



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

WP No. 34163 of 2022

1 N.V.Devi @ Devika

...Petitioner

Vs.

1 The Joint Director
Central Bureau of Investigation haddows
Road Chennai- 600 006.

2 The Commissioner of Police

City Commissioner office Egmore Chennai-
600 008.

3 The Assistant Commissioner o
f Police Mylapore Division Mylapore
Chennai- 600 004.

4 The Inspector of Police
Mylapore Police Station Mylapore Chennai-
600 004.

5 N.Kanniah

6 A.Raja Sridhar



7 THE INSPECTOR OF POLICE
The Station House Officer Kotwali City
Haridwar Police station Haridwar
Uttarakhand. (R7 IMPEADED VIDE ORDER DT 14.
02.2023 MADE IN WMP.149/2023

...Respondent

PRAYER : This petition has been filed under Section 482 of Cr.P.C , to transfer the investigation proceedings from the second and third respondents to the file of first respondent to find out the truth in the case of the petitioner father Thiru.M.Namachivayam based on the complaint dated 11.12.2010.

For Petitioner : Mr.L.Dhamodharan

For R1 to R4 & R7 : Mr.S.Vinoth Kumar

Government Advocate (Crl. side)

For R5 & R6 : Mr. N.R.Elango

for Mr.A.Nagarajan & Mr.K.R.Ramesh
Kumar

ORDER

The petitioner herein filed this petition to transfer the investigation proceedings from the second and third respondents to the file of first respondent to find out the truth in the case of the petitioner father Thiru.M.Namachivayam based on the complaint dated 11.12.2010.

2. The learned counsel for the petitioner submits that petitioner



father Namachivayam was holding post as General Secretary of the Southern Railway Mazdoor Union (in short "Union") for more than 25 years who elected unopposed. While so, in the year 2001, the her father Namachivayam went on a spiritual tour to Haridwar along with the members of the said Union. After two days her mother Suseela was informed that her father Namichivayam was missing and necessary complaint was lodged with the concerned jurisdictional police. The respondents 5 and 6 who are then office bearers of the said "Union" assured that they have taken necessary steps on legal front to secure the presence of Nachivayam. Believing their version, her mother not taken any steps to find him. In order to defer the initiation of the any proceedings in the court of law they gave a false information that they were in search of her husband/Namachivayam and in parallel the said kannaiya/5th respondent and succeeded to the post of General Secretary the post held by the Namachivayam in the said "Union" and Sridar/6th respondent also become the president of the said "Union". After assuming the office they made claim in the Anjalai Ammal Mahalingam Engineering College (in short "college") and Trust created by her father/Namachivayam from his own funds. Further, her mother received threat call from unknown person that they should not



raise even a little finger against the said Kannaiya and Sridhar and also not to resort for any legal proceedings in search of her father. Thereafter, her mother approached this Court filed Crl.O.P No. 29191 of 2010 and sought for order to transfer the investigation to CBI enquiry. While so, the Civil suit in C. S No. 160 of 2004 was filed by the said kannaiya and Sridhar made claim on the "college" property which belongs to her family. In the civil suit, the Court framed scheme for administration of College by order dated 07.06.2013. the said order was challenged by way of appeal and the same are pending for final adjudication. Thereafter, the petitioner's mother came to know that counsel engaged by her was no more and also she breathed her last breath on 26.04.2013 and also the petition filed by her mother was withdrawn by the petitioner with the liberty to file fresh petition. Now, the petitioner filed the present petition to transfer the investigation to CBI with regard to missing of her father/Namachivayam.

