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C.R.P.No.3695 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.3695 of 2022
and C.M.P.No.19530 of 2022

Pravesh Kumar

.. Petitioner / Defendant

Vs.

Senji Venkatesan @ M.Venkatesan

.. Respondent / Defendant

Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint as far as the prayer directing the petitioner / defendant to pay of sum of Rs.25,00,000/- towards damages with cost in O.S.No.104 of 2022 on the file of the Additional District (FTC) Judge, Vellore.

For Petitioner : Mr.C.Emalias

For Respondents : Mr.D.Rajagopal



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ORDER

This Civil Revision Petition has been filed to strike off the plaint pending in O.S.No.104/2022 on the file of the Additional District Judge, FTC Court, Vellore.

2. The respondent herein has filed a suit in O.S.No.104/2022 on the file of the learned Additional District Judge, Vellore claiming damages of a sum of Rs.25,00,000/- as against the petitioner herein.

3. According to the petitioner he is the defendant in the main suit and he is working as Deputy Inspector General Police, Tirunelveli Range. Earlier he worked as Superintendent of Police, Vellore District from 30.07.2018 to 04.09.2020. The respondent / plaintiff filed a suit for compensation of a sum of Rs.25,00,000/- as damages in respect of a detention order in C3/D.No.68/2020 dated 29.07.2020 passed by the District Collector cum District Magistrate, Vellore against the respondent.

4. A proposal has been sent by the Inspector of Police to the District



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Collector, Vellore through Superintendent of Police, Vellore on 26.07.2000 against the respondent / defendant to initiate proceedings under Tamil Nadu Act 14/1982 (hereinafter referred to as “Act”) since the respondent had acted against the maintenance of public order and public peace. The petitioner has forwarded the proposal of the Inspector of Police, DCB, Vellore to the District Collector, Vellore. Thereafter, the District Collector, Vellore has passed an order to detain the respondent through the detention order dated 29.07.2020 in good faith. Subsequently, the detention order has been revoked by the Deputy Secretary to the Government of Tamil Nadu as per G.O.Rt.No.3637 Home, Prohibition and Exercise (IX) Department dated 04.09.2020 on the recommendation of the Advisory Board letter dated 27.08.2020. The petitioner pleads that the suit is barred under Section 16 of the Act since the action was taken in good faith. There is no cause of action for the suit and the jurisdiction of the Civil Court is excluded as per Section 16 of the Act. Therefore, the present petition is filed to strike off the plaint.

5. The learned counsel appearing for the petitioner / defendant would contend that the petitioner, when he was working as Superintendent of



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Police, Vellore, had forwarded a letter from the Inspector of Police, Vellore on 26.07.2000 against the respondent to initiate proceedings under the Act. Based on the proposal, the District Collector cum District Magistrate, Vellore has passed an order to detain the respondent / plaintiff on 29.07.2020 in a good faith. Thereafter, the detention order has been revoked on the recommendation of the Advisory Board vide letter dated 27.08.2020. Later, the respondent / plaintiff has filed a suit in O.S.No.104 of 2022 before the Additional District Court, Vellore for claiming compensation of Rs.25,00,000/- for damages. There is a bar under Section 16 of the Act since the petitioner acted on good faith and therefore the pending suit is barred by law. Accordingly, the plaint in O.S.No.104/2022 on the file of Additional District Judge, Vellore has to be stuck off.

6. In support his above contentions, the learned counsel for the petitioner relied on the following judgments :

- i) Allahabad Bank Vs. Shank's** reported in **AIR 2009 CAL 96**
- ii) Commissioner, Bangalore Development Authority Vs. K.S.Narayan** reported in **(2006) 8 Supreme Court Cases 336**
- iii) State of Punjab Vs. Amarjit Singh** reported in **(2011) 14 SCC**



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- iv) Jayanthi and another Vs. Tamil Nadu Housing Board in SLP
No.16804/2021 dated 05.01.2022***
- v) Tamil Nadu Housing Board Vs. Jayanthi and ors. in
C.R.P.(NPD) No.3610 of 2018 dated 03.08.2021***
- vi) M.G.Hanif Vs. The Secretary to Government, Housing and
Urban Development Department and ors. in W.P.No.5522 of 2015 dated
21.09.2015***

7. The learned counsel for the respondent would contend that the respondent / plaintiff has filed the suit for claiming compensation of Rs.25,00,000/- as damages as against the petitioner / defendant. In fact the respondent is a social activist and doing social service and he used to raise questions against the persons who are doing anti-social activities and the police personnels who are supporting the anti-social elements. Many false cases have been registered as against the respondent / plaintiff by the Panamadangi Police Station and thereafter, the detention order was passed by the District Collector, Vellore in C3/D.No.68/2020 dated 27.09.2020 on the recommendation of the petitioner as against the respondent. On



