



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5352 of 2022

N.Rahul Kumar

.. Petitioner

Vs

1. Central Bureau of Investigation,
Joint Director & Head of Zone,
Central Bureau of Investigation,
III Floor, E.V.K.Sampath Building,
College Road,
Chennai-600 006.

2. State of Tamilnadu,
Principal Secretary,
Department of Home,
Government of Tamilnadu,
Secretariat Building,
Chennai, Tamilnadu.

3. Union of India,
Union Home Secretary,
Department of Home,
Govt. of India, North Block,
Parliament House, New Delhi-1.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to ensure the protection of the fundamental rights of the petitioner to live a lawful life with dignity, security and liberty as guaranteed under Article 21 of the Constitution of India as directing the respondent No.1 to register a regular case and conduct the in depth investigation in the matters of the large scale fraud and scam of the public money, as reported by the petitioner before them vide complaint dated 26.12.2021.



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For the Petitioner : Mr.R.S.Dubey
Senior Counsel
for M/s.M.Selvin

For the Respondents : Mr.N.Sirnivasan
Spl. Public Prosecutor (CBI)
for respondent No.1

: Mr.R.Shunmugasundaram
Advocate-General
assisted by
Mr.Hasan Mohamed Jinnah
State Public Prosecutor
and Ms.A.G.Shakeenaa
for respondent No.2

: Mr.N.Ramesh
for respondent No.3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The writ petition has been filed to seek a direction on the respondents to ensure the protection of the fundamental rights of the petitioner guaranteed under Article 21 of the Constitution of India and to direct the first respondent to register a regular case and conduct in depth investigation in the matter of the large scale fraud and scam of the public money as reported by the petitioner in his complaint dated 26.12.2021.

2. The petitioner has also sought interim direction to conduct a preliminary inquiry and summon the action taken report from the first respondent in the matters of the offences as reported by him in his complaint dated 26.12.2021.

3. Learned counsel for the petitioner submitted that a large scale scam has been committed by the accused and, therefore, the petitioner has made a complaint under Section 154 read with Sections 36 and 39 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") to the Joint Director and Head of Zone, Central Bureau of Investigation alleging offences under Section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Sections 406, 407, 409, 420, 467, 468, 471, 474, 506, 507, 120-B and 34 IPC.



4. Learned counsel further submitted that despite the complaint exposing the large scale scam of more than Rs.20,000 crore, no preliminary inquiry or investigation has been caused. Thus, the petitioner having been left with no other option filed this public interest litigation to seek a direction on the respondents to cause an inquiry/investigation into the matter in reference to the complaint dated 26.12.2021 made by him.

5. It is under such circumstances that the complaint was lodged directly to the Joint Director and Head of Zone, CBI at Chennai as the scam happened under his jurisdiction and otherwise a private complaint is not maintainable under Section 190 Cr.P.C. for investigation of the case by the CBI under the Delhi Special Police Establishment Act, 1946 (for short, "the Act of 1946"). Accordingly, a prayer is made to direct the respondents to cause an inquiry/ investigation of the matter.

6. Learned counsel further added that an FIR has been lodged by the petitioner on the assault committed on him by the accused and the same is pending investigation. However, for the reason that an order cannot be passed under Section 156(3) Cr.P.C. for an investigation by the CBI, the present writ petition has been filed. Thus, the prayer is not only to direct the respondents to cause in depth investigation into the matter of large scale scam and fraud of public money, but also to submit a report to the Court in reference to it.

7. We have considered the submissions of learned counsel for the petitioner and also perused the materials available on record.

8. The writ petition has been filed to seek a direction in reference to the complaint dated 26.12.2021 lodged by the petitioner under Section 154 read with Sections 36 and 39 Cr.P.C. The complaint was given to the Joint Director and Head of Zone, CBI. Since the complaint was given under Section 154 read with Sections 36 and 39 Cr.P.C., the said provisions are quoted herein under for ready reference:

"154. Information in cognizable cases.-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the



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State Government may prescribe in this behalf:

PROVIDED that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

PROVIDED FURTHER that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the



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case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

"36. Powers of superior officers of police.—

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

"39. Public to give information of certain offences.—

(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—

(i) Sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);

(ii) Sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) Sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);

(v) Sections 302, 303 and 304 (that is to say, offences affecting life);

(va) Section 364A (that is to say, offence relating to kidnapping for ransom, etc.);

(vi) Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) Sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

(viii) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);



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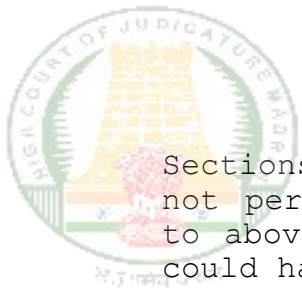
- (ix) Sections 431 and 439, both inclusive (that is to say, offences of mischief against property);
- (x) Sections 449 and 450 (that is to say, offence of house trespass);
- (xi) Sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass); and
- (xii) Sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes),

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India."

