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W.P.No.7990 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

W.P.No.7990 of 2023

A.S.Mathialagan

... Petitioner

Vs.

1.The Chairman,
Bar Council of Tamil Nadu and
Puducherry, High Court Buildings,
Chennai - 600 104.

2.K.S.Selvaganeshan

3.S.Ravi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the first respondent to take legal action against the second and third respondents based on his complaint dated 25.10.2022, and the same numbered as 490 of 2022 within a stipulated time fixed by this court.

For petitioner : Mr.A.D.Ganesamoorthi
for Mr.I.Karuppaiah

For respondents : Mr.M.R.Jothimanian for R-1
Mr.N.R.Elango, Senior Counsel
for M/s.Aswin Prasana for R-2
Mr.John Sathyan, Senior Counsel
for Mr.S.Manuraj for R-3



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ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The relief sought in this writ petition is to issue a writ of mandamus, directing the first respondent to take legal action against the second and third respondents based on the complaint filed by the petitioner on 25.10.2022, which was taken on file as complaint no.490 of 2022, within a time to be stipulated by this court.

2. According to the petitioner, he is a practising advocate before the Madurai Bench of Madras High Court with a standing of 29 years at the Bar. It is alleged that the second respondent, who belongs to a political party and is presently, serving as an Additional Government Pleader in the Madurai Bench, by false promise of securing a standing counsel post in the Madurai Bench of Madras High Court, had made the petitioner to trust and demanded him a sum of Rs.1,00,000/- as advance. Believing his words, the petitioner paid the said sum during the month of September 2021. However, the second respondent failed to honour his promise of securing a standing counsel post for the petitioner and also evaded from repaying the amount received by him. When the petitioner repeatedly demanded the same, on 15.07.2022 at midnight, the second respondent along with his juniors and a henchman, trespassed into the office of the petitioner, brutally attacked him and scolded him with unparliamentary words



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by using his community name and also threatened him with dire consequences, if he asks for posting and money. In this regard, the petitioner gave a complaint to the Inspector of Police, Tiruppalai Police Station, Madurai and it was registered as Crime No.187/2022, after obtaining an order dated 24.08.2022 from the Madurai Bench of Madras High Court in WP(MD)No.19337 of 2022, but no action was taken on the same. In the mean while, the third respondent who is serving as Additional Public Prosecutor in the Madurai Bench of Madras High Court, also threatened the petitioner over phone to withdraw the said complaint. For their professional misconduct, the petitioner lodged a complaint on 25.10.2022 before the first respondent requesting to take legal action against the respondents 2 and 3 and the same was registered as Complaint no.490/2022, however, no action has been taken on the same, till date. Therefore, this writ petition came to be filed for the aforesaid relief.

3. The learned counsel for the petitioner submitted that on the basis of the promise and assurance given by the second respondent, the petitioner had parted with money for getting the post of standing counsel in the Madurai Bench of Madras High Court. But, neither the post was secured nor the amount was repaid. When the petitioner questioned the same, the second respondent and his juniors had beaten him. Immediately, the petitioner lodged a police complaint against them, but no action was taken on the same. It is also submitted that the



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respondents 2 and 3 threatened the petitioner with dire consequences in connection with the criminal complaint lodged against them and hence, the petitioner also made a complaint to the first respondent for taking disciplinary proceedings against the respondents 2 and 3, but the said complaint is kept pending for more than one year, without any action. Stating so, the learned counsel prayed for appropriate direction to the first respondent in respect of the complaint lodged by the petitioner.

4. The learned counsel for the first respondent submitted that it was the petitioner who gave complaint against the respondents 2 and 3 for the alleged professional misconduct, despite the fact that he himself is in wrong for having advanced an illegal consideration for securing a post in the public office. However, the learned counsel submitted that the first respondent would proceed with the complaint lodged by the petitioner, on merits and in accordance with law.