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04.09.2020, the Government of Tamil Nadu has set aside the detention order on the basis of Advisory Board recommendation since there was no sufficient cause for passing detention order. Therefore, the above said facts shows that the officials have acted in a vindictive manner. The respondent / plaintiff was detained under the Act and lodged in Central Prison, Thorapadi for about 45 days. His personal liberty was curtailed by the petitioner / defendant and the police officials. On 09.09.2020 the wife of the respondent gave a representation before the Government officials and the petitioner ordered for enquiry and entrusted the matter to the Additional Superintendent of Police, CWC, to conduct enquiry and after enquiry, he gave a recommendation to take action against the erring officials. Thereafter, no action was taken against the erring officials.

7.1 The petitioner has issued communication to the Inspector of Police, Latheri to complete the investigation in Cr.No.238/2020 within 60 days and file report. The said communication would disclose the fact that the petitioner has personally involved in the above case. Based on the created documents, the petitioner recommended the Collector and based on that recommendation, the Collector passed the detention order. It is the



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contention of the learned counsel for the respondent that the petitioner / defendant without even applying his mind, placed the case materials in Cr.No.13/2020 and Cr.No.14/2020 as ground cases before the detaining authority. The *de facto* complainant in those cases filed affidavit before the Judicial Magistrate Court, Katpadi and other officials, that they have not lodged any complaint as against the respondent / plaintiff. The petitioner / defendant being a superior authority ought to have recommended the Investigation Officer to consider the affidavit filed by the *de facto* complainants but, failed to do so by exercising his power. Therefore, the respondent / plaintiff has filed the suit for damages claiming a sum of Rs.25,00,000/-. The suit is filed based on the documents and thereby the petitioner has to face the trial and after full trial only the case has to be decided. It is the main contention of the respondent that the petitioner has not approached the trial Court appropriately and straight away approached this Court without exhausting his remedy before the trial Court. Therefore, the petition filed by the petitioner is liable to be dismissed.

8. To support his above contentions, the learned counsel for the respondent relied on the judgments in :



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i) Construction (P) Ltd., Vs. Hanuman Seva Trust & others reported in **2006(5) SCC 658**

ii) Abdul Razak and others Vs. Mangesh Rajavamwagle and others reported in **2010(2) SCC 432**

iii) Jacky Vs. Tiny reported in **2014(6) SCC 508**

iv) Virudhunagar Hindu Nadargal Dharma Paribalana Saba case reported in **2019(9) SCC 538**

v) Shakti Bhog Food Industries Ltd., Vs. Central Bank of India and another reported in **2020(17) SCC 260**

vi) Amaravathy Cranes and Structural Pvt. Ltd., & another Vs. Rajendra Raja and others reported in **2013(2) CTC 756**

vii) TASMACH Vs. S.Kumaravel reported in **2017 SCC OnLine Mad 19620**

viii) M.Kishanlal and another Vs. K.Pushpavalli @ Elizabeth Pushpavalli and others in **CRP No.1512/2021 dated 05.01.2022**

ix) Balaji and others Vs. Arumugam and others reported in **MANU/TN/2169/23**



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9. This Court heard both sides and perused the materials available on record.

10. In this case the respondent / plaintiff herein has filed a suit in O.S.No.104 of 2022 on the file of the Additional District, FTC Judge, Vellore, claiming damages of Rs.25,00,000/- as against the petitioner / defendant herein. According to the respondent, he filed a suit for damages since the petitioner / defendant has registered a false case against the respondent / plaintiff and without verifying the records recommended for detention under the Act. According to the petitioner / defendant, he acted in good faith and based on the recommendation of the concerned Inspector of Police, he forwarded the letter to the District Collector to initiate proceedings as against the respondent / plaintiff under the Act. Therefore there is a bar under Section 16 of the Act.

11. This Court carefully perused the records. It is an admitted fact that the suit is filed by the plaintiff for damages, alleging that without perusing the records the petitioner / defendant has recommended for initiating



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proceedings under the Act. At this juncture it is relevant to refer Section 16 of the Act which is extracted hereunder:

“16. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything in good faith done or intended to be done in pursuance of this Act.”

12. On a careful perusal of the above provision, it is clear that if the officials acted in a good faith, no civil suit can be initiated. In the case on hand also the proceedings were initiated as against the respondent / plaintiff under the Act.

