



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on : 30.10.2024

Orders pronounced on : **27.11.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD).Nos.29558, 29559 and 29565 of 2023
and W.M.P.(MD).Nos.25521, 25522 and 25523 of 2023

J.Chenthil Rajan

.. Petitioner
(in all the cases)

Versus

1. The Additional Chief Secretary to the Government,
Home Department,
Secretariat,
Chennai.
2. The Director,
Vigilance and Anti-Corruption,
Chennai - 16.
3. The Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli Detachment.
4. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.
5. The Inspector of Police,
C.B.I. A.C.B.,
No.73, Athikulam Main Road,
Reserve Line Post,
Tirunelveli District.



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

6. S.Vaikundarajan
7. R.Suresh Kumar

.. Respondents
(in all the cases)

(R6 & R7 are impleaded vide Court order dated
30.10.2024 in W.M.P.(MD).Nos.596, 595, 4443,
4439, 4444 and 597 of 2024 in W.P.(MD).Nos.29558,
29559 and 29565 of 2023)

Prayer in W.P.(MD).No.29558 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus by calling for the entire records pertaining to the proceedings of the 1st respondent in G.O.(Ms) No.24 Home (Police.2) Department, dated 23.01.2023 and quash the same insofar as his decision in not to recommend for criminal proceedings in Crime No.07 of 2022 on the file of the 3rd respondent concerned and consequently, direct the 5th respondent to take up the investigation of the said case and to proceed further in accordance with law.

(Prayer amended vide Court order, dated 15.03.2024 in W.M.P.(MD).No. 5911 of 2024 in W.P.(MD).No.29558 of 2023)

Prayer in W.P.(MD).No.29559 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus by calling for the entire records pertaining to the proceedings of the 1st respondent in G.O.(Ms) No.25 Home (Police.2) Department, dated 23.01.2023 and quash the same insofar as his decision in not to recommend for criminal proceedings in Crime No.07 of 2022 on the file of the 3rd respondent concerned and consequently, direct the 5th respondent to take up



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

the investigation of the said case and to proceed further in accordance with law.

(Prayer amended vide Court order, dated 15.03.2024 in W.M.P.(MD).No. 5907 of 2024 in W.P.(MD).No.29559 of 2023)

Prayer in W.P.(MD).No.29565 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus by calling for the entire records pertaining to the proceedings of the 1st respondent in G.O.(Ms) No.26 Home (Police.2) Department, dated 23.01.2023 and quash the same insofar as his decision in not to recommend for criminal proceedings in Crime No.07 of 2022 on the file of the 3rd respondent concerned and consequently, direct the 5th respondent to take up the investigation of the said case and to proceed further in accordance with law.

(Prayer amended vide Court order, dated 15.03.2024 in W.M.P.(MD).No. 5910 of 2024 in W.P.(MD).No.29565 of 2023)

For Petitioner : Mr.N.R.Ilango, Senior Counsel
(in all the cases) for Mr.R.Anand

For Respondents : Ms.Aasha,
Government Advocate (Crl. Side),
for RR-1 to 5

: Mr.M.Maharaja, for R6

: Mr.T.M.Arunan, for R7



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

COMMON ORDER

WEB COPY

These Writ Petitions are filed challenging the Government Orders in G.O.(Ms) Nos.24, 25 and 26 Home (Police.2) Department, dated 23.01.2023.

2. By G.O.(Ms). No.24 Home (Police.2) Department, dated 23.01.2023, the Government examined the report of the third respondent/Investigating Authority, accepted the recommendation of the said authority and ordered to drop further action which was made against two Police Officers namely, *R.Suresh Kumar*, former Deputy Superintendent of Police and *Pattani*, Inspector of Police. By G.O.(Ms). No.25 Home (Police. 2) Department, dated 23.01.2023, disciplinary action was directed to be initiated against the said *Pattani*, Inspector of Police on the lines mentioned therein. Similarly, by G.O.(Ms).No.26 Home (Police.2) Department, dated 23.01.2023, disciplinary action was directed to be initiated against *R.Suresh Kumar*, former Deputy Superintendent of Police on the lines mentioned therein. The petitioner, *J.Chenthil Rajan*, the *de facto* complainant, on whose complaint the case was registered and investigated, has filed the above Writ Petitions challenging the same.