5. The learned senior counsel appearing for the second respondent stoutly refuted the submissions so made on the side of the petitioner. According to the learned senior counsel, the petitioner was not provided with the post of standing counsel and aggrieved by the same, he has lodged a false complaint on 19.09.2022 against the respondents 2 and 3, which was subsequently, closed as mistake of fact. In support of the same, the learned senior counsel produced the



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final report filed by the police officials in Spl.SC.No.200 of 2023 dated 23.03.2023.

The learned senior counsel also submitted that with an ulterior motive, the petitioner also made a complaint before the first respondent alleging professional misconduct, which is not maintainable and therefore, this writ petition may be dismissed as devoid of merits.

6. The learned senior counsel appearing for the third respondent submitted that the third respondent has nothing to do with the alleged transaction between the petitioner and the second respondent. According to the learned senior counsel, there was a dispute between two advocate friends and as a common friend to both of them, the third respondent tried his level best to sort out the issues and pacify them, which is in no way connected with the discharge of professional duties. It is further submitted that in order to tarnish the reputation and create professional hurdles, the petitioner submitted complaints to various authorities and also circulated messages on various whatsapp groups containing advocates as members. It is also submitted that the complaint filed by the petitioner before the first respondent against this respondent, would not disclose any *prima facie* material to establish professional misconduct as contemplated under the Advocates Act and hence, the writ petition made without any basis, is liable to be dismissed.



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7. Heard the learned counsel on either side and perused the materials available on record.

8. At the outset, this court is of the opinion that the writ petition is not maintainable on the following grounds:

(i) The petitioner sought a writ of mandamus to the first respondent against the respondents 2 and 3, for the alleged illegal transaction entered into between him and the second respondent, in connection with securing a post in the public office, which act itself is wrong and the same goes to the root of the matter. In such circumstances, the conduct of the petitioner has to be strictly viewed. In this connection, it may be relevant to refer to the decision in **Smt. Narayanappa and another v. Govindappa and others [(2019) 19 SCC 42]**, wherein, it was observed by the Hon'ble Supreme Court as follows:

"16. It could thus be seen, that this Court has held that the correct position of law is that, what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. This Court further held, that if the illegality is trivial or venial and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. It has further been held, that a strict view must be taken of the plaintiff's conduct and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. However, if the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose is achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail. "



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(ii) The role of the advocates is indispensable in the system of delivery of justice and the advocates must exhibit high standards of professionalism both inside and outside the courts of law. Whereas, in the present case, the parties being advocates, failed to maintain their professional ethics. The Hon'ble Supreme Court in various decisions, emphasized the nobility of the legal profession and laid down the standards of professional conduct and etiquette, which advocates must follow in order to maintain the dignity and purity of the profession. A few of the decisions are quoted below for ready reference:

(a) Indian Council of Legal Aid and Advice v. Bar Council of India [(1995) 1 SCC 732 : (AIR 1995 SC 691)]:

"It is generally believed that members of the legal profession have certain social obligations, e.g., to render "pro bono publico" service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession."

(b) Re: Sanjeev Datta [(1995) 3 SCC 619 : (1995 AIR SCW 2203)]:

"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must



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not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life."

(iii) In the instant case, the act of the petitioner in advancing the money for procuring the standing counsel post in the public office, amounts to a serious misconduct lowering the standards of the legal profession in the society and this Court cannot help the petitioner, who himself has admittedly, committed such an illegal act. In similar circumstances, the Division Bench of the Kerala High Court in ***Pottakalathil Ramakrishnan v. Tahsildar, Tirur and others*** [MANU/KE/1365/2021] observed that "*the honesty, fairness, purity of mind, and approaching the writ court with clean hands should be of the highest order and is a sine qua non to maintain a writ petition and secure orders, failing which the litigant should be shown the exit door at the earliest point of time.*" Therefore, the petitioner having entered into an illegal transaction against public policy, cannot be treated as one with purity of mind, but is a person with unclean hands and he cannot seek any relief from this Court.

9. In view of the foregoing reasons, the writ petition fails and is accordingly, dismissed. No costs.

[R.M.D,J.] [M.S.Q, J.]
26.09.2023

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

To

The Chairman,
Bar Council of Tamil Nadu and
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