

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.02.2021

PRONOUNCED ON : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

W.P(MD)No.5417 of 2020

and

W.M.P.(MD)Nos.4713 and 4715 of 2021

Dhandapani

... Petitioner

Vs.

- 1.The Vigilance Commissioner,
Tamil Nadu Vigilance Commission,
Secretariat, St.George Fort,
Chennai.
- 2.The Director,
Vigilance and Anti Corruption Wing,
Chennai.
- 3.The Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, St.George Fort,
Chennai.
- 4.The Director of Rural Development Department,
Panangalmaligai, Saidapet,
Chennai.
- 5.The District Collector,
Trichy District, Trichy.

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6.The Superintendent of Police,
Southern Range,
Vigilance and Anti Corruption Wing,
Chennai.

7.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Trichy.

8.P.Karthick

9.Kandasamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the 7th respondent vide proceeding No.PE.No.11/ 2020 /RDP/ TR, dated 09.03.2020 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.R.Raja Karthikeyan

For Respondents : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor, for R1 to R7.

: Mr. N.Sathees Kumar, for R8 and R9.

ORDER

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The Writ Petition has been filed seeking orders to call for the records in proceeding No.PE.No.11/ 2020 /RDP/ TR, dated 09.03.2020, on the file of the 7th respondent and quash the same.

2.The petitioner is working as Assistant Director in Rural Development Department, Trichy District. According to the petitioner, there existed property dispute between him and his brother/9th respondent herein and that the 8th respondent, on the instigation of his friend 9th respondent, had filed numerous complaints against him to various authorities. The 8th respondent has filed a petition in CrI.O.P.(MD)No.30288 of 2019 before this Court under Section 482 Cr.P.C., for directing the Director of Vigilance and Anti Corruption Wing, Chennai, to take further action on the basis of the complaint, dated 15.07.2019 given by the 8th respondent herein and that this Court, after hearing the learned Additional Public Prosecutor, has passed an order, dismissing the criminal original petition with a direction to the 8th respondent to appear before the Director of Rural Development and Panchayat Raj, Chennai and to lodge a detailed complaint along with relevant documents.

3.It is the specific case of the petitioner that as per the orders of this Court, 8th respondent has filed a detailed complaint before the 4th respondent, who in turn, directed the District Collector, Trichy/5th respondent herein to conduct enquiry, who in turn appointed a Joint Director of Rural Development/ Mahalir Thittam, Trichy as Enquiry Officer, that the Enquiry Officer has issued a notice, dated 07.02.2020, and called for the entire service particulars and

property statements of the petitioner, that he conducted enquiry and inspected the petitioner's village and that the enquiry was in final stage at the time of filing the above writ petition.

4.It is further case of the petitioner that when the above enquiry is about to attain finality, to the petitioner's shock and surprise, the 7th respondent has issued the impugned proceedings, dated 09.03.2020, directing the petitioner to furnish the various particulars called for therein and that the said impugned proceeding is now under challenge.

5.The petitioner has raised two main grounds to sustain the above petition.

(i) During enquiry in CrI.O.P(MD)No.30288 of 2019, it was represented on behalf of the 2nd respondent that the complaint received by them was forwarded to the 4th respondent and that only after receiving the report from the 4th respondent, further action will be taken. Thereafter only, this Court has passed an order, directing the 8th respondent to give a detailed complaint to the 4th respondent, that accordingly, a detailed complaint was given to the 4th respondent, who in turn directed the 5th respondent to conduct enquiry, who in turn appointed an Enquiry Officer and that when the enquiry was about to attain

finality, the 7th respondent has commenced preliminary enquiry and issued the impugned proceedings, which is very much against the order of this Court and that the initiation of de-nova enquiry and that too 20 days prior to the petitioner's superannuation is arbitrary and is not permissible and is very much against the order of this Court.

(ii) As per Section 17-A of Prevention of Corruption Act, the police officer has to get previous approval to conduct any enquiry or inquiry or investigation, that the Vigilance and Anti Corruption Wing had not obtained any previous approval from the Government to conduct any enquiry against the petitioner herein and that therefore, very initiation of enquiry proceedings is void.

6. The defence of the Vigilance and Anti Corruption Wing is that as per the order of this Court in CrI.O.P.(MD)No.30288 of 2019, the 8th respondent presented a petition, dated 08.01.2020 to the 4th respondent, in which, he raised allegations against the petitioner and his family members regarding the purchase of properties, which are not disclosed to the Government and also he has not properly accounted for the same, that a copy of the complaint was marked to the Vigilance and Anti Corruption Wing, Chennai and after receipt of

the same, the Director of Vigilance and Anti Corruption Wing, Chennai, has issued an order for preliminary enquiry vide memo PE11/2020/RDP/TR, dated 17.02.2020 and accordingly, preliminary enquiry was registered on 02.03.2020 and the same was taken up for investigation.

7. When the matter was taken up for hearing on 17.02.2020, the learned Additional Public Prosecutor would submit that after completion of preliminary enquiry, FIR came to be registered in Crime No.8 of 2020 for the offence punishable under Sections 13(2) r/w 13(1) (b) of Prevention of Corruption Act, 1988, and the investigation is pending and that therefore, nothing survives for adjudication.

8. It is evident from the records that the District Collector, Trichy/5th respondent has sent a letter along with his report to the 4th respondent and whereunder, he has stated that the allegations levelled against the petitioner were not proved. It is not in dispute that the 8th respondent, while preferring a detailed complaint to the 4th respondent, as per the orders of this Court marked a copy to the 2nd respondent, who in turn ordered for preliminary enquiry and after completion of preliminary enquiry, FIR came to be registered.

