

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30/09/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.28066 of 2004

and

WP.M.P.No.34094 of 2004

T.Maruthamuthu .. Petitioner

-vs-

1. Government of Tamilnadu,
rep. by its Home Secretary,
Secretariat, Chennai-9.

2. Director General of Police,
Tamilnadu, Chennai-4.

3. Additional Director General
of Police, Crime Branch CID,
Admiralty House, Government
Estate, Chennai-2.

4. Commissioner of Police,
Tiruchirapalli City Police,
Tiruchirapalli-620 001.

5. Central Bureau of Investigation,
rep. by its Director,
Block No.4, 6th Floor, CGO Complex,
Lodi Road, New Delhi-110 003. .. Respondents

Prayer :- Petition under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the Tamilnadu Police consisting of 1987 batch police officers, more particularly as Inspectors of Police are incompetent to do investigation of Indian Penal Code Crime Murder cases, consequently cases falling under the category of Murder cases including Air Port Police Station Crime No.151 of 1998, which became S.C.No.39 of 2001 in the Court of the First Additional District Judge Tiruchi and K.K.Nagar Police Station Crime No.237 of 2001 have necessarily to be handed over to Central Bureau of Investigation.

For Petitioner : Party-in-person

For Respondent : -

:O R D E R

(Order of the Court was made by N.DHINAKAR, J.)

The petitioner, calling himself as a public spirited man, interested in the welfare of the people and administration of criminal justice, has filed the above writ petition inter alia making allegations against the police officers in general, in Tamil Nadu, and more particularly, the Sub-Inspectors of the year 1987 batch, who have been promoted to the rank of Inspectors, since, according to him, the said batch of officers, who have been promoted as Inspectors from the year 1996, have amassed disproportionate assets and are indulging in real estate business with their ill-gotten money leading a luxurious life. According to him, the Inspectors of Police, though provided with a jeep and a driver, are using it for purposes other than official and some of the Inspectors are able to stay in the same District leading to a nexus between them and the criminals. According to him, the Inspectors have no respect for law because they have a batch of Indian police officers of Tamil Nadu cadre as god fathers, to save them from any penal proceedings and that the remaining 25% are unable to withstand the non-cooperation and disturbances from 75% corrupt police officers. He has also quoted the statistics of National Crime Records Bureau, New Delhi, according to which, 32.2% of the offences are crimes under the Indian Penal Code, which are cognizable in nature and murder cases constitute only 2%. He has further alleged that the Inspectors of Police are not taking interest in the investigation of murder cases and if at all they do any investigation, they are not collecting evidence and witnesses to prove the ingredients of the offences and their investigation is faulty leading to acquittal. It is his further allegation that in the past, District Superintendents of Police used to review the judgments of cases and used to monitor and appraise the officers involved in prosecution, which system, according to him, is no longer in existence. He has stated that on account of acquittal of the accused persons, they escape from the clutches of law, which affects the family of the deceased and reflects on the entire society.

2. He has further stated in the grounds that Crime No.151 of 1998 registered at Air Port Police Station, Tiruchirapalli City Police Limits, as regards the murder of one Vijayalayan, has ended in filing of the final report and is pending as Sessions Case No.39 of 2001 in the Court of the First Additional District Judge, Tiruchi and that the investigation in the said crime was taken up by Saminathan, Inspector of Police. According to him, in the case diary dated 14.7.98, 15.7.98 and 19.7.98, the officer has mentioned that he identified Pichaimuthu, James, Settu, Kora Kumar and Subramanian Chettiyar as accused and that in his case diary dated 2.8.98, he has mentioned that he identified a blue colour jeep, which came to the scene of occurrence and that the said officer has omitted to arrest Subramanian Chettiyar, Kora

Kumar, Pichaimuthu, James and Settu and also failed to recover the said jeep with an intention to shield the offenders. He has further stated that later, the investigation was taken up by his successor, Selvaraj, who created false records and filed the final report on 14.6.2000 against three accused, namely, Batcha, Mahamuni and Jayakumar, without any evidence. According to him, the case was transferred to Crime Branch C.I.D. and D.S.P., C.B.C.I.D., Madurai Range, with the assistance of Senthil, Inspector of Police, created false records with an intention to shield the offenders and filed the amended final report on 30.6.2003 against Subramanian Chettiyar, Korakumar, Batcha, Mahamuni and Jayakumar without any evidence. It is further alleged that for motive, Selvaraj – a prohibition offender and Krishnamurthy – Ex-convict, were cited as witnesses, who are working as Day watchman and Night watchman in the house of Sujatha Subramanian Chettiyar, though they were not the real witnesses. According to the petitioner, to prove the conspiracy, Mohan, who is the servant of Senthil, Inspector of Police and one Thangapatham were cited as witnesses, though they went away in 1998 to buy chemicals for their soap manufacturing industry, which was commenced in the year 2002, from a Glucose manufacturing industry owned by the accused, Subramanian Chettiyar. According to him, Hakeem and Dhinakaran, who were cited as witnesses to prove that the accused and the deceased were last seen, were only name lenders arranged by the accused, Subramanian Chettiyar and that all of them have played their respective roles, so that the case will not succeed in the Court. According to the petitioner, the investigation carried out by the police is dishonest and faulty and that right from the registration of the first information report till the final report was filed, the investigation was not on proper lines. According to him, on account of the murder of the son, the father, who is the retired Secretary to Government, died and the mother filed a petition in CrI.O.P.No.17026 of 2004 before this Court for re-trial, which was admitted on 12.5.2004 and stay was also granted. According to him that in spite of the notice given to the Additional Public Prosecutor, he did not convey the order of the learned Judge to the State Police Authority, since, according to him, "no care attitude prevails at Prosecution Law Officer level" and there is no monitoring or appraisal system before the State Police Department about Prosecution Law Officers.