3. This court impleaded the Haridwar police as Seventh respondent.

4. The learned senior counsel for the respondents 5 and 6 submits that the said Namachivayam was a General secretary to the said "Union" for more than two decades. Besides, the respondent five and six also holding key post in the said Union. The said Namachivayam and others went to



Haridwar where he was missing, the complaint was lodged before the Haridwar police station by the said Union members based on which FIR was registered in crime No. C: 881407 dated 22.02.2001 . The said police recovered the suicide note in which he stated that due to death of his son who was aged about 19 years, he had been in a state of depression and that he had decided to end his life. Further, the said Namchivayam written separate notes for each of his family members and the members of the Union and he mentioned that 5th respondent should be made as General secretary to the said Union. In fact, the 5th and 6th respondent was holding the said post even before his missing. Therefore the allegations leveled against them was false and frivolous one and the petitioner bound to prove the same. One G.C.Sridhar lodged the complaint on 24.08.2001 with the CB CID accusing 5th respondent and his associates for the missing of the said Namachivayam the said complaint was closed on 12.09.2001. Subsequently, the Said Sridhar filed HCP No. 539 of 2002 before this Court regarding missing of said Namachivayam wherein this Court passed order on 10.07.2002 stating that the petitioner filed the said petition in order to wreak Vengeance accordingly dismissed the same and also stated that the matter has already been investigated and it has closed by the CB CID. But



suppressing the above, the petitioner filed this present petition after nine years. On 11.12.2010 the wife of the Suseela lodged a complaint before the commissioner of police, Egmore, regarding missing of her husband Namachivayam and CSR was issued for the said complaint in CSR No. 470/CSR/E1/2010. Being not satisfied with that the Suseela filed a petition before this Court in CrI.O.P No. 29191 of 2010 seeking direction to direct joint Director CBI to depute a competent investigating officer to investigate the missing of her husband and the same was withdrawn on 12.07.2017. After a period of five years the petitioner come forward with the present petition for similar prayer in order to harass the fifth and sixth respondent. Further, as on date there is no FIR was pending before the respondent police hence this petition is not maintainable and also impleading the Haridwar police also unwarranted. Further, 5th and 6th respondent as a administrator moved two applications before this Court in Appls. Nos. 6020 & 6021 of 2010, seeking to remove the petitioner/N.V.Devi from the Madoor Welfare Trust and to direct the petitioner to secure the Mazdoor Welfare Trust records. The interim order passed by the this court was stayed by the Division Bench of this Court in O.S.A No. 15 of 2011 and the same is still pending. Both the 5th and 6th respondents are parties to the said



proceedings in order to wreak out vengeance against the respondents she come up with frivolous allegations against them. Further, while disposing this court observed as follows:

Therefore, It is clear that, Ex.D.98 series are documents, which are created and fabricated by the second defendant, for the purpose of the case."

5. Therefore, against these petitioners this Court has already made observation that she was indulged in fabrication of the records in respect of said Trust, thus she has not approached the court with clean hands and had filed this writ petition, only to wreak vengeance on the fifth and sixth respondents and also as a counter blast now the present petition was filed. Further, suicide note also concealed by the petitioner and accusing the fifth and sixth respondent without any basis continuously by filing one another petition for the same issue is amount to abuse of process of law, hence prayed to dismiss this petition.

6. The learned Government advocate submits that Haridwar police lodged a FIR based on the complaint in crime No. C: 881407 dated 22.02.2001. Further the CBCID filed report before this Court which is



extracted hereinbelow:

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On 20.2.2001 Tr. Namachivayam informed Dhandapani to proceed to Rishikesh by bus to book a room in a lodge, Dhandapani went to Rishikesh, and booked a room in a lodge and made a call to Tr. Namachivayam who stayed in Haridwar, Hotel Sagar Ganga, the call was attended by the receptionist and the receptionist replied that Tr. Nimachivayam had handed over a written message to him and left the lodge. Dhandapani after receiving the message to returned to Hotel Sagar Ganga, Haridwar and contacted receptionist and collected the written message, in that letter it was mentioned that Tr. Namachivayam had received a Telephone call, asking him to return to Madras immediately and further it was written that Dhandapani should collect all the luggage of Tr. Namachivayam and return back to Chennai, after went through the letter Dhandapani landed up in suspicion and made a search all over the pilgrim centers of Haridiwar with the help of Sagar Ganga Hotel Management. During the course Dhandapani informed the message to SRMU office bearers, they have also taken steps though the union office, Delli, to help in the search of Tr. Namachivayam, the union office bearers lodged a complaint to the City Police Commissioner, Chennai on the same was forwarded to the Haridwar area S.P to do needful in the issue of Tr. Nanachivayam's disappearance. On 20.2.2001, a man missing case was registered at Haridwar Police, the case is still under Investigation.

