



WEB COPY



WP No. 34380 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 34380 of 2022
and
WMP. No. 33839 of 2022

1. R. Manickavel
Advocate (Enroll. No. 667/1980)
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2. Ralph V. Manohar
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3. A. Ramakrishnan
Advocate (Enrol. No.265/2017)
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Ground Floor, Parrys
Chennai - 600 001

.. Petitioners

Versus

1. The Secretary
Bar Council of Tamil Nadu & Puducherry
Bar Council Building
High Court Campus
Chennai - 600 104



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2. A.G. Sivaraman

.. Respondents

WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the proceedings initiated by the first respondent in pursuant to the show cause notice dated 06.05.2022 in Complaint No. 60 of 2022 (C.O.N.F.L. No.1303 of 2022) against the petitioner Advocates by quashing the proceedings as the complaint does not *prima facie* disclose any professional misconduct against the petitioners' advocate.

For Petitioners : Mr. S. Poovendhan
For Respondents : Mr. C.K. Chandrasekhar for R1
Mr. A. Kalai Selvan for R2

ORDER

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

Seeking to quash the show cause notice dated 06.05.2022 issued by the first respondent, upon receipt of the complaint No.60/2022 dated 09.02.2022 given by the second respondent against the petitioners, this writ petition is filed.

2.1. The facts, as set out in the affidavit filed in support of the writ petition are succinctly narrated hereunder for the purpose of disposal of this writ petition.

2.2. The petitioners are practising as advocates in the Courts and Tribunals in the State of Tamil Nadu. While the first petitioner is the Senior Advocate, the petitioners 2 and 3 are his juniors.



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2.3. According to the petitioners, the second respondent / complainant is known to the first petitioner. His father by name A.Govindarajalu is the founder of an educational trust viz., M/s.Govindarajalu Educational and Charitable Trust, which owns several schools. The first petitioner, as an advocate, was attending to all the legal matters entrusted to him by the said Govindarajalu and he was instrumental in preparation of Trust Deed as well as re-constituted Trust Deed as required by his client Late.Govindarajalu. The first petitioner further stated that the said Govindarajalu used to discuss everything with him including his intention not to give his properties and the schools to his children. In this context, the second respondent had developed a grudge against the first petitioner under the impression that it was he, who had misguided his father Late. Govindarajalu not to give any share in the property to his children. On the other hand, it was the first petitioner, who convinced his client Late. Govindarajalu to believe his children and to part with his property in their favour. But the fact remains that due to pressure exerted by his children, the said Govindarajalu requested the first petitioner to prepare three separate Settlement Deeds and settled all his properties in favour of his children, including the second respondent/complainant.

2.4. It is further stated by the petitioners that after the death of



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Govindarajalu, the first petitioner has attended to the litigations for and on behalf of the second respondent herein. In the affidavit filed in support of the writ petition, the first petitioner had narrated the various litigation he had attended for and on behalf of the second respondent and submitted that the second respondent had reposed absolute faith and confidence in the first petitioner and approached him for all his needs.

2.5. While so, one of the clients of the first petitioner by name Anjana Rani was the owner of the property bearing Door No.35, Venkataraman Street, Perambur, Chennai - 600 011. It is stated that the said Anjana Rani had a dispute concerning the said property with her brother and it was the first petitioner who defended the case of his client Anjana Rani. Ultimately, the suit in C.S. No. 621 of 2006 for partition, was decreed in favour of Anjana Rani and she became the owner of half of the property aforesaid. However, appeals were filed in O.S.A. Nos. 44 and 45 of 2016 by the brother of Anjana Rani. As the litigation prolonged, the said Anjana Rani, due to her old age, wanted to dispose of half of the property over which she had obtained decree, notwithstanding the pendency of the appeals filed by her brother. In this context, the said Anjana Rani reposed absolute faith and confidence on the first petitioner as her lawyer. The first petitioner in turn entrusted the job to a builder by name Rajesh Kumar, who was known to him as well as his client



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Anjana Rani. A power of attorney deed was therefore executed by Anjana Rani and her children in favour of Rajesh Kumar for alienating the said property.