9.As rightly contended by the learned Additional Public Prosecutor, this Court has nowhere stated that the second respondent should not proceed with enquiry or for registration of FIR. Though the 5th respondent has sent a report stating that the complaints against the petitioner were not proved, there is no bar or prohibition for the 2nd respondent to order for enquiry and to proceed further on the basis of the enquiry conducted. Hence the contention of the petitioner that the initiation of the impugned proceeding is arbitrary and is against the order of this Court, is devoid of substance and the same is liable for rejection.

10.The next plea, a legal plea was raised that the initiation of the proceedings by the second respondent without getting previous approval from the Government under Section 17(A) of the amended Prevention of Corruption Act is invalid and illegal. It is necessary to refer the Section 17(A) of Prevention of Corruption Act.

“17 A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

(1) No Police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the

alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of person who is or was employed, at the time when the offence was alleged to have been committed, in connections with the affairs of the Union, of that Government;

(b) in the case of person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his officer, at the time when the offence was alleged to have been committed.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided Further that the concerned authority shall convey its decision under this Section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one months.”

11.The above provision was inserted vide Amendment Act 16/2018. A cursory perusal of the above provision would only suggest that the previous approval is necessary for conducting any enquiry or inquiry or investigation

into any offence alleged to have been committed by a public servant, which is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.

12.In the case on hand, the petitioner has not been charged with any offence relatable to any recommendation made or decision taken by him while discharging his official function or duties. But, on the other hand, FIR came to be registered for allegedly acquiring assets disproportionate to his own source of income, during the check period between 01.01.2013 and 29.02.2020. Considering the above, I am of the view that prior approval under Section 17 (A) of Prevention of Corruption Act is not at all necessary and that the said provision is not applicable to the disproportionate assets cases.

13.More over, as rightly pointed out by the learned Additional Public Prosecutor, this Court in W.P.(MD)No.15845 of 2020, on 23.12.2020, after referring to the decisions of the Delhi High Court and Chhattisgarh High Court reported in **2019 (1) Crimes (HC) 726 (Devender Kumar Vs. CBI and (2020) 0 Supreme (CHH) 149, Sathish Pandey Vs. Union of India**, has specifically held that Section 17(A) of Prevention of Corruption Act cannot be made applicable to those cases where the act of the public servant that amounts to an

offence, appears on the face of it lacking in good faith. Considering the above provision and the above decision, it is clear that Section 17 (A) has been inserted only to give protection to the honest officers, but when the act of a public servant amounts to or constitutes an offence by itself, prior sanction or approval from the Government would not be necessary. Viewing from this angle also, I hold that Section 17 (A) of Prevention of Corruption Act has no application to the case on hand. As already pointed out, since FIR has already been registered and is pending investigation, the relief sought for by the petitioner has become infructuous. Considering the above, this Court decides that the Writ Petition is devoid of merits and the same is liable to be dismissed.

14. In the result, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

09.03.2021

Index : Yes/No
Internet : Yes/No
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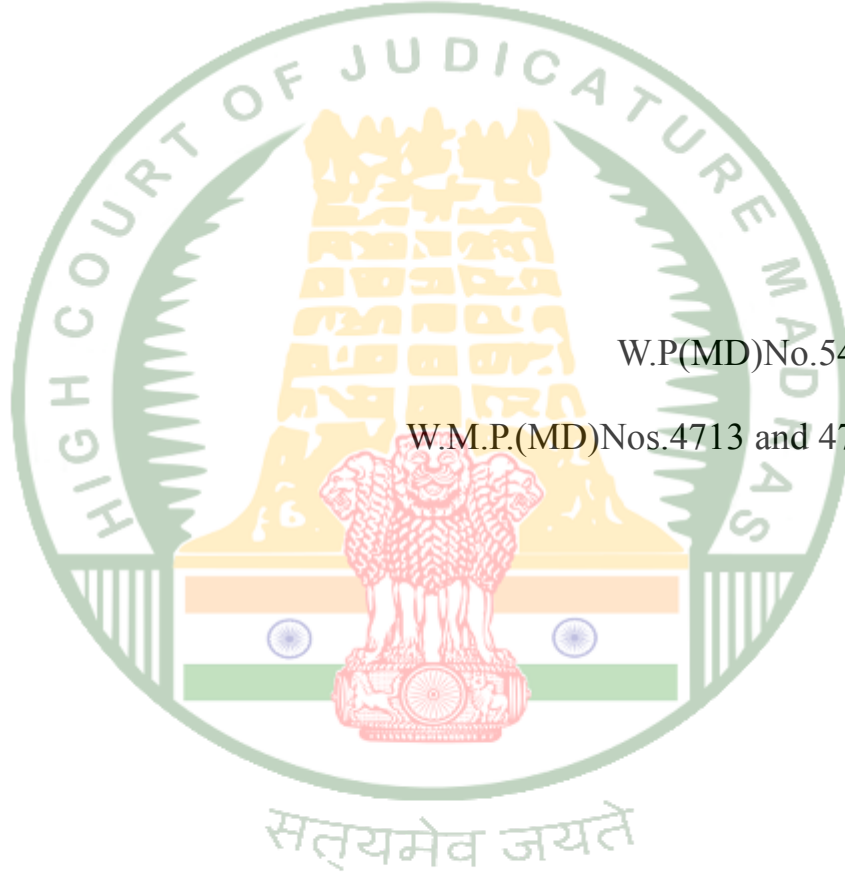


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