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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.39872 OF 2005

T.Arul Chezhian

... Petitioner

Vs.

1.Jeevarathinam

Inspector of Police
Central Crime Branch - 3
Office of the Commissioner of Police
Egmore, Chennai.

2.The Commissioner of Police

Office of the Commissioner of Police
Egmore,
Chennai.

3.The Secretary to Government of Tamil Nadu

Public Department
Fort St. George,
Secretariat, Chennai.

4.M.Sakthi @ Sathiamoorthy

Power of Attorney of M/s.Dish Asia Ltd.,
No.2, 27th Street, 7th Avenue,
Ashok Nagar, Chennai - 83.

(R4 impleaded as per order dated

04.07.2006 by MJPJ in WPMP No.1923/06) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the second and third respondents to initiate department proceedings against the first respondent and direct the respondents to pay a monetary compensation of Rs.5,00,000/- to the petitioner.

For Petitioner : Mr.K.Sakthivel

For Respondents: Mr.T.Venkatesh Kumar
1 to 3 Special Government Pleader

For Respondent 4:Mr.Kannan



O R D E R

The petitioner comes before this Court on a complaint that he was taken to City Crime Branch on 27.08.2005 at around 06.00 am by two Police Constables, wherein, he was threatened with dire consequences of arrest at the behest of one M.Sakthi @ Sathiamoorthy, who was a Power of Attorney of one Gunganathan, with whom he had business transactions. Alleging that the petitioner cheated the Gunganathan, the first respondent forced him to sign a Memorandum of Understanding and taken away all the equipments belonging to him forcibly. The petitioner also made a representation to the first respondent on 19.10.2005 and met the Director General of Police on 20.10.2005 followed by a reminder dated 02.11.2005 to the second respondent. Though the petitioner was called for an enquiry on 04.11.2005 by the Assistant Commissioner of Police, Crime Branch Team III, no further action was taken. FIR registered in DFIR No.284 of 2005 was also closed after obtaining two cheques to the tune of Rs.1,50,000/- each and realising the same on par the post illegal action taken by the first respondent. The petitioner sought for initiation of departmental proceedings against the first respondent as well as claimed damages to the tune of Rs.5,00,000/-.

2.The first respondent was impleaded in his personal capacity and he has denied all the allegations. According to him, the Memorandum of Understanding was entered between the parties outside the Police Station premises and that it was executed in front of a Notary Public. Pursuant to the Memorandum of Understanding, he has handed over two cheques and agreed to return all the equipments belonging to the defacto complainant. After recording the amicable settlement, the complaint was closed as "mistake of fact" and that he has not committed any illegal act. The action of the petitioner after a period of two months is an afterthought and therefore, the writ petition is liable to be dismissed.

3.The counter filed by the second respondent / Commissioner of Police would state that there was a complaint against the petitioner under Sections 409 and 420 IPC and on 10.08.2005, for the complaint that the petitioner collected a sum of Rs.26.25 Lakhs from various organisations from 04/2004 to 12/2004 for preparing Tamil programmes for the Television. Thereafter, both the parties assisted by their respective counsel entered into a compromise outside the Police Station premises and they have handed over two cheques for Rs.1,50,000/- each and also handed over the equipments and office premises to the defacto complainant. Therefore, the first respondent dropped action in Crime No.622/2005. There was no violation of fundamental rights as alleged by the petitioner and the writ



petition is liable to be dismissed in limine.

4. Heard the submissions made on either side and perused the materials available on record.

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5. Admittedly, the first respondent was impleaded in his personal capacity. At the time of filing of writ petition, he was 47 years old and he has retired from service. Secondly, the petitioner would claim damages to the tune of Rs.5,00,000/- on the alleged misconduct of the first respondent. The use of force in getting a Memorandum of Understanding on 27.08.2005 is a factual issue to be proved. As per the counter affidavit filed by the second respondent, it is noted that the petitioner was accompanied by a Lawyer and cheques were handed over. In such circumstances, the alleged force extracted by the first respondent that too in the presence of a Lawyer is doubtful and heavy burden is cast upon the petitioner to prove the same in the manner known to law. Apart from this, for the incident which had taken place on 27.08.2005, a complaint was made only after two months in spite of the legal assistance given by the Lawyer. Therefore, all these factual issues are subject to proof.

6. This Court, while exercising its power under Article 226 of the Constitution of India, cannot conduct a roving enquiry and ascertain the fact for the purpose of awarding damages to the petitioner. Therefore, the factual disputes cannot be decided by way of this writ petition. Even assuming that the first respondent is guilty of committing an illegal act, there is no scope for directing the second and third respondents to initiate departmental action against him as he is out of service. Therefore, it is futile to pursue this matter any further.

7. The writ petition on the basis of the factual disputes cannot be sustained and accordingly, stands dismissed. However, it is open to the petitioner to pursue his effective legal remedies in the manner known to law and the period spent before this Court can be excluded while initiating other action. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

TK



To

1.The Inspector of Police
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Office of the Commissioner of Police
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3.The Secretary to Government of Tamil Nadu
Public Department
Fort St. George, Secretariat,
Chennai.

+1cc to Mr.K.Sakthivel, Advocate SR.No.17854

+1cc to Government Pleader SR.No.18166

WP NO.39872 OF 2005

SSD(CO)
GMY(31/05/2022)