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W.P.(MD)NO.8923 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 02.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8923 of 2023

I.Sajini

... Petitioner

Vs.

1. The District Collector,
Madurai.
2. The Treasury Officer,
District Collectorate, Madurai.
3. The Assistant Commissioner of Police,
Tallakulam Range, Madurai.
4. The Branch Manager,
State Bank of India,
Tallakulam Branch,
Madurai.
4. D.Sikkandhar

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.10423/2023/L1 dated 14.03.2023 on the file of the 2nd respondent office and quash the same with respect to the petitioner alone.



For Petitioner : Mr.K.K.Udayakumar
For R-1 to R-3 : Mr.K.Balasubramani,
Special Government Pleader.
For R-4 : Mr.G.Radhakrishnan,
Standing Counsel.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for respondents 1 to 3 and the learned Standing counsel appearing for the fourth respondent.

2. The fifth respondent appeared in person.

3. The petitioner and the fifth respondent are siblings. Their father Dawood Sahib was working as Office Assistant in the Public Works Department. He was receiving pension. The petitioner's mother passed away on 08.10.2010 itself.

4. Even though the petitioner's father died on 03.07.2020, it was not immediately informed to the department. His pension continued to be



drawn by using ATM card in ATM Centre at Papanasam, Tirunelveli.

When the department came to know of the same, they issued communication to the third respondent for initiating criminal action and for recovering a sum of Rs.4,03,441/- from the legal heirs. Challenging the said communication, the present writ petition came to be filed.

5. The stand of the respondents 1 and 2 is that what has happened was a clear case of criminal misappropriation. The pension amount could not have been withdrawn.

6. I endorse the stand of the learned Special Government Pleader that the act of withdrawal clearly constitutes the offence of criminal misappropriation. But then, the fifth respondent states that it was he who had withdrawn and that the petitioner has no role whatsoever.

7. The learned Special Government Pleader would state that the fifth respondent wants to protect her sister. He drew my attention to the statement given by the petitioner before the Treasury Officer in writing.



8. The petitioner's counsel would come out with an explanation that since the authorities promised to sanction family pension for the petitioner, if she admits having withdrawn the pension amount of her father even after his demise, the petitioner gave such a statement. I do not want to go into this aspect.

9. The jurisdictional police is directed to take action based on the department's complaint. Even though I am only exercising jurisdiction under Article 226 of the Constitution of India and not under Section 438 of Cr.P.C, I am certain that this is not a case for arrest and that the petitioner will not be arrested. I am certain that if there is no material against the petitioner, final report will not implicate the petitioner. The jurisdictional police will bear in mind the explanation given by the petitioner in the affidavit filed in support of the writ petition as regards the statement given by her before the Treasury Officer, Madurai.

10. Issuance of the impugned communication will not come in the way of the petitioner from submitting application to the department for grant of family pension. If the petitioner is entitled to family pension, it shall be sanctioned. The authorities will of course be entitled to adjust



the amount of Rs.4,03,441/- as against pension if sanctioned. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

02.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The District Collector,
Madurai.
2. The Treasury Officer,
District Collectorate, Madurai.
3. The Assistant Commissioner of Police,
Tallakulam Range, Madurai.



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G.R.SWAMINATHAN,J.

PMU

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