagangai.
6. The Superintendent of Police,
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Sivagangai District.
(along with Petition enclosed in the Typed
set of Papers)

<https://hcservices.ecourts.gov.in/hcservices/>



7.The Deputy Superintendent of Police,
Ram Nagar, Devakottai,
Sivagangai District.

8.The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai, Sivagangai District.

9.The Inspector of Police,
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10.The Sub Inspector of Police,
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Devakottai, Sivagangai District.

11.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A. AMALA, Advocate (SR-35000[F] dated 18/11/2021)

WP (MD) No.16825 of 2019

16.11.2021

SR (CO)

GC(13.12.2021) 12P 13C