



W.P.(MD).No.7162 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.12.2023
Pronounced On : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.P.(MD).No.7162 of 2022

K.Balasubramaniyan

... Petitioner

Vs.

- 1.The Director,
Central Bureau of Investigation (CBI),
Head Office: Plot No.5-B, CGO Complex,
Lodhi Road,
New Delhi 110 003.
- 2.The Deputy Superintendent of Police,
O/o.Central Bureau of Investigation,
No.73, Athikulam Main Road,
Reserve Line, Madurai.
- 3.The Director General of Police,
Police Head Quarters,
No.1, Dr.Radhakrishnan Road,
Mylapore, Chennai 600 004.
- 4.The Inspector General of Police,
O/o, Inspector General of Police,
South Zone,
Madurai.



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5. The Commissioner of Police,
O/o, Commissioner of Police,
Madurai City, Madurai District.
6. Chinnathurai (Former Taluk Supply Officer, Kariyapatti)
Thasildar,
Adi-Dravidar Welfare Office,
District Collectorate Office,
Virudhunagar.
7. Raja Rajan,
Superintendent of Police,
Virudhunagar District.
8. Dhanapal (Former D.S.P. Aruppukottai)
Additional Superintendent of Police (PEW),
District Superintendent of Police Office,
Tirunelveli.
9. Annaraj,
Inspector of Police,
Taluk Police Station,
Aruppukkottai, Virudhunagar District.
10. Veeranan (Former S.I of Police, Mallankinaru Police Station)
Sub-Inspector of Police,
Taluku Police Station, Srivilliputhur,
Virudhunagar District.
11. Muthuganesan,
Sub-Inspector of Police,
Mallankinaru Police Station,
Virudhunagar District.



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12.Muthuramalingam,
Head Constable(Writer),
District Superintendent of Police Office,
Aruppukkottai, Virudhunagar District.

13.Balamurugan,
Head Constable,
Mallankinaru Police Station,
Virudhunagar District.

14.Palani,
Head Constable,
Mallankinaru Police Station,
Virudhunagar District.

15.Sasikumar,
Head constable,
Mallankinaru Police Station,
Virudhunagar District.

16.Karthik Raja,
Head Constable,
Mallankinaru Police Station,
Virudhunagar District.

17.Paramasivam,
Constable,
Mallankinaru Police Station,
Virudhunagar District.

18.Muneeswaran,
Constable,
Mallankinaru Police Station,
Virudhunagar District.



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19.Dr.Vinila,
Government Rajaji Hospital,
Madurai, Madurai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing 1st and 2nd respondents to conduct proper enquiry and investigation to the petitioner's complaint dated 16.10.2021 and 24.03.2022 and take appropriate action against 6th to 19th respondents with regard to the complaint pending before 1st to 5th respondents within the time limit.

For Petitioner :Mr.P.Singaravel

For Respondents :Mr.M.Karunanithi,
Special Public Prosecutor for CBI
for R1 and R2

:Mr.T.Senthil Kumar,
Additional Public Prosecutor
for R3 to R5

ORDER

This writ petition has been filed seeking for a Mandamus directing the 1st and 2nd respondents to conduct proper enquiry and investigate the petitioner's complaint dated 16.10.2021 and 24.03.2022 and take appropriate action against 6th to 19th respondents with regard to the



complaint pending before 1st to 5th respondents.

2. The petitioner was working as an Ambulance Driver attached with the Devadoss Hospital Madurai. Earlier, he married one Thangaselvi, hailing from the Keppulingampatti, Virudhunagar District. According to the petitioner, from the said marriage, they have got two sons. Thereafter, there was some dispute between them. So, an exparte divorce decree was obtained in HMOP.No.57 of 2008 on 24.10.2008 by the petitioner herein. Then, she filed H.C.P(MD)No.608 of 2012 before this Court to produce her husband alleging that he eloped with one Rajeswari. The petitioner appeared before this Court and hence, the Habeas Corpus Petition was closed. During that proceedings, the grant of exparte decree of divorce was disclosed to her. Thereafter, she filed a petition to set aside the exparte divorce decree before the jurisdictional Court. Subsequently, she made an application to the sixth respondent for issuance of ration card. After considering the records produced by her, the sixth respondent issued ration card to her.



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3. Thereafter, the petitioner made a complaint alleging that in the month of November 2016, the 6th respondent herein created a forged family ration card in the name of the petitioner and his first wife, namely, Thangaselvi. Based on the complaint preferred by the petitioner, the Inspector of Police, Kariyapatti Police Station, registered a case against the Tahsildar, Chinnathurai (Former Taluk Supply Officer, Kariyapatti), Adi-Dravidar Welfare Office, District Collectorate Office, Virudhunagar and two others in Crime No.395 of 2017 for the offence under Sections 420, 467, 468 and 34 of IPC. Since there was no progress in the investigation, the petitioner made a request to the Deputy Superintendent of Police, namely, the 8th respondent. However, according to the petitioner, the 8th respondent threatened him to withdraw the said complaint. Hence, the petitioner made a further request to the 7th respondent, viz., the Superintendent of Police to take action on his complaint. The Superintendent of police has also not taken any action. So, the petitioner filed CrI.O.P.(MD).No.996 of 2018 before this Court seeking transfer of investigation.