2.6. It is also stated by the petitioners that during a casual discussion of the above transaction with the second respondent/complainant, he evinced interest to purchase the property from Anjana Rani and others. Accordingly, the first petitioner facilitated the transaction which resulted in the power of attorney agent Rajesh Kumar entering into an agreement of sale with the second respondent/complainant, as per which the second respondent/complainant paid a sum of Rs.1,25,00,000/-. Thus, the first petitioner was only a facilitator and the transaction was between the builder cum power agent Rajesh Kumar, the principals Anjana Devi and her children and the second respondent, over which the petitioners have nothing to do. In the mean while, the Original Side Appeals were disposed of by modifying the decree passed in the suit and allotting only 1/3rd share in favour of Anjana Rani. By virtue of the judgment passed in the appeals, Anjana Rani and her children became entitled to only 1/3rd share and not half share, as ordered in the suit. At this stage, the complainant insisted Anjana Rani to execute the sale deed in respect of half of the share, to which she is not entitled. The complainant/second respondent therefore wanted the money back and cancelled the agreement. The power agent cum builder Rajesh Kumar also paid



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a sum of Rs.40,00,000/- by way of cheques and the balance amount is payable by the builder to the complainant.

2.7. It is the stand of the petitioners that the dispute is purely between the complainant/second respondent herein and the land owner of the property, over which the first petitioner has no role to play. The first petitioner, as a counsel for the land owner Anjana Devi, only facilitated the transaction and he has not received any money. However, the second respondent has given the instant complaint dated 09.02.2022 as if the first petitioner had received the entire amount towards purchase of the property without introducing him to the owner of the land. The fact remains that the second respondent/complainant had entered into an agreement of sale only with Rajesh Kumar, Power of Attorney agent of the land owner Anjana Rani and her children. When the contract could not be proceeded with due to the judgment and decree passed in O.S.A. Nos. 44 and 45 of 2016, the second respondent/complainant entered into an agreement for Rs.1,68,00,000/- with Rajesh Kumar, builder and received the payment of Rs.40,00,000/-. The Memorandum of Receipt dated 28.04.2021 executed by the complainant/second respondent would make it clear that the entire allegations made in the complaint as if the first petitioner had received the entire amount, are false. If the first petitioner had received the



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amount from the complainant/second respondent, there is no necessity for the power of attorney agent Rajesh Kumar to execute the Memorandum of receipt dated 28.04.2021 and repay the amount of Rs.40 lakhs to the complainant/second respondent herein.

2.8. By referring to the Memorandum of receipt dated 28.04.2021 executed by the second respondent/complainant with the power agent Rajesh Kumar, the petitioners would state that the complaint given by the second respondent/complainant is nothing but false. There is no professional misconduct on the part of the petitioners especially when they have nothing to do with the alleged transaction that had executed between the second respondent/complainant and land owner as well as her power agent. There is no *prima facie* case made out in the complaint warranting initiation of disciplinary proceedings against the petitioners. The petitioners therefore would state that an enquiry on the basis of the complaint dated 09.02.2022 of the second respondent against them, is not warranted.

3. The learned counsel appearing for the petitioners would contend that the complaint given against the petitioners, who have nothing to do with the transaction that had between the second respondent/complainant and the land owner, is an abuse of process of law. According to the learned counsel,



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the complainant/second respondent had engineered a short cut and novel idea to recover the amount payable by the builder Rajesh Kumar under the Memorandum of Agreement dated 28.04.2021 by filing the instant complaint against the petitioners herein. The second respondent/complainant knew very well that Rajesh Kumar, the builder with whom he had entered into an agreement, was once a Junior of the first petitioner herein in his office. Therefore, the second respondent had given the instant complaint, to indirectly threaten and intimidate the petitioners to exert pressure on the builder to pay the amount to him. Thus, it is contended that the definition 'misconduct' under Section 35 (1) of the Advocates Act, 1961 (in short, "the Act") is not attracted to the complaint given by the complainant/second respondent. The learned counsel further contended that the complainant//second respondent is using the present complaint and the process of disciplinary proceedings initiated by the first respondent to settle personal score, which should not be permitted. In any event, the complaint given by the second respondent against the petitioners, a group of advocates, is not maintainable when no professional misconduct could be attributed against them. However, the first respondent, without considering the nature of complaint given against the petitioners, has hastily issued the notice dated 06.05.2022 in an arbitrary manner and it calls for interference by this Court. The learned counsel for the petitioners therefore



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prayed for allowing this writ petition by setting aside the show cause notice dated 06.05.2022 issued by the first respondent.

