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W.P(MD)No.15703 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	31.07.2023
Pronounced On	:	17.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD)No.15703 of 2021

D.Valan Kumar

... Petitioner

Vs.

1. The Central Bureau of Investigation,
Represented by its Director,
Plot No.5-B, 6th Floor, CGO Complex,
Lodhi Road, Jawaharlal Nehru Statium Marg,
New Delhi-110 003.

2. The Superintendent of Police,
Central Bureau of Investigation,
A-Wing, Block A-4, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

3. I.Krishna Pillai

4. K.Iyappa

5. The Government of Tamil Nadu,
represented by its
the Principal Secretary,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariat, Chennai.

... Respondents

***(R5 is suo-motu impleaded vide Court Order dated 17.02.2022 in
W.P(MD).No.15703/2021 by GIJ)***



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first and second Respondents to register a case based on the complaint lodged by the petitioner dated 09.02.2021 and to investigate into the matter.

For Petitioner : Mr.E.Felix Parthiban

For Respondents : Dr.M.D.Poornachari,
Special Public Prosecutor for CBI
for R1 & R2

: Mr.C.S.S.Pillai for R3 & R4

: Mr.T.Senthil Kumar,
Additional Public Prosecutor
for R5

ORDER

The petitioner filed this writ petition to take action against the 3rd and 4th respondents for their alleged act of transfer of the properties of PACL.

2. PACL Private Limited Company collected huge money from the investor to the extent of more than 49 crores all over India. Using the said amount, PACL purchased the properties in the name of the benami companies in India and also in Foreign countries. Hence, as per the direction of the Hon'ble Supreme Court, by order dated 12.03.2013, in



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Civil Appeal No.6572 of 2004, a case was registered and investigation was conducted by the CBI. Thereafter, the Hon'ble Supreme Court appointed a committee under the Chairmanship of Hon'ble the then Chief Justice of India Thiru. R.M.Lodha. After constitution of the committee, the entire property is vested with the committee. The properties purchased in Tamil Nadu around 11,000 acres also came under the control of the said committee and a communication was also sent to the committee by the Principal Secretary to Government, Tamil Nadu dated 14.05.2018, to the effect that transfer of property should not be allowed without obtaining No objection certificate from the said committee.

3. In the said circumstances, the third and fourth respondents conspired together and made the fraudulent transactions of the said committee properties. Therefore, the petitioner made a representation dated 09.02.2021 to the respondent Nos.1 and 2. The material averment of the complaints is as follows:

“The Hon'ble SCI by its order dated 02.02.2016, in the above said case had formed a committee headed by Former Chief Justice of India Hon'ble Mr.Justice R.M.Lodha to deal with the lands seized by CBI and also with a direction



to sell the lands and to repay the amount to the investors as compensation. The Hon'ble Supreme Court had further directed the Securities and Exchange Board of India (SEBI) to co-operate with the committee in all aspects to dispose of the lands to repay the investors.

The list of such seized properties are more than about 1000s of acres of land which are situated in various villages of Thoothukudi and Tirunelveli Districts. MR numbers were also assigned by the committee to identify those properties of PACL and were also informed to the respective Sub-Registrar's offices not to register any documents with respect to those properties. Knowing well above all these facts, Mr.Krishna Pillai, his son Mr.Iyappa with an intention to cheat the Hon'ble Mr.Justice R.M.Lodha Committee have indulged in fabrication and manipulation of Documents and Government Records pertaining to lands belong to PACL and under the governance of Hon'ble Mr. Justice R.M.Lodha Committee.”

To take action against the third and fourth respondents, the petitioner filed this petition seeking a direction to the CBI to investigate the same on the basis of the representation dated 09.02.2021.



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4. The learned counsel for the petitioner submitted that even though he approached this Court under Section 482 Cr.P.C., to take action against the third and fourth respondents, the same was dismissed on the ground that without approaching the jurisdictional police, the petition was filed and hence, the same was not maintainable. Thereafter, the petitioner made a representation to the CBI, namely, the first and second respondents, as per the CBI Manual, since they are the competent authority to receive the complaint. Since the third and fourth respondents committed an offence relating to the fabrication of documents pertaining to the property of the Hon'ble Justice Lodha Committee, the CBI alone has jurisdiction and hence, he filed a representation on 09.02.2021, before the first and second respondents. The first respondent did not consider the same and hence, he filed this writ petition.

5. The CBI filed the counter dated 06.10.2021. In the counter, it is stated that on 14.05.2018, they sent a communication to the Principal Secretary, Revenue and Disaster Management Department, requesting that the properties in the name of M/s.PACL and its associate company may not be allowed to be transferred without obtaining No Objection Certificate from Hon'ble Justice Lodha Committee. In Paragraph No. 4 it



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is stated that “*there are more than 40,000 sale deeds of properties of M/s.PACL Ltd., and M/s.PGF Ltd., spread throughout the country. The petitioner has a remedy available for registering FIR of the matter with local police for its investigation. As such, it is not feasible to investigate each and every matter arising out of these properties.*”

and in prayer portion it is stated that *under such circumstances, the issue may be investigated by the State Government as to how the concerned Registrar had got the properties of M/s.PACL registered without the permission of Justice Lodha Committee*

6. The contesting third respondent filed a counter stating that the present petition is hit by the principles of *res judicata*. He submitted that earlier petition filed under Section 482 Cr.P.C., was dismissed, and hence, the present petition is hit by *res judicata*. He also submitted that the petitioner made a complaint in order to blackmail the third respondent and also the allegation made against the petitioner is *malafide* one. He also placed reliance of the Division Bench Judgment reported in **2018 (4) MLJ CrI. 513**. On the basis of the same, the writ petition itself is not maintainable without complying the 154 (3) Cr.P.C.



