



WEB COPY



W.P.No.22998 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.22998 of 2021

P.Gopinathan

...Petitioner

-Vs-

1. The Deputy Inspector General of Police,
Salem Range Office,
Hasthampatti, Salem,
Tamil Nadu – 636007.

2. The Superintendent of Police,
Salem – 636 002.

3. The Deputy Superintendent of Police,
C.B.C.I.D., Salem,
Tamil Nadu – 636 005.

4. The Inspector of Police,
District Crime Branch,
Salem District – 636 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to change the investigation in Crime No.8 of 2016 dated 28.06.2016 on the file of the fourth respondent to the CBCID, Salem/third respondent or any other police office superior from the District Crime Branch, Salem as no confidence, who is not investigate the case in accordance with law



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and file a final report in before the jurisdictional Magistrate within the time stipulated by this Court.

For Petitioner : Mr.S.Saravanan
For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

The writ petition has been filed for transfer of investigation in Crime No.8 of 2016 dated 28.06.2016, from the file of the fourth respondent to the fifth respondent or any other police officer superior from the fifth respondent.

2. The case of the prosecution is that while the petitioner was working as Block Development Officer(VP) in Kolathur Block, Salem District, between 29.06.2015 to 20.08.2015, he carried out works inspection in respect of on going contractual works carried out by the contractors. He found that the works carried out by them in respect of roads and retaining walls were carried out without any quality as specified in the estimates and also flouting all the norms and procedures. Therefore, he caused notice on 30.07.2015 and 07.08.2015 to the contractors. Thereafter, enquiry was conducted and disciplinary proceedings were initiated as against them.



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3. Further it is found that the contractors had submitted fabricating Form-S certificate claiming exemption from the commercial tax, as if it was issued by the commercial officer. Therefore, the petitioner filed writ petition before this Court in W.P.No.11525 of 2016 and this Court by an order dated 02.04.2016, directed the Joint Commissioner, Commercial Tax, Salem and the Assistant Commissioner, Commercial Tax, Omalur, to take appropriate action as against the contractors. Further directed them to recover the tax amount to the tune of Rs.45 lakhs, due to the commercial tax department.

4. Thereafter, the Director of Rural Development by his proceedings dated 21.07.2016, directed the Assistant Director of Audit (RD), Salem, to conduct special audit in 14 panchayats with regard to fabrication of Form-S submitted by the contractors. It came to light that 181 Form-S submitted by the contractors are forged and fabricated one and the valuation of the certificates are computed to several crores. The Assistant Commissioner, Commercial Tax, Omalur, suppressed the above facts and willfully disobeyed the order passed by this Court in



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W.P.No.11525 of 2016, in order to escape the contractors from the clutches of law. Further he gave report for the name sake alleging that only eight Form-S were forged by the contractors for megar value of Rs.1.078 lakhs.

5. On the strength of the report, the fourth respondent closed the FIR in Crime No.8 of 2016 and filed referred charge sheet before the learned Judicial Magistrate No.VI, Salem. On the protest petition filed before the learned Judicial Magistrate No.VI, Salem, the learned Magistrate refused to accept the final report and ordered for further investigation. Accordingly, the fourth respondent conducted further investigation and filed final report for the offences under Sections 468, 471 & 420 of IPC, as against only three contractors that too alleged that they cheated the commercial tax to the tune of Rs.1,07,800/- by fabricating Form S. Hence, the petitioner filed the present petition for transfer of investigation to CBCID.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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7. On perusal of records revealed that there are nearly 15 contractors were involved in this type of crime and they had committed very serious offence by producing fabricated Form-S. They had submitted 203 fabricated Form-S for the total value of Rs.15,28,94,742/-. Insofar as the accused 1 to 3 are concerned, they produced 113 Form-S and other contractors has been produced the remaining Form-S. Therefore, the petitioner filed contempt petition before this Court for non compliance of the order passed by this Court in W.P.No.11525 of 2016 dated 02.04.2016.

8. In the said contempt petition, it was informed that a sum of Rs.4,64,812/- was recovered from the accused persons. However, no action has been taken as against other contractors. On perusal of the status report filed by the Deputy Superintendent of Police, District Crime Branch, Salem, revealed that the final report filed by the fourth respondent was pending on the file the learned Judicial Magistrate No.6, Salem for taking cognizance. Till today, no cognizance has been taken on the final report filed by the fourth respondent.



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9. Consideration the above facts and circumstances, this Court is inclined to order for further investigation, since the transfer of investigation cannot be ordered, for the reason that already the fourth respondent completed the investigation and filed final report before the learned Judicial Magistrate No.6, Salem. Therefore, the entire case diary in pursuant to the registration of FIR in Crime No.8 of 2016 is hereby withdrawn from the fourth respondent and transferred to the third respondent for fair and proper enquiry. On receipt of the entire case diary, the third respondent is directed to conduct further investigation and file additional final report before the concerned Court within a period of twelve weeks on receipt of the entire case diary in Crime No.8 of 2016.

10. With the above directions, the Writ Petition stands disposed of. There shall be no orders as to costs.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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4. The Inspector of Police,
District Crime Branch,
Salem District – 636 002.
5. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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