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

3. Heard *Mr.N.R.Ilango*, learned Senior Counsel and *Mr.R.Anand*, learned Counsel for the petitioner; *Ms.Aasha*, learned Government Advocate (Crl. Side) for the respondent Nos.1 to 5; *Mr.M.Maharaja*, learned Counsel for the sixth respondent and *Mr.M.T.Arunan*, learned Counsel for the seventh respondent.

4. *Mr.N.R.Ilango*, learned Senior Counsel for the petitioner submits that the issue relates to the dispute between the petitioner and his father namely, *Jegatheesan* on one side and his father's brother namely, *Vaikundarajan*, the sixth respondent, on the other side. While so, there have been several legal proceedings between both sides given the number of properties and businesses belonging to the family. There are partnership firms and other entities, regarding which disputes between the two sides arise. While so, on 21.05.2020, at about 1.30 P.M about 12 members, wielding weapons like aruval, petrol bomb and country bomb, entered the business premises and made a huge threat to the Manager of the petitioner namely, *Devadoss Thomas Thavaraj* and also threatened the other employees and created ruckus. Immediately thereafter, a complaint was lodged on the file of the Sawyerpuram Police Station. However, the complaint was not received directing the petitioner's Manager to contact the



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

Deputy Superintendent of Police. In view thereof, the complaint was uploaded through the online portal vide CCTNS Reference No.RDR20051216.

5. On the same day, at about 2.00 P.M, one *Muthuraja @ Muthuraj*, along with a team of hooligans, barged into the petitioner's other partnership firm namely, M/s.V.V.Marine Products in two cars bearing Registration Nos.TN 69 BM 6600 and TN 69 BH 8527. They also carried lethal weapons like Aruval, knives, petrol bombs and country bombs and started threatening the employees at the unit. In this connection also, when the Manager of the said premises namely, *Royston Kagoo* rushed to the Eral Police Station and lodged a complaint to the Inspector of Police, again the said *Pattani*, Inspector of Police avoided receiving the complaint. Therefore, that complaint was also uploaded online on 26.05.2020 vide CCTNS Reference No.RDR20051218.

6. Three days later i.e., on 29.05.2020 at about 11.30 A.M, the Deputy Superintendent of Police, *R.Suresh Kumar* and the Inspector of Police, *Pattani* with the company of about 50 policemen in Vajra vehicle came to the petitioner's company premises without there being any specific



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

complaint abusing their official position at about 2.15 P.M. They threatened the petitioner/*de facto* complainant to accept the proposal of *Vaikundarajan* regarding the properties and businesses. They further said that the talks can be held in R.V.S.Farm, Karunkulam and one Advocate *Maharajan* will make all arrangements. If the petitioner does not come forward for an amicable settlement, false cases like one registered against one *Mariappan* in Eral Police Station, will be registered against him and he will be arrested.

7. On their threat, the petitioner's father went to the Eral Police Station at about 4.30 P.M. along with quarry Manager *Gopala Krishnan* and M/s.V.V.Tower Manager, *Abdul Rahuman* and Driver, *Nainar*. The petitioner's father was asked to wait by the said *Pattani*, Inspector of Police. Around 5.00 P.M, *R.Suresh Kumar*, Deputy Superintendent of Police came to the Police Station and directed the Manager and the Driver to wait outside. He handed over a list of properties/businesses and in the list, some of the items were marked. He instructed that those marked properties will not be allocated to the de facto complainant's father's share and those were meant to be given to the said *Vaikundarajan*. Further, regarding the issue talks can be held and he instructed that the petitioner's father pay a sum of Rs.75 crores to *Vaikundarajan*, upon which, the deal will be completed. Towards



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

completion of the deal, he also asked for a 10% commission from the petitioner's father and threatened to foist false cases, if he did not come around.