3. The petitioner has cited another instance, which was registered as a crime at K.K.Nagar police station in Tiruchi, in Crime No.237 of 2001 pertaining to the murder of one Sobha, aged about 19 years. He has stated that the parents of the said Sobha were made to wait before the police every day for a month by Kandasamy, Inspector of Police, K.K.Nagar Police Station, who is now an Inspector at Tiruchi Fort police station. According to him, in the said crime, Ajeeth has been named as a suspect accused and that the said officer Kandasamy kept silent and the matter is still under investigation. He has further stated that the said case is equal to Kerala advocate Abdul Rashid murder case at Salem, in which, investigation was done by C.B.I. on the directions of the Court. According to him, "the entire investigating officers involved in murder cases" either did defective investigation or not doing investigation, with an intention to save the real accused and "are unable to cope up with the Indian Penal Code Crime Murder cases". He has made further allegation that those who are responsible for protecting life and ensuring fair and proper investigation are not showing any

anxiety and that law and justice become files in the hands of those "wanton boys" and that investigation carried out by the officers in the above two crimes are defective and faulty and if the records are called for, it will reflect the faulty investigation.

4. According to him, in view of the above, it is clear that Tamil Nadu Police consisting of 1987 batch police Sub-Inspectors, who were later promoted as Inspectors of Police are incompetent to do investigation with regard to the crimes under the Indian Penal Code, especially the murder cases and therefore, this Court will issue " Writ of Declaration declaring that the Tamilnadu Police consisting of 1987 batch police officers, more particularly as Inspectors of Police are incompetent to do investigation of Indian Penal Code Crime Murder cases, consequently cases falling under the category of Murder cases including Air Port Police Station Crime No.151 of 1998, which became S.C.No.39 of 2001 in the Court of the First Additional District Judge Tiruchi and K.K.Nagar Police Station Crime No.237 of 2001 have necessarily to be handed over to Central Bureau of Investigation and pass such further or other orders as this Court may deem fit proper in the nature and circumstances of the case".

5. The petitioner, who appeared as party-in-person, was heard and he repeated the arguments, which he has mentioned in his affidavit as well as in the grounds and did not have anything new to say by way of oral arguments, except to repeat the same argument time and again.

6. It is needless to say, even at the outset, that this writ petition is to be dismissed. In *BALCO EMPLOYEES' UNION (REGD.) v. UNION OF INDIA* [(2002) 2 SCC 333], the Supreme Court, while considering the circumstances under which a Public Interest Litigation can be entertained, observed that PIL is not a pill or a panacea for all wrongs and it is essentially meant to protect basic human rights of the weak and the disadvantaged and is a procedure which is innovated where a publicspirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief and that there have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. The learned Judges also quoted the earlier judgment of the Supreme Court in *S.P.GUPTA v. UNION OF INDIA* (1981 Supp.SCC 87) and further held that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage and in those cases also it is the legal rights which are secured by the Courts and that public interest litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.

7. In *ASHOK KUMAR PANDEY v. STATE OF W.B.* [(2004) 3 SCC 349] and in *B.SINGH (DR) v. UNION OF INDIA* [(2004) 3 SCC 363], the Supreme

Court held that public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paaise income litigation" and that if not properly regulated and abuse averted, it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. The Supreme Court was of the view that there must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe and it cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. It was further observed by the Supreme Court in the above judgments that Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction and a person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. The Supreme Court further stated that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens and the public interest litigation should not be used for suspicious products of mischief.

8. The Supreme Court, in the above two judgments, laid down the guidelines and stated that the court, before entertaining a PIL, should satisfy itself about a) the credentials of the applicant; b) the prima facie correctness or nature of information given by him; and c) the information being not vague and indefinite. The information should show gravity and seriousness involved and the court has to strike a balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions and according to the Supreme Court, in such case, the court cannot afford to be liberal and it has to be extremely careful to see under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The Supreme Court further observed that the Court has to act ruthlessly while dealing with imposters and busybodies or meddling interlopers impersonating as public-spirited holy men, who masquerade as crusaders of justice and who pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

9. Keeping the above principles enunciated by the Supreme Court in mind, we will now find out whether the petition has been filed with any bona fides.

10. The averments, which we have extracted in the earlier

part of our order, show that they are vague, blanket in nature and take within its wings the entire police department of the State of Tamil Nadu and more particularly, the Sub-Inspectors of 1987 batch, who have been promoted as Inspectors from 1996. The averments, to say the least, are defamatory and made without any basis. The petitioner, by simply citing two crime numbers and making allegations, wants this Court to infer that the two crime numbers have not been properly investigated and thereby wants to tarnish the image of the entire police officers of 1987 batch. The averments, which we have extracted, show that the petitioner has stated in the petition that the case diary dated 14.7.98, 15.7.98 and 19.7.98 as well as case diary dated 2.8.98 reveal certain facts and that the officer did not take action against the persons concerned and did not seize the jeep involved in the crime. We are unable to comprehend as to how the petitioner was able to lay his hands on the case diary, which is confidential in nature, to make an allegation that the case diary of the above dates contains the details and when specifically asked as to how he was able to get those details, the petitioner informed this Court that he got them from the accused persons. This itself shows that the allegations are made on the basis of the information furnished to him by a third party and he has no personal knowledge of the same. He has further stated that Selvaraj, Inspector of Police, who took up further investigation from Saminathan, created false records to shield the offenders and that final report was filed against three persons without any evidence, which, according to him, was later transferred to C.B.C.I.D., who, according to the petitioner, also filed the final report against some other accused and that the witnesses shown