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7. In reply, the learned counsel for the petitioner submitted that the judgment of the Hon'ble Division Bench of this Court is not applicable to the facts of the present case and that the CBI Manual provides procedure for entertaining the complaint. As per the procedure, he correctly made a complaint to the first and second respondents. In the CBI Manual, complaint is to be first addressed to the first and second respondents, who are the higher officials in the department. Hence, the procedure under Section 154(3) Cr.P.C., also complied with. The learned counsel for the petitioner further submitted that the CBI originally registered a case against the PACL and other sister companies on the allegation of cheating to the tune of Rs.49,00,00,000/- on the direction of the Hon'ble Supreme Court Judgment. In the said case, the Hon'ble Supreme Court appointed Hon'ble Chief Justice Thiru.R.M.Lodha Committee to sell the properties and disburse the proceeds to the depositors. The said property was taken into the custody of the respondents No.3 and 4 by creating a false documents. Hence, CBI alone have the jurisdiction to investigate the matter upon considering the allegation made in the representation. He also relied the judgment of the Hon'ble Supreme Court **2001 3 SCC 333** and **2007 6 SCC 156**. On the basis of the said judgments, he stated that under Section 156(3) of Cr.P.C., the Magistrate has no power to issue



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direction to CBI to register the case. Hence, the petition under Article 226 of Constitution of India is maintainable.

8. This Court considered the rival submissions and perused the materials available on records and precedents relied upon by them.

9. The plea of *res judicata*

The third respondent raised a plea that the earlier Crl.O.P. (MD).No.5035 of 2021 was dismissed with the same prayer and the operative portion is as follows:

"3.Based on the submission of the learned counsel for the respondents 3 and 4, remarks were called from the Registry, as to how this petitioner was numbered. On perusal of the Ruling (cited supra), it is found that there are guidelines issued by the Hon'ble Division Bench of this Court. However, the Registry, in this case, had not taken notice of the same. Therefore, this Criminal Original Petition is dismissed as not maintainable."

Hence, the present petition with same relief is not maintainable on the principle of *res judicata*.

(i) The Principle of *res judicata* is strictly not applicable to



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criminal cases. The earlier petition was dismissed only on the ground that the petition is not maintainable on the basis of the Hon'ble division Bench Judgment reported in **2018 4 MLJ CrI. 513**. There is no adjudication on merits. The petitioner has come forward with the specific allegation that the third respondent made false documents over the property vested under the control of the Hon'ble Chief Justice Thiru.R.M.Lodha committee as if he is the owner of the property. The act of the third respondent entering into the transaction of the property of the committee itself prima facie constitutes an offence and hence, the said allegation is not considered in the earlier order. Hence, this Court is not inclined to accept the argument of the counsel for the third respondent that the present petition is hit by *res judicata*.

10. Maintainability of the writ petition

As per the law laid down by the Hon'ble Supreme Court reported in *2001 3 SCC 333* and *2007 6 SCC 156*, the jurisdictional magistrate has no jurisdiction to issue direction under Section 156 of Cr.P.C, to the CBI to register the case. Further, the CBI manual prescribes that if the aggrieved person sent a complaint to the jurisdictional Joint Director Jurisdictional Superintendent of Police, then, the jurisdictional Joint



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Director/jurisdictional Superintendent of Police alone is/are entitled to pursue the complaint and take a decision on the complaint. Hence, the Hon'ble Division Bench Judgement is not applicable to the present case.

11. The Division Bench of this Court has held that in the event of non-receipt of the complaint by the jurisdictional Police within the state of Tamil Nadu, the complainant can make a further complaint to the Superintendent of Police under Section 154 of Cr.P.C., and the said system of hierarchy is not available in the CBI. Hence, the CBI has jurisdiction to look into the allegation made by the petitioner.

12. Further, the above judgment of the Hon'ble Supreme Court, clearly stated that in the exceptional cases, the CBI can entertain the petition and also this Court has power to issue a direction to CBI.

13. In this case, the third respondent made a fraudulent transaction relating to the property vested with the Hon'ble Chief Justice Thiru.R.M.Lodha Committee. The property is meant for the distribution of the amount to the eligible depositors. Hence, the fraudulent transaction itself constitutes an offence and hence, CBI has jurisdiction to register



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the case.

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14. Further it is the own case of the CBI that they sent a representation to the Principal Secretary to the Government of Tamil Nadu not to allow any of the transaction relating to the property situated in Tamil Nadu.

15. In the said circumstances, it is the duty of the CBI to register the case and investigate the matter in the manner known to law. Hence, the first and second respondents shall take necessary action, on the complaint made by the petitioner and complete the same within a period of eight months from the date of receipt of a copy this order.

16. With the above directions, this writ petition stands disposed of. There shall be no order as to costs.

17.11.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

sbm



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- To
1. The Director,
The Central Bureau of Investigation,
Plot No.5-B, 6th Floor, CGO Complex,
Lodhi Road, Jawaharlal Nehru Statium Marg,
New Delhi-110 003.
 2. The Superintendent of Police,
Central Bureau of Investigation,
A-Wing, Block A-4, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
 3. The Principal Secretary,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariat, Chennai.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K. RAMAKRISHNAN. J.,

sbn

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Dated :17.11.2023