8. Thereafter, on 16.06.2020 at about 1.00 P.M., one *Rajesh, Muthusamy* and *Ponraj* entered into premises of M/s.V.V.Marine products and threatened the Manager, *Royston Kagoo*. They also stole a sum of Rs. 50,000/- which was in the hands of one of the employees *Pulikkessi*. Immediately thereof, when the complaint was lodged at the Eral Police Station, the Inspector of Police simply refused to accept the same by stating that the Deputy Superintendent of Police gave a clear-cut instruction that any complaint from the petitioner's side should not be received. The said complaint was also uploaded through the online portal vide Reference No.HDR20060409. Subsequently, in respect of the complaint, they approached the learned Judicial Magistrate, Srivaikundam, Thoothukudi district vide Cr.M.P.No.721 of 2020 and Cr.M.P.No.753 of 2020 and the learned Magistrate referred the said complaint under Section 156(3) of the Code of Criminal Procedure with a direction to register a First Information Report with reference to the Eral Police Station and the Sawyerpuram Police Station, on account of which, cases in Cr. No.389 of 2020 and 343 of 2020



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

were registered in the respective Police Stations. However, for extraneous reasons, the aforesaid Inspector of Police, on instructions of the Deputy Superintendent of Police, referred these cases as 'Mistake of Fact'.

9. Since the said two public servants openly demanded a commission amount and also indulged in these extraneous acts of threatening and attempting to conduct a kangaroo panchayat, the petitioner sent a detailed complaint about the same to the higher police officials and also to the Government on 20.10.2020. In response thereof, the first respondent, the Additional Chief Secretary to the Government, through the Director, Vigilance and Anti-Corruption, sent a reply, dated 21.10.2020, that the complaint was being enquired by the Inspector of General of Police, South Zone, Madurai. Aggrieved by the same, the petitioner filed W.P.(MD). No. 2549 of 2021, and by the order dated 29.07.2021, this Court was pleased to direct the second respondent to embark on the petitioner's complaint as per the dictum of the Hon'ble Supreme Court of India in ***Lalitha Kumari Vs. Government of Uttar Pradesh and Ors.***¹.

10. After considering the nature of the allegation, the first respondent, vide G.O.(2D) No.152 Home (Police.2) Department, dated 05.05.2022,

¹ (2014) 2 SCC 1
<https://www.mhc.tn.gov.in/judis>



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

directed a regular case being registered and investigated against the aforesaid officials. It is only thereafter, the present case in Cr. No.7 of 2022 was registered for the offences under Section 7 of the Prevention of Corruption Act, 1988 and under Sections 120B, 166A and 34 of the Indian Penal Code. The above Government Order was passed duly granting prior approval in terms of Section 17(A)(1) of the Prevention of Corruption Act, 1988. The investigation was entrusted to the third respondent and after investigation, the third respondent sought to file a Final Report before the jurisdictional Magistrate on 07.03.2023.

11. It is stated in the said Final Report that the materials collected during the investigation of this case are not adequate to prove the guilt of the accused before the Court beyond the reasonable doubt and they only prove delinquencies of the accused persons warranting departmental action and it is prayed that further action be dropped in the criminal case. When the notices were ordered to the petitioner and even before the petitioner could file his objections, hastily, the first respondent has now issued the aforementioned three Government Orders, whereby, the Final Report of the Investigating Authority is now accepted and further action is ordered to be dropped. By the Government Orders in G.O.(Ms) Nos.25 and 26 Home



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

(Police.2) Department, dated 23.01.2023, it is further ordered that a Disciplinary Enquiry be initiated against the said two persons. Aggrieved by the same, the present Writ Petitions are filed.

12. *Mr.N.R.Ilango*, taking this Court through the materials collected by the third respondent, submits that apart from the fact that the third respondent did not conduct a proper investigation considering that the accused persons were Police personnel, even as per the half-hearted investigation that was conducted, it can be seen that there are materials which were collected by the third respondent which would at least *prima facie* point out to a triable case making out a charge under Section 7 of the Prevention of Corruption Act, 1988 and also the other offences. The learned Senior Counsel submits that firstly, to prove that the Police personnel entered the premises along with the 50 Police personnel, the witnesses were examined and there is other evidence. Similarly, for directing the petitioner's father to come to the Police Station where he was threatened, the Google timeline of the petitioner's father's mobile phone from Google Maps is produced which clearly shows that at the relevant point in time, the petitioner's father had travelled to Eral Police Station on the day of the occurrence. The list of companies, handed over by the Deputy



