



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.20584 of 2021

and

W.M.P (MD) Nos.17224 and 17225 of 2021

Muruganantham

... Petitioner

Vs.

1.The District Manager,
(TASMAC),
Tamil Nadu State Marketing Corporation Ltd,
Ramanathapuram District,
Ramanathapuram.

2.The Sub-Registrar,
R.S.Mangalam Registration Office,
Ramanathapuram District.

3.The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.

4.The Inspector of Police,
District Crime Bench,
Ramanathapuram.

... Respondents

(R4 is Suo Motu impleaded vide Court Order dated 14.12.2021 in W.P(MD)No.20584 of 2021.)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the auction notice in Na.Ka.A4/0726/2017 dated 19.07.2021 on the file of the 1st respondent and quash the same.

For Petitioner

: Mr.V.Kannan

For R-1

: Mr.S.Ramakrishnan

for Mr.B.Jameel Arasu

For R-2 to R-4

: Mr.S.Kameswaran

Government Advocate



ORDER

Heard Mr.V.Kannan, learned counsel for the petitioner and Mr.S.Ramakrishnan, learned counsel for the first respondent and Mr.S.Kameswaran, learned Government Advocate, for respondents 2 to 4.

2. This Writ Petition has been filed in the nature of Certiorari calling for the records relating to the auction notice in Na.Ka.A4/0726/2017 dated 19.07.2021 on the file of the first respondent/the District Manager, (TASMAC), Ramanathapuram District.

3. The petitioner was working as a sales man in the TASMAC shop since 2003. In 2014, there was an inspection conducted at Shop No.7032 where he was working. It was found during enquiry, that there was a shortage of Rs.2,200/- (Rupees Two Thousand Two Hundred only) from the amount due to TASMAC. There was another sales person, Murugan, who was also suspended. The petitioner was also issued with a suspension order on 19.07.2014. Thereafter, a notice was issued raising allegations of shortage of cash payable to TASMAC to the tune of Rs.11,52,790/- (Rupees Eleven Lakhs Fifty Two Thousand and Seven Hundred and Ninety only) and causing loss to the Government and misappropriation of amounts due to the Government and failure to perform duties as required under the contracts.

4. Further, a First Information Report in Crime No.41 of 2014 had also been registered under Sections 409 and 420 of IPC by the District Crime Branch, Ramanathapuram. The petitioner was shown as the third accused. The petitioner sought Anticipatory Bail. The petitioner was directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as a condition for grant of such relief.

5. In the meanwhile, the first respondent issued the present notice directing that the property of the petitioner to be brought on auction to cover the loss amount. Learned counsel objected to the said notice on the ground that the petitioner was not directly involved in the offence and it was the other two accused who were responsible for the misappropriation and the contribution of the petitioner if at all the amount of Rs.11,00,000/- (Rupees Eleven Lakhs) is divided by three would only around Rs.3,00,000/- and odd and since he had already paid a sum of Rs.2,00,000/- (Rupees Two Lakhs only), he is liable only to pay the balance amount only. This in effect means that the petitioner has admitted misappropriation. He has admitted that he is liable to pay 1/3rd of the misappropriated amount. Whether he is liable to pay the 1/3rd amount alone or the entire amount are issues of fact which can only be established during the course of trial.

6. Sections 409 IPC relating to Criminal Breach of Trust by a public servant would be attracted even if in the morning, a



public servant takes public money and instead of keeping it in the official drawer, puts it in his pant pocket and then replaces it in the evening. This act would also amount to misappropriation.

7. The petitioner has been charged with misappropriation of amount. It is a serious offence. The money has to be recovered. Even otherwise under Criminal Law Amendment Ordinance 1994, attachment of property can be effected on conviction of a person who is convicted of such offence. Whether the petitioner is actually convicted or acquitted would be known only at the conclusion of trial. As on date, the fate of the petitioner lies in the course of the trial which is ongoing before the concerned Judicial Magistrate Court at Ramanathapuram. If the petitioner seeks the property to be released, his relief lies only with the concerned Magistrate who can pass such orders only on conclusion of trial and depending on the nature of the judgment to be passed.

8. I am not prepared to interfere with the impugned order. There has got to be security provided for amount misappropriated and the first respondent had issued an auction notice only for that purpose. Learned counsel for the petitioner stated that the first respondent has no such right. But however, as the institution from which the amount has been misappropriated, every right is vested with the first respondent to ensure that the amount is recovered. This is one of the steps taken. Therefore, I am not prepared to interfere with the impugned order.

9. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

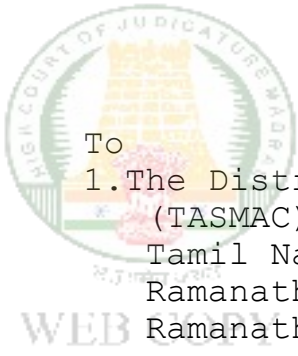
// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 District Manager,
(TASMAC),
Tamil Nadu State Marketing Corporation Ltd,
Ramanathapuram District,
Ramanathapuram.

2.The Sub-Registrar,
R.S.Mangalam Registration Office,
Ramanathapuram District.

3.The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.

4.The Inspector of Police,
District Crime Bench,
Ramanathapuram.

+1 CC to M/s.V.KANNAN, Advocate (SR-724[F] dated 07/01/2022)

+1 CC to M/s.SPL.GP (SR-977[F] dated 10/01/2022)

W.P. (MD) .No.20584 of 2021
06.01.2022

MGJ(03.02.2022) 4P 7C