



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/02/2023

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THE HON'BLE MR JUSTICE G.ILANGO VAN

WP (MD) No.1697 of 2023

Abdulla : Petitioner

Vs.

1.State of Tamil Nadu
Represented by its
Principal Secretary to the Government,
Agriculture and Farmers' Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Director,
Vigilance and Anti-Corruption,
293, MKN Road,
Alandur,
Chennai-600 016.

: Respondents

Prayer: Writ petition has been filed under section 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to provide sanction to initiate criminal proceedings on the basis of the petitioner's representation's, dated 21/12/2022 within a stipulated time as fixed by this court and pass such further orders.

For Petitioner : Mr.A.Joel Paul Anthony

For Respondents : Mr.S.Ravi

Additional Public Prosecutor



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This writ petition has been filed seeking for a direction to the respondents to provide sanction to initiate criminal proceedings on the basis of the petitioner's representation's, dated 21/12/2022 within a stipulated time as fixed by this court and pass such further orders.

2.Heard both sides.

3.The learned counsel appearing for the petitioner would insist upon this court to pass a similar order, that was passed in WP(MD)No.6150 of 2017, dated 01/03/2019.

4.But the learned Additional Public Prosecutor would submit that proper representation was not given by the petitioner setting out the facts and circumstances and the necessity of granting sanction etc., facts. He simply sent a representation expressing his desire to file a private complaint against one of the officials of the Agricultural Department.

5.Earlier, petition in WP(MD)No.18362 of 2022 was filed by this petitioner seeking direction to take necessary action on the basis of the representation, dated



20/07/2022. That matter was heard by this court and liberty was granted to the petitioner to file appropriate proceedings before the trial court, since the learned Additional Public Prosecutor would submit that the complaint given by the petitioner was forwarded to the Director of Agricultural Department for necessary action. That writ petition was disposed, on 23/09/2022. After that, this writ petition has been filed seeking for the above said direction.

6.I am afraid that such sort of writ petition can be entertained by this court. Since before making a request seeking sanction, section 19 of the Prevention of Corruption Act must be complied.

7.Section 19 of the Act reads as follows:-

19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—



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(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub section, unless-

(i) such person has filed a complaint in a competent court about the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceedings:



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(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:



Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation-For the purpose of sub-section (1): the expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.



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(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have



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regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

8. Reading of the above said provision makes the position very clear to the effect that a request cannot be made, unless the private person file complaint before the competent court and the court has not dismissed the complaint under section 203 Cr.P.C and the direction must be issued by the concerned court to obtain the sanction for prosecution. Not only that sanction is not an automatic one, but opportunity must be given to the accused official before granting sanction. So all these process must be undertaken before granting sanction. Sanction cannot be granted as a matter of routine and at mere asking without even mentioning the basic facts.



9.At the time of moving the petitioner itself, this court heavily came down upon the petitioner to file such sort of petitions in a casual manner. That request made by the petitioner cannot be entertained.

10.In the result, this writ petitions fails and the same is **dismissed**. The petitioner has to follow the provisions of law before seeking request as stated above.
No costs.

02/02/2023

Index:Yes/No
Internet:Yes/No
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To,

1. The Principal Secretary to the Government,
Agriculture and Farmers' Welfare Department,
Fort St. George,
Chennai-600 009.
2. The Director,
Vigilance and Anti-Corruption,
293, MKN Road,
Alandur,
Chennai-600 016.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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