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

Superintendent of Police after rounding off the items, was produced and is very much available to the Investigating Officer. The petitioner spoke about the demand for a 10% commission. The petitioner's father gave a statement categorically mentioning the demand for a 10% commission. The other witnesses, including the Manager of the petitioner's Company and other employees, spoke about the same. The very fact that the Police force entered into the premises of the petitioner without there being any complaint whatsoever also corroborates the fact that the said two public servants attempted to conduct a Kangaroo Court and forced the petitioner to pay a sum of Rs.75 crores and also demanded 10% commission, would all *prima facie* make out a charge and therefore, filing of the charge-sheet, as if there is no material whatsoever, is perverse and the Final Report is not at all liable to be accepted.

13. Though the petitioner is entitled to file his objections before the jurisdictional Magistrate Court, the other respondents, upon the influence exhorted by the other side, prevented the whole thing by passing these Government Orders. Once the first respondent granted prior approval for proceeding with the investigation after due application of mind, the same should have been done while dropping further action also. He submits that



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

in the teeth of the Government Orders, it would be pointless to file a protest petition before the jurisdictional Magistrate. Therefore, he submits that the impugned Government Orders are issued without application of mind as to the materials which are there on record and also without taking into consideration that the Final Report is not yet accepted by the jurisdictional Magistrate.

14. Per *contra*, *Ms.Aasha*, learned Government Advocate (Crl. Side) for the respondent Nos.1 to 5, by relying upon the counter-affidavit, submits that every aspect of the matter was thoroughly investigated by the third respondent, the Investigating Officer. Upon verification of the weekly diary of the Government vehicle bearing Registration No.TN 69 G 1179, it was concluded that the said *R.Suresh Kumar* never visited the Police Station at that time and the Disciplinary Proceedings are now recommended. It is also stated that no C.C.T.V camera was installed in the camp office. The Investigating Officer examined 53 witnesses and collected 30 documents. However, upon consideration of the same, it did not reveal a demand as alleged by the petitioner. There is no material evidence such as audio or video recording in support of the demand for commission. Therefore, only after thorough consideration of the facts and circumstances, the Final Report



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

is filed and the Government, after due application of mind, issued G.O.(Ms) Nos.24 Home (Police.2) Department, dated 23.01.2023, deciding to drop further action on the main allegation. The other two Government Orders are passed to initiate departmental action as per the recommendation of the investigating authority. Therefore, she prays that there is nothing for this Court to interfere in the matters.

15. *Mr.M.Maharaja*, learned Counsel for the sixth respondent, after taking this Court through the various averments which are made in the impleading applications, submits that there are ongoing disputes between the parties. The allegations which are made in the present complaint are false and are only to make the sixth respondent accept the illegal proposals made by the petitioner and his family. He submits that in any event, when the Final Report is placed before the jurisdictional Magistrate, the only remedy available to the petitioner/*de facto* complainant is to file a protest petition which will be dealt with on merits per law. The petitioner has no grievance to challenge the present Government Orders.

16. *Mr.M.T.Arunan*, learned Counsel for the seventh respondent submits that the entire allegations against the seventh respondent are false.



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

The averments made by the petitioner are thoroughly unsubstantiated. When the enquiry was duly held and the outcome of the investigation came up by way of a Final Report, the only remedy available was to file a protest petition and the petitioner, without even filing the protest petition, filed these Writ Petitions and therefore, the Writ Petitions should not be entertained.

17. I have considered the rival submissions made on either side and perused the material records of the case.

18. At the outset, though it may not be out of place for the Investigating Authority to ask the warring fractions, especially, since they being brothers/members of the extended family to come to an amicable settlement, in this case, the first factor is that there was no complaint concerning cheating, forgery or criminal trespass pending at the relevant point of time. When they entered the business premises as well as when they conducted peace meetings, it is not their case that they were acting upon any complaint/petition. Though there is no audio or video recording concerning the demand, materials such as a Google map extract, a list of properties as alleged to be furnished by the accused police officers are produced and also the statement of the affected persons namely, the petitioner and his father,



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

Jegatheesan and the other witnesses speak about the demand. In the counter-affidavit filed before this Court or in the Final Report, nothing is stated about any petition/complaint in which the said accused officers sought to conduct a peace meeting between the two sides.

