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Crl.O.P.No.12574 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.12574 of 2024

and

Crl.M.P.No.7814 of 2024

Kesava Vinayagam

... Petitioner

Vs.

1.The State Rep.by
The Deputy Superintendent of Police,
CBCID, Metro Wing-I,
Egmore, Chennai
Crime No.04/2024

2.Mrs.Senthil Balamani,
Assistant Agriculture Officer,
Chitlapakkam,
Flying Surveillance Team, A Shift 2.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for the records in Crime No.04 of 2024 on the file of the 1st respondent and quash the same as against this petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj

For R1 : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



CrI.O.P.No.12574 of 2024

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ORDER

This Criminal Original Petition is filed to call for the records in Crime No.4 of 2024, on the file of the 1st respondent and quash the same.

2. It is a case where above Rs.4 Crores was seized from three passengers travelling in a train proceeding towards Tirunelveli. The money, which was in their possession been suspected to be used for election purpose for a particular candidate contesting election. This petitioner is the office bearer of the political party to which the candidate belongs. Contending that there is procedural violation and incompetency to register the case under Section 171(C), 171(E) and 171(F) and 188 IPC, the present petition is filed to quash the FIR.

3. According to the learned counsel appearing for the petitioner, offence under Sections 171(C), 171(E) and 171(F) IPC are not cognizable offence and no police officer shall investigate a non cognizable case without the order of the Magistrate having power to try such cases. Referring Section 155(2) of Cr.P.C., the learned counsel submitted that the petitioner herein was called to participate in the



Crl.O.P.No.12574 of 2024

investigation by issuance of summons under Section 41A Cr.P.C.

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4. The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that apart from offence under Sections 171(C) 171(E) and 171(F) of IPC, FIR was registered for offence under Section 188 IPC also. Therefore, the bar under Section 155(2) Cr.P.C., is not applicable to the case in hand, since initially FIR was registered for cognizable offence under Section 188 IPC also and thus, rigor of Section 155(2) of Cr.P.C., taken away by the exemption provided under Section 155(4) Cr.P.C., The FIR came to be registered on 06.04.2024 against three persons by Tambaram Police, later transferred to CBCID, Chennai on 28.04.2024. This petitioner participated in the enquiry and had given his statement on 06.04.2024.

5. The counter filed by the State nowhere states about the semblance of involvement of this petitioner from the enquiry so far conducted. To be more precise the counter indicate the necessity to cause summon to the petitioner for the following reason:-



WEB COPY



CrI.O.P.No.12574 of 2024

“14.It is humbly submitted that a substantial sum of money, approximately Rs. 3,98,91,500/-, was seized during the enforcement of the Model Code of Conduct. Along with the money, the identity card of Mr. Nainar Nagendran, MLA of Tirunelveli assembly constituency, was also confiscated. The individual from whom the money was seized works at a hotel owned by Mr. Nainar Nagendran. Mr. Nainar Nagendran is currently a candidate in the ongoing parliamentary election, representing the Bharatiya Janata Party from Tirunelveli parliamentary constituency. Given the circumstances, it is imperative to investigate the source of this substantial amount and its intended purpose during this critical election period. In this course it is also essential to enquire this petitioner in order to ascertain certain facts. In this scenario the petitioner's submission of this affidavit with false allegations demonstrates a lack of cooperation with the investigation and appears to be an attempt to delay the process by misusing court provisions.

15. It is humbly submitted during the course of



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CrI.O.P.No.12574 of 2024

the investigation, it was revealed from the statement of Mr. Satheesh, from whom the money was seized, that he had collected the money from ASEO Korean Restaurant located on Greenways road Road, Adyar, Chennai, in various installments since April 4, 2023. Mr. Satheesh was apprehended on April 6, 2023. The ASEO Korean Restaurant building belongs to Mr. Goverdan, who is the industrial wing head of the BJP. On April 6, 2023, Mr. Goverdan's mobile location was found at the ASEO Korean Restaurant during one of the installment payments to Satheesh. Additionally, the locations of Mr. Satheesh from Elephant Gate, Mr. Vignesh @ Ganesh (driver of Mr. Goverdan), and Mr. S.R. Sekar (BJP Tamil Nadu State Treasury) were found to align with Mr. Satheesh's confession and are to be at ASEO Korean restaurant during various installment payments. It is also revealed from the investigation that Mr. Satheesh, Mr. Naveen, Mr. Perumal who transported the cash through train had travelled in emergency quoot (EQ) ticket which was recommended by Mr. Nainar Nagendran, MLA Tirunelveli assembly constituency. Thus, the investigation



Crl.O.P.No.12574 of 2024

so far has provided substantial evidence suggesting that the movement of the money is linked to potential offences. Therefore, in the interest of justice, further investigation is essential to uncover the truth behind this incident.”

6. The learned counsel appearing for the petitioner submits that even after participating in the enquiry and giving his statement, just to harass him and to tarnish his image as the office bearers of the political party, the Investigating Officer has caused summon under Section 91 Cr.P.C., for production of mobile hand sets, SIM cards and about the tour details from the month of March to May 2024, which clearly show that the Investigating Officer exceeding his power of investigation and wants to make a roving enquiry.

7. The learned Government Advocate (Crl Side) appearing for the respondent police submits that since certain information regarding the location of the petitioner during transaction of the money has to be ascertained, those details been sought for. It is not that the petitioner should come in person, since the summon itself clearly show that he can send the material through his representative.



Crl.O.P.No.12574 of 2024

8. This Court, on perusing the summon dated 05.06.2024, the day after the petitioner participated in the enquiry, finds that it is an attempt to make roving enquiry of the public figure to collect details which may not be necessary. Roving enquiry under the guise of investigation cannot be permitted. Though the prayer to quash the FIR is not maintainable, this Court is vested with power to protect personal liberty and privacy of the petitioner herein and therefore, directed the Investigating Officer in this case not to disturb the petitioner any further, unless and until material collected during the investigation warrants his presence. Even if it is so, State can be done it only after obtaining permission by placing the material before this Court why the petitioner be summoned.

9. With the above observation, this Criminal Original Petition is disposed of. Consequently, the connected Criminal Miscellaneous Petition is closed.

06.06.2024

Index : Yes/No

Neutral Citation : Yes/No

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CrI.O.P.No.12574 of 2024

Dr.G.JAYACHANDRAN,J.

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To

1.The Deputy Superintendent of Police,
CBCID, Metro Wing-I,
Egmore, Chennai

2.The Public Prosecutor,
High Court of Madras,
Chennai.

CrI.O.P.No.12574 of 2024

06.06.2024