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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 31/01/2024

CORAM

The Hon`ble Mr.Justice M.DHANDAPANI

WP(MD). No.5798 of 2022

Ganapathi Raja .K ... Petitioner

Vs

1. The Commissioner of Police,
Madurai City, Madurai.

2. The Inspector of Police,
B-1, Vilakkuthoon Police Station,
Madurai City..

3. The Inspector of Police,
Central Crime Branch -Ii,
Madurai City..

4. The Sub-Inspector of Police,
Central Crime Branch-Ii,
Madurai City.. ... Respondents

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned communication of the 4th respondent signed by him on 17.03.2022 in connection with my complaint dated 23.12.2021 and quash the same and consequently direct

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the 3rd respondent to deal with the same a fresh in accordance with the guidelines formulated by the Honble Supreme Court of India in the case of Lalitha Kumari -Vs- Uttar Pradesh (2014) 2 SCC 1 as expeditiously as possible within the time frame as fixed by this Court

For Petitioner : M/s. Anand .R,

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the impugned communication of the 4th respondent dated 17.03.2022 and for a consequential direction to the 3rd respondent to deal with the same afresh in accordance with the guidelines formulated by the Honble Supreme Court of India in the case of Lalitha Kumari -Vs- Uttar Pradesh (2014) 2 SCC 1.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. It is the case of the petitioner that due to some dispute with the partner of the petitioner, since multiple litigations are pending between

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the partners, the petitioner has given complaints to the 2nd respondent police. While so, one such complaint was given by the petitioner, on 23.12.2021, to the 2nd respondent. However, the 2nd respondent has in turn forwarded the same to the third respondent and the 3rd respondent, instead of conducting enquiry and registering an FIR, on the basis of the legal opinion, which was sought from the Public Prosecutor, has closed the complaint. As against the said impugned communication, the petitioner is before this court with this petition.

4. The learned counsel for the petitioner, by placing reliance on a judgment in ***R.Sarala v. T.S.Velu and others*** reported in ***(2000) 4 SCC 459***, would submit that a Public Prosecutor, who is the officer of the court, has powers to withdraw any case from the prosecution with the consent of the court, however, he has no role in the investigation conducted/to be conducted by an investigating officer. The learned counsel would contend that when that being the position, the closure of the complaint based on the legal opinion is per se illegal and contrary to the decision and also the powers envisaged in the Code of Criminal Procedure. Hence, on this ground, he prays interference of this court.

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3. Heard the learned Additional Public Prosecutor, who would submit that if it is the case of the petitioner that based on the legal opinion of the Public Prosecutor, the case has been closed, then, in that case, necessary direction to withdraw the said communication may be issued to the respondents.

4.This Court gave its anxious considerations to the rival submissions and perused the materials available on record.

5. It is seen that a Public Prosecutor, who is appointed under Section 24 Cr.P.C., shall conduct any prosecution, appeal or other proceedings in the court and he, who is the officer of the court, has also got the power to withdraw any case from the court, however, with the consent of the court. When that be so, the involvement of the Public Prosecutor has no role in the investigation. It is also not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. The role of the Prosecutor is different and the role of the investigating officer is different. However, the investigating officer

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cannot relegate the power to the Public Prosecutor in the matter of investigation. The decision in Sarala's case (supra) squarely covered the issue in the present writ petition. In the said decision,

6. In view of the above, this writ petition is allowed in the following terms:

(i) the impugned communication of the 3rd respondent is set aside and the matter is remanded back to the third respondent;

(ii) the third respondent shall conduct the investigation afresh and on completion of investigation, file appropriate report as per law. Such report shall be filed within a period of six weeks from the date of receipt of a copy of this order.

31.01.2024

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   Madurai..

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M.DHANDAPANI,J

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