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4. The above mentioned Criminal Original Petition came up for admission on 23.01.2018 and the same was adjourned at the request of the police officials. Subsequently, the Mallankinaru police officials threatened the petitioner to withdraw the case registered in Crime No.395 of 2017 and CrI.O.P.(MD).No.996 of 2018. Then his rival party, namely, Thanga Selvi filed a case against the petitioner in Crime No.26 of 2018. In the said case, the jurisdictional police arrested the petitioner. He further alleged that he was assaulted by the police officials in custody due to which the petitioner sustained injuries. The said facts were disclosed to the Government Doctor, namely, the 19th respondent. However, the 19th respondent did not record his statement as he disclosed that the said injury was caused by the police officials. He was not admitted in the hospital and advised to take him to the Central Jail Madurai.

5. It is the further case of the petitioner that the 8th respondent attacked the petitioner and caused blood injury over his ear and on 25.01.2018, the petitioner was taken to the Central Jail, Madurai. The medical officer attached with the Central Jail has given the treatment and



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recommended to admit in the casualty. So, the petitioner was taken to the Government Rajaji Hospital, Madurai, where, the doctors did not give proper treatment. With such allegations, the petitioner preferred the complaint to the respondents 1 to 5 to take action against all the officials shown as respondents 6 to 19.

6. Today, when the matter was taken up for hearing, the learned counsel for the petitioner made a detailed submission that all the officials colluded with the first wife of the petitioner and fabricated the documents and assaulted the petitioner as narrated above. Therefore, he seeks transfer of investigation.

7. Per contra, the learned Government Advocate (Criminal Side) would submit that the petitioner did not disclose the earlier dismissal order for the same relief in CrI.O.P.(MD).No.996 of 2018. He further submitted that the petitioner has not challenged the closure report ie., 'mistake of fact' in Crime No.395 of 2017. Hence, prays for dismissal of this petition.



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8. The learned counsel for the first and second respondents submitted that when the jurisdictional Police official closed the case as 'mistake of fact', the petitioner is duty bound to file a protest petition before the competent jurisdictional Court. The same was also observed by this Court in Crl.O.P.(MD).No.996 of 2018. However, without filing the protest petition, he filed the present writ petition. Therefore, he seeks dismissal of this petition.

9. This Court considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

10. Admittedly, the petitioner has initiated divorce against his first wife Thangaselvi and got an exparte divorce decree. Then, he married one Rajeswari. In the month of November 2016, the 6th respondent herein created a forged family ration card in the name of the petitioner and his divorced first wife, namely, Thangaselvi. Therefore, the petitioner lodged a complaint before the police officials. However, the same was closed by the



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Kariyapatti Police Officials as 'mistake of fact'. The said report was not furnished to the petitioner. Therefore, this Court in CrI.O.P.(MD).No.996 of 2018 directed the police officials to furnish the copy of the report to the petitioner and the petitioner was directed to file a protest petition before the concerned jurisdictional Magistrate Court. The petitioner, without filing a protest petition, filed the present Petition before this Court to register the complaint against all the respondents.

11. Further, the petitioner filed this writ petition without disclosing the true facts. According to the learned Government Advocate (Criminal Side), the petitioner had already approached this Court by invoking the provision under Section 482 Cr.P.C., to take action against the Officials/ the respondents herein and the same was dismissed. The petitioner intentionally suppressed the same in the present petition. The learned counsel for the petitioner did not dispute the same. He pleaded lame excuse stating that his client namely the petitioner has not disclosed the same. It is the duty of the petitioner to furnish the true facts. But, he has not furnished the same. In the said circumstances, the writ petition is liable to be



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dismissed on the ground of the suppression of the material fact.

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12.However, in the interest of justice, this Court, considering the earlier direction of this Court to challenge the closer report by way of filing protest petition in CrI.O.P.(MD).No.996 of 2018, dismiss this petition with liberty to challenge the closer report in accordance with law. Therefore, this Court does not find any merit in this writ petition.

13. Accordingly, this writ petition stands dismissed with a liberty to the petitioner to work out his remedy by way of filing the protest petition as observed by this Court in CrI.O.P.(MD).No.996 of 2018 before the appropriate forum. There shall be no order as to costs.

19.01.2024

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



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K.K.RAMAKRISHNAN, J.

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