4.1. The learned Standing counsel appearing for the first respondent submitted that on receipt of a complaint from the second respondent on 09.02.2022, enclosing 10 documents in support thereof, the first respondent issued the notice dated 06.05.2022 and sought the response of the petitioners. The first petitioner submitted his comments on 01.06.2022. The second and third petitioners also submitted their comments on 02.06.2022 and 01.06.2022 respectively. The complaint received from the second respondent as well as the comments of the petitioners were placed in the General council meetings. At this stage, the complainant-second respondent has also furnished a copy of the first information report registered as Crime No. 132 of 2022 dated 02.07.2022 on the file of CCB 1, registered against the petitioners for the offences punishable under Sections 406, 420 read with Sections 34 and 120 (B) of IPC in relation to the transaction, which is the subject matter of the complaint. The first information report was also placed in the subsequent General Council meetings held on 30.09.2022 and 01.12.2022. The complaint received from the second respondent was discussed and deliberated, however, the decision was deferred as a few of the members sought time to go through



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the complaint and the documents submitted therewith. In the meantime, two other complaints received against the petitioners under Complaint Nos. 29/2021 and 49/2021 were also deliberated and they were dropped on 18.12.2021 by the General Council.

4.2. It is further stated by the first respondent that on 23.12.2022, the General Council meeting of the Bar Council was scheduled to be taken place. However, on 20.12.2022, the petitioners have filed the present writ petition alleging that the first respondent ought not to have entertained the complaint from the complainant inasmuch as there is no *prima facie* case made out against the petitioners. By virtue of the present writ petition, the petitioners are attempting to restrain the statutory body / Bar Council from exercising their powers to consider a complaint given by the complainant, as an aggrieved party, on merits. The first respondent is seized of the complaint given by the second respondent, but a decision is yet to be taken. Hence, the apprehension as well as the allegations made in the writ petition are baseless and the rights of the petitioners are in no way taken away. While so, the present writ petition as against the show cause notice dated 06.05.2022 in Complaint No. 60 of 2022 is not maintainable, as it is premature. The learned counsel for the first respondent also submitted that the decision taken by the first respondent in the meeting held on 23.12.2022 has been furnished to this Court, in a sealed cover.



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Stating so, the learned counsel prayed for a direction to the first respondent to pass further orders in accordance with law, with regard to the complaint lodged by the second respondent.

5.1. The learned counsel for the second respondent / complainant submitted that the second respondent after coming to know about the availability of the property owned by one Anjana Devi for sale, evinced interest to purchase it. When it was disclosed to the first petitioner, he fixed the total sale consideration of the property at Rs.3,25,00,000/- during January 2016 and the second respondent paid Rs.10,00,000/- as advance. On receipt of the amount, a sale agreement was entered into between the first petitioner and the second respondent during January 2016, however, the date was written in the stamp paper as 16.07.2013. Subsequently, at the request of the first petitioner, the second respondent paid another sum of Rs.40,00,000/-. When the second respondent insisted the first petitioner to introduce him to the owner of the property namely Anjana Rani, he assured to facilitate a meeting. However, during July 2016, the first petitioner only produced an unregistered general power of attorney deed dated 02.07.2016 executed in favour of Rajesh Kumar, who is the staff, working in the office of the first petitioner. The power of attorney deed was drafted and signed by the first petitioner with a notary



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seal. When the second respondent reiterated his request to meet the owner of the property, it was informed that the land owner is aged 80 years and her legal heirs have duly executed a power of attorney deed dated 10.07.2016 in favour of Rajesh Kumar. The first petitioner also assured to transfer the sale agreement between him and the second respondent and that, a fresh sale agreement will be executed between the power agent Rajesh Kumar and the second respondent. At this stage, the second respondent has paid another sum of Rs.40,00,000/- to the first petitioner and reposed utmost faith and confidence in him. Since the first petitioner did not introduce the land owner inspite of repeated demands, the second respondent started suspecting the activities of the first petitioner. At one stage, the first petitioner clearly stated that the second respondent cannot meet the land owner and if he believes his word, he can proceed with the transaction otherwise, he can get back the money paid. In such circumstances, the second respondent did not incline to proceed further with the transaction and decided to get back the sum of Rs.1,68,00,000/- paid to the first petitioner. On such demand for repayment, the first petitioner made the second respondent to meet him on several occasions and ultimately paid a sum of Rs.40,00,000/- and assured to repay the balance amount.