From the above it is clear that the allegation created by the petitioner is unbelievable, I herewith enclosed the xerox copy of the letters written by Tr. Namachivayam at Haridwar.

7. The learned Government Advocate (Crl side) submits that FIR was filed before the Haridwar Police station was closed. After 24 years the petitioner filed this petition.



8. Considering the submissions on either side, it reveals that near about 24 years later the petitioner filed this petition to transfer the investigation from CB CID to CBI. Further, as on date, no FIR is pending before the Tamil Nadu Police. Further, the Haridwar police also filed the FIR about the missing of the petitioner's father/Namchivayam even the said complaint also not given by this petitioner or the legal heirs of the said Nachivayam. On the other hand, the complaint was lodged by the Union members. Further, the suicide note of the said Namachivayam also been recovered by the police. Further, near about 10 years later wife of the Namachivayam filed petition to transfer the investigation and subsequently, the same was dismissed as withdrawn in the year 2017. Though in the year 2013 these petitioner issued notice to the CBCID but had not taken any steps. Eventually, after 10 years she come forward with the present petition seeking transfer of investigation from CBCID to CBI, all these years no proper explanation was offered on the side of the petitioner for not taken steps by the petitioner for past 25 years. The learned counsel for the petitioner submits that time is not matter about the missing of the person to that effect he relied the judgment of this Court in W.P No. 14572 of 2018:

"3 Under normal circumstances, this Court would be relegating the



petitioner to file a protest application before the Court concerned on the closure report. However, this Court finds that the missing person was in Army Intelligence and therefore, a thorough probe by a centralised agency may bear fruit. It is made clear that this Court is not returning a finding that the investigation of the CB-CID is perfunctory. On the solitary ground that the missing person was working in a very sensitive department, this Court is of the view that interests of justice will be sub-served if the case is entrusted to the CBI for further investigation. "

9. The above referred case fact is differs from present case. The wife of the deceased Namachivayam has already filed petition before this Court to transfer to the investigation to CBI with regard to missing of his husband. Thereafter, she died her daughter/petitioner withdrawn her case with the liberty to file fresh petition. The investigating authority issued notice seeking certain information about her father in the year 2013. Thereafter, she has not taken any steps. Now all these facts reveals that during the pendency of the civil suit against the family members of the Namachivayam more particularly against this petitioner there is prime facie material that she was indulged in misappropriation of funds of the Mazdur Uniona Welfare Trust. Based on that criminal complaint was lodged against her and final report



was submitted in C.C No. 461 of 2007 pending before the Judicial Magistrate - I, Mannargudi. By collecting contribution from the members of Mazdur Union AAME College was started parents of Namachivayam name was assigned but the college is not the individual property of the said Namachivayam though the petitioner and her family members claimed as individual property so the civil suit was filed by fifth and sixth respondent and R6 in C.S No. 160 of 2004 but in order to avoid further complications the administrator Hon'ble Rtd. Judge, was appointed by this Court. Now, the issue is pending before division bench of this court. Further, it is alleged that the petitioner taken the certain records in which FIR was filed against the petitioner and 11 others on the file of the District Crime Branch for the offence of misappropriation, criminal breach of Trust. Thereafter she filed the application to quash the same but was dismissed by this Court. Therefore, it seems that the present petition was filed by the petitioner after 25 years of her father missing in order to harass the respondent 5 and 6 due to the pendency of the civil suit and criminal proceedings in C.C No. 461 of 2007. Hence, this Court is not inclined to allow this petition as it is clear case abusing process of law.

10. In the result, this petition is dismissed. No Costs. Pending



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petition(s), if any, stands closed.

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To

1. The Public Prosecutor, High Court, Madras.
2. The Joint Director
Central Bureau of Investigation haddows
Road Chennai- 600 006.

T.V.THAMILSELVI, J.
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