19. On a perusal of the impugned Government Orders, it is very clear that the third respondent, Investigating Authority concluded that the former Deputy Superintendent of Police and the Inspector of Police conducted the peace meetings and he is finding fault that the Deputy Superintendent of Police, *R.Suresh Kumar*, did not record the proceedings of the peace meeting conducted in the said two Company campuses between the two partners brothers namely, *Jegatheesan* and *Vaikundarajan*. Similarly, the presence of *R.Suresh Kumar*, the former Deputy Superintendent of Police in the Eral Police Station is disbelieved only by taking into account his vehicle logs. No investigation is done about his mobile phone or by examining the C.C.T.V footage of the Police Station or the C.C.T.V footage that may be available in the vicinity. Thus, in this case, the petitioner's grievance cannot be said to be without any material at this stage.



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

20. On the other hand, the learned Senior Counsel for the petitioner points out the concrete and *prima facie* material for the petitioner to be feeling aggrieved by the Final Report deciding to drop further action. In that view of the matter, when the Final Report is filed before the learned Chief Judicial Magistrate, Thoothukudi and notices have been issued and the same is pending, it is preposterous and premature that the first respondent passed the impugned Government Orders preempting the decision of the jurisdictional Court either to accept or to reject the Final Report which is filed by the third respondent, by issuing impugned Government Orders dropping further action and to take further disciplinary action as recommended by the third respondent. The said action cannot precede even when the Final Report is pending consideration of the learned Chief Judicial Magistrate.

21. In view thereof and given the *prima facie* case pleaded by the petitioner to feel aggrieved and to file a protest petition, I am of the view that the petitioner is very much entitled to file a protest petition and contest the Final Report on merits before the learned Chief Judicial Magistrate who can only decide the further course of action as to whether the Final Report is to be accepted or whether any offence is made out for taking cognizance or



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

to direct the same Investigating Authority to collect further materials etc., in accordance with law. Therefore, the petitioner will be entitled to file a protest petition raising all the grounds raised before this Court. The same shall be duly considered by the learned Chief Judicial Magistrate in accordance with law.

22. At the same time, for the aforementioned reasons I am of the view that the consequential prayer to entrust the investigation to the Central Bureau of Investigation cannot be countenanced at this stage as I do not find any alarming lapse to entrust the investigation to an independent agency like the Central Bureau of Investigation. However, the aforesaid Government Orders are premature and are in a manner as to preempt the lawful enquiry by the learned Chief Judicial Magistrate and are passed even without taking into account the very material fact that the Final Report is yet to be approved or accepted by the learned Chief Judicial Magistrate and as such, are passed without due application of mind and taking into consideration the relevant material and as such, are arbitrary.

23. In view thereof, these Writ Petitions are disposed of on the following terms:-



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

(i) The impugned Government Orders in G.O.(Ms) Nos.24, 25 and 26 Home (Police.2) Department, dated 23.01.2023 shall stand quashed;

(ii) The petitioner shall file a protest petition, if any, before the learned Chief Judicial Magistrate before whom the proceedings are pending, within two weeks from the date of receipt of a copy of this order and the same shall be duly considered and appropriate orders may be passed in accordance with law;

(iii) As and when the final order, with reference to the Final Report, is passed by the learned Chief Judicial Magistrate, the first respondent will be entitled to pass Government Orders afresh, in tune with the said order of the appropriate Court;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.11.2024

Neutral Citation: yes
grs

To

1. The Additional Chief Secretary to the Government,
Home Department,
Secretariat,
Chennai.



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

2. The Director,
Vigilance and Anti-Corruption,
Chennai - 16.
3. The Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli Detachment.
4. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.
5. The Inspector of Police,
C.B.I. A.C.B.,
No.73, Athikulam Main Road,
Reserve Line Post,
Tirunelveli District.



WEB COPY



W.P.(MD).Nos.29558, 29559 and 29565 of 2023

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.(MD).Nos.29558, 29559 and 29565 of 2023
and W.M.P.(MD).Nos.25521, 25522 and 25523 of 2023

27.11.2024