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Crl.O.P.No.30434 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

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

Crl.O.P.No.30434 of 2019
and Crl.M.P.No.16491 of 2019

A.Sampath Kumar
...Petitioner

Vs.

1. State Rep by its
Inspector of Police,
C-5, Kothalachavadi Police Station,
Chennai.
2. The fit person/Executive Officer,
Arulmighu TVR Subbi Chetty Charities,
No.5, Audiappa Naicken Street,
Chennai – 600 001.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the direction order in M.P.No.482 of 2019 dated 23.09.2019 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner	: Mr.L.Infant Dinesh
For Respondents	
For R1	: Mr.L.Baskaran
	Government Advocate (Crl. Side)
For R2	: Mr.M.Karthikeyan



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ORDER

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This petition has been filed to set aside the order dated 23.09.2019 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai, in M.P.No.482 of 2019, thereby directing the first respondent police to register a case, investigate and report.

2. The petitioner was trustee and he was suspended from the management of the Trust called TVR Subhichetty's Families Charities (hereinafter called as “the Trust”), in the year 2008. The said order was challenged before this Court in W.P.No.9209 of 2009 and the same was disposed of with direction to the Joint Commissioner, HR&CE, to complete the proceeding under Section 101 of HR&CE Act, within a period of three months from the date of receipt of a copy of that order.

3. Accordingly, the second respondent was appointed as fit person to manage the Trust. However, the petitioner failed to hand over the fixed deposit receipts, demand collection balance register, miscellaneous receipt book, lease agreement of the tenants, records pertaining to the immovable properties of the charities, other register maintained in the office of the charities, other movables vested in the



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name of the charities. Therefore, the second respondent approached the Magistrate Court for taking possession of the documents under Section 101 of HR&CE Act.

4. The learned Magistrate thought that it was a private complaint filed for registration of FIR and directed the jurisdiction police viz., the Inspector of Police, C-5, Kothawalchavadi Police Station, Chennai, to register the case, investigate and report by an order dated 24.09.2019. Aggrieved by the same, the petitioner filed the present petition to set aside the said order.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. The petitioner challenged the said order on the ground that the second respondent failed to comply the provision under Sections 154 & 154(3) of Cr.P.C., and straight away, he filed complaint before the learned Magistrate seeking direction under Section 101 of HR&CE Act.



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7. It is seen that the second respondent filed petition under Section 101 of HR&CE Act, for taking possession of the various documents belonging to the Trust. The petitioner and two others were managed the Trust and they were the Trustee of the Trust. On various allegations, the petitioners and others were issued show cause notice by the Commissioner of HR&CE Department, and they were suspended from their respective post and appointed the second respondent herein as fit person in order to administer the management of the Trust. It was challenged before this Court in W.P.No.9209 of 2009 and this Court by an order dated 26.10.2018, disposed the writ petition and directed the second respondent to initiate the proceedings under Section 101 of HR&CE Act and also directed to complete the same within stipulated time.

8. In pursuant to the direction, the second respondent filed application under Section 101 of HR&CE Act, before the learned Magistrate. It is relevant to extract the provision under Section 101 of HR&CE Act, as follows:-

“101. Putting Trustee or Executive Officer in possession.—



(1) Where a person has been appointed—

(a) as trustee or executive officer of a religious institution ; or

*(b) to discharge the functions of a trustee of a religious institution in accordance with the provisions of this Act, in any scheme framed by the Board before the 30th September 1951, and such person is resisted in, or prevented from, obtaining possession of the religious institution or of the records, accounts and properties thereof, by a trustee, office-holder or servant of the religious institution who has been dismissed or suspended from his office or is otherwise not entitled to be in possession or by any person claiming or deriving title from such trustee, office-holder or servant, not being a person claiming in good faith to be in possession on his own account or on account of some person not being such trustee, officer-holder or servant, any *Presidency magistrate or any Magistrate of the first class in whose jurisdiction such institution or property is situated shall, on application by the person so appointed, and on the production of the order of appointment, and where the application is for possession of property, of a certificate by 1[the Commissioner] in the prescribed form setting forth that the property in question belongs to the religious*



institution, direct delivery to the person appointed as aforesaid of the possession of such religious institution, or the records, accounts and properties thereof, as the case may be :

Provided however that, before issuing any such certificate in respect of any property, 1[the Commissioner] shall give notice to the trustee, officer-holder or servant of the religious institution, as the case may be, 2[of his intention] to issue the certificate and consider the objections, if any, of such trustee, officer holder or servant:

Provided further that for the purpose of proceedings under this subsection, the certificate aforesaid shall be conclusive evidence that the properties to which it relates belong to the religious institution.

Provided also that nothing contained in this subsection shall bar the institution of a suit by any person aggrieved by an order under this sub-section for establishing his title to the said property.”

9. Unfortunately, the learned Magistrate thought that it was a petition filed under Section 156(3) of Cr.P.C., and directed the Inspector of Police, C-5, Kothawalchavadi Police Station, to register FIR,



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investigate and submit report. Though the petitioner challenged the said order on various grounds, the impugned direction cannot be sustained on the ground that the learned Magistrate ought to have pass order to hand over the possession of the documents, which are in possession of the petitioner herein.

10. Only after the order passed by the Commissioner of HR&CE Department, the second respondent was appointed as fit person to manage the Trust. In order to take possession of the documents, the second respondent filed petition under Section 101 of HR&CE Act. Therefore, the learned Magistrate is an executing Court and it cannot go into any questioning beyond the order passed by the Commissioner of HR&CE Department. It is not open to the learned Magistrate in the petition presented under Section 101 of HR&CE Act, by the fit person to administer the Trust. The power of the Magistrate under Section 101 of HR&CE Act, is very limited and the learned Magistrate has to act an executing Court.

11. The learned Magistrate cannot go behind the order of the Commissioner of HR&CE Department or the certificate issued by the



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Commissioner and the learned Magistrate has no power to entertain any objection to the validity, legality or correctness of the order or to the jurisdiction of the authority issuing the order of certificate. In fact, already the order passed by the Commissioner was challenged before this Court in W.P.No.9209 of 2009 and it was also confirmed by this Court by an order dated 26.10.2018. Therefore, the impugned order cannot be sustained and it is liable to be set aside.

12. Accordingly, the order dated 23.09.2019, passed by the learned VIII Metropolitan Magistrate, George Town, Chennai, in M.P.No.482 of 2019, is hereby set aside and the petition is remanded back to the trial Court for fresh disposal. The learned VIII Metropolitan Magistrate, George Town, Chennai, is directed to pass orders as per the observations made by this Court and also in accordance with the provisions under Section 101 of HR&CE Act. The petitioner and the second respondent are directed to appear before the learned VIII Metropolitan Magistrate, George Town, Chennai, on 27.11.2023 without fail, and the learned Magistrate is directed to post the matter for hearing on 27.11.2023 and pass orders within a period of four weeks thereafter.



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WEB COPY 13. With the above directions, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

10.11.2023

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

***Note : Issue order copy on or
before 17.11.2023***

rts

To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
2. The Inspector of Police,
C-5, Kothalachavadi Police Station,
Chennai.
3. The fit person/Executive Officer,
Arulmighu TVR Subbi Chetty Charities,
No.5, Audiappa Naicken Street,
Chennai – 600 001.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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