13. According to the petitioner, his main contention is that he acted in a good faith and thereby, he is entitled to protection under Section 16 of the Act, thereby, the suit is barred by law. If the suit is barred by law, he can approach the trial Court to seek remedy under Order 7 Rule 11 CPC. Without exhausting that remedy the petitioner has straight away approached this Court under Article 227 of the Constitution of India. It is a well settled law that when a specific provision is available to get remedy,



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then the party cannot approach the Court under Article 227 of the Constitution of India. Though there is a bar under Section 16 the Act, when the authorities have acted in a good faith, the petitioner could approach the trial Court by filing appropriate application. But without exhausting that remedy, the petitioner has straight away approached this Court. Therefore, the Court cannot invoke the power under Article 227 of the Constitution of India.

14. At this juncture, the learned counsel for the petitioner would rely upon the following judgments:

i) Allahabad Bank Vs. Shank's reported in *AIR 2009 CAL 96*

ii) Commissioner, Bangalore Development Authority Vs. K.S.Narayan reported in *(2006) 8 Supreme Court Cases 336*

iii) State of Punjab Vs. Amarjit Singh reported in *(2011) 14 SCC 713*

iv) Jayanthi and another Vs. Tamil Nadu Housing Board in SLP No.16804/2021 dated 05.01.2022

v) Tamil Nadu Housing Board Vs. Jayanthi and ors. in C.R.P.(NPD) No.3610 of 2018 dated 03.08.2021



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vi) M.G.Hanif Vs. The Secretary to Government, Housing and Urban Development Department and ors. in W.P.No.5522 of 2015 dated 21.09.2015

On a careful perusal of the above judgments, it is seen that they will not be applicable to the facts of the present case because all the judgments are in respect of jurisdiction of the Courts and those judgments are referring about the decree passed by the Court without jurisdiction. But, in the case on hand according to the petitioner the suit is barred under Section 16 of the Act. However the petitioner has not exhausted the remedy available under the Code of Civil Procedure before the trial Court and thereby the petitioner can approach the trial Court by way of filing appropriate application if so advised.

15. Per contra, the learned counsel for the respondent relied on the following judgments:

i) Construction (P) Ltd., Vs. Hanuman Seva Trust & others reported in ***2006(5) SCC 658***



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ii) Abdul Razak and others Vs. Mangesh Rajavamwagle and others
reported in ***2010(2) SCC 432***

iii) Jacky Vs. Tiny reported in 2014(6) SCC 508

iv) Virudhunagar Hindu Nadargal Dharma Paribalana Saba case
reported in ***2019(9)SCC 538***

v) Shakti Bhog Food Industries Ltd., Vs. Central Bank of India and another reported in ***2020(17) SCC 260***

vi) Amaravathy Cranes and Structural Pvt. Ltd., & another Vs. Rajendra Raja and others reported in ***2013(2) CTC 756***

vii) TASMACH Vs. S.Kumaravel reported in ***2017 SCC OnLine Mad 19620***

viii) M.Kishanlal and another Vs. K.Pushpavalli @ Elizabeth Pushpavalli and others in CRP No.1512/2021 dated 05.01.2022

ix) Balaji and others Vs. Arumugam and others reported in ***MANU/TN/2169/23***

On a careful perusal of the above judgments it is clear that Order 7 Rule 11 of CPC is not exhaustive and a plaint can be rejected on the



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grounds other than the ones enumerated under Order 7 Rule 11 CPC also.

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The High Court will refrain from exercising jurisdiction under Article 227 of Constitution of India, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, when a remedy under the Code of Civil Procedure is available to the party approaching the High Court. In the case on hand also, the petitioner has filed an application to strike off the plaint on the ground that the suit is barred by law. If so, he could very well approach the trial Court by way of filing an application under Order 7 Rule 11 CPC to reject the plaint. Without exhausting that remedy, he straight away approached this Court to strike off the pleadings alleging that the suit is barred by law. When there is a specific provision under Order 7 Rule 11 of CPC, then the petitioner could very well avail that remedy. Without exhausting such remedy before the trial Court, the petitioner has straight away approached this Court and thereby it is not appropriate to entertain this petition. Accordingly, this Court is of the opinion this petition is devoid of merits and deserves to be dismissed. However, the petitioner is at liberty to approach the trial Court by way of filing appropriate application in accordance with law.



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16. In the result, this Civil Revision Petition is dismissed. No costs.

Connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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Copy to:

The Additional District (FTC) Judge,

Vellore.



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P.DHANABAL, J.,

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