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5.2. The learned counsel for the second respondent further submitted that the complaint given by the second respondent against the petitioners is not a lone or isolated complaint. There are several complaints given against the petitioners before the Bar Council of Tamil Nadu and most of the complaints were closed. In any event, the petitioners, having submitted their response to the notice dated 06.05.2022 issued by the first respondent, are precluded from approaching this Court with this writ petition. The *gay-abandon* with which the present writ petition has been filed by the petitioners, would only expose their intention to stall all legal proceedings that may be initiated by the first respondent against them. The first respondent, being a statutory body, has to be permitted to conduct the proceedings against the petitioners based on the complaint given by the second respondent. It is also submitted that the complaint given by the second respondent clearly makes out a case of professional misconduct and it has to be enquired by the first respondent as contemplated under the Act. Therefore, the learned counsel prayed for dismissal of the writ petition.

6. We have heard the learned counsel for the petitioners, the learned Standing Counsel for the first respondent and the learned counsel for the second respondent and also perused the materials available on record.



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7. Admittedly, a complaint dated 09.02.2022 was sent by the second respondent to the first respondent alleging professional misconduct attributable on the part of the petitioners. On receipt of the complaint, the first respondent sought the response of the petitioners by issuing notice dated 06.05.2022, which is impugned in this writ petition. It is also an admitted fact that all the petitioners have submitted their response, repudiating the averments made in the complaint dated 09.02.2022 given by the second respondent against them.

8. It is seen from the second respondent's complaint that there is advocate and client relationship between the petitioners and the second respondent/complainant; and that, several acts of misconduct on the part of the petitioners have been alleged and the same have also been substantiated by documentary evidence. However, this court is of the opinion that those factual disputes raised by the second respondent warrant detailed examination by the first respondent by conducting an enquiry and the same cannot be gone into, in this writ petition under Article 226 of the Constitution of India.

9. It is also to be noted that the first respondent is governed by Tamil Nadu Bar Council Act and Rules made thereunder. Whenever a complaint is



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received against a legal practitioner, interest of justice demands that the person against whom a complaint has been received, is put on notice in compliance with principles of natural justice. Accordingly, in the present case, on receipt of the complaint dated 09.02.2022 from the complainant, the first respondent merely issued a notice and sought the response of the petitioners. The petitioners have also subjected themselves to the jurisdiction of the first respondent by submitting their response. In such circumstances, they ought to have waited for the outcome of the enquiry conducted by the first respondent, which is a statutory body and is already seized of the matter. Therefore, the first respondent has to be permitted to proceed further with the enquiry against the petitioners.

10. Though a specific plea was raised by the petitioners that the complaint dated 09.02.2022 given by the second respondent is false and the first respondent ought not to have even issued the notice, which is impugned in this writ petition, the same cannot be countenanced by this court, as it is well settled principles of law that a writ petition cannot be maintained against a notice issued by the statutory authority and that, the statutory authority may be permitted to conduct and complete the proceedings. If it is found that the charges raised in the complaint do not amount to professional misconduct,



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then, the authority may even drop the proceedings. Therefore, this court is not inclined to entertain the instant writ petition at this stage.

11. Concededly, upon considering the complaint dated 09.02.2022 given by the second respondent as well as the response submitted by the petitioners, the first respondent has already examined the same and an order was made ready to be pronounced. At this stage, the petitioners have rushed to this Court with this writ petition, in which, this court directed the first respondent to submit a report. Accordingly, the report was submitted in a sealed cover, which has been perused by this court. We are not inclined to express any opinion as to the correctness or otherwise of the same, except directing the first respondent to serve a copy of the said report to the petitioners and proceed further in accordance with law. We also direct that the report submitted by the first respondent in a sealed cover shall be returned to them, under due acknowledgment.

12. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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

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Speaking Order / Non-speaking Order

Index : Yes / No

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To

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