9. Section 154 Cr.P.C. refers to the information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, required to be reduced to writing by him or under his direction, and shall be signed by the person who has given it and thereafter, the substance thereof shall be entered in a book kept by such officer. Section 154(3) provides that any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information in writing and by post to the Superintendent of Police concerned, who, if satisfied that the information discloses commission of cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

10. In view of the above, if any information is given even orally, it is required to be reduced in writing by the officer-in-charge of the police station. But, a perusal of the complaint made by the petitioner shows that it was not given to the officer-in-charge of the police station concerned, rather it is to the Joint Director and Head of Zone, CBI by invoking the provisions of Section 154 read with Sections 36 and 39 Cr.P.C., which do not provide for a complaint to the Joint Director and Head of Zone, CBI. The complaint has to be lodged before the officer-in-charge of the police station concerned. In view of the above, the Joint Director and Head of Zone, CBI has not taken steps on the complaint made under Section 154 read with



Sections 36 and 39 Cr.P.C., for the reason given above. It is not permissible even under Sections 36 and 39 Cr.P.C. referred to above. Thus, this Court is of the view that the petitioner could have lodged the FIR as per the provisions of law.

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11. At this stage, a reference of the amended provision of Section 17-A of the Act of 1988 would be relevant and the same is quoted:

"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.-- 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."

12. Section 17-A of the amended Act of 1988 provides that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by



a public servant under the Act without the previous approval. In view of the above, any offence alleged to have been committed by a public servant under the Act of 1988 can be inquired or investigated by the police officer only on the previous approval. Learned counsel for the petitioner has failed to show the prior approval to seek direction for inquiry or investigation pursuant to the complaint. In view of the above, the direction sought by the petitioner for registration of the case and to conduct in-depth investigation cannot be given against the provision referred above.

13. The Supreme Court has time and again held that a direction to CBI to conduct investigation should not be issued as a matter of course and the extraordinary power should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. In this regard, it is appropriate to refer the decision of the Larger Bench of the Supreme Court in the case of *State of West Bengal and others v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571, where in paragraphs 70 and 71, it has been held as under:

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may



find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

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71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*, (2002) 5 SCC 521, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

(emphasis supplied)

14. A direction for registration of a regular case with a further direction for in-depth investigation has been sought without impleading the accused against whom allegations have been made as party respondents in the writ petition. Any direction for investigation against the so-called accused would have consequence on the accused. In view of the above, the writ petition suffers from non-joinder of necessary party. It is not a criminal case where accused is not required to be heard before the cognizance. The principle aforesaid would be applicable after the registration of a criminal case and not in a writ petition where direction is sought against the so-called accused for registration of the case. A direction by the High Court for investigation may have serious repercussion.

15. It is also that the petitioner has already lodged an FIR regarding the assault said to have been committed against him by the accused and the matter is under investigation, as stated by the petitioner. It could not be clarified as to why the petitioner can not lodge a complaint or FIR against the alleged large scale scam or fraud in the manner given under the Cr.P.C. If the FIR is lodged and proper investigation is not caused, the petitioner can very well approach the High Court thereupon to seek direction for investigation by the CBI, in accordance with the provisions of the Act of 1946.

16. Thus, for the foregoing reasons, we are not inclined to accept the prayer made by the petitioner. However, the writ petition is disposed of with liberty to the petitioner to take the legal recourse for registration of the case by the police to seek an inquiry and investigation into the alleged offence under Section 13(1)(d) of the Act of 1988, as amended, apart from the offences under the IPC as per the provisions of law.



There will be no order as to costs. Consequently,
W.M.P.No.5444 of 2022 is closed.

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Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Joint Director & Head of Zone,
Central Bureau of Investigation,
III Floor, E.V.K.Sampath Building,
College Road,
Chennai-600 006.
2. The Principal Secretary,
Department of Home,
Government of Tamilnadu,
Secretariat Building,
Chennai, Tamilnadu.
3. The Home Secretary,
Union of India,
Department of Home,
Govt. of India, North Block,
Parliament House, New Delhi-1.

+2ccs to Mr.M.Selvin, Advocate, S.R.No.16547

+1cc to the Government Pleader, S.R.No.16990

W.P.No.5352 of 2022

JP (CO)
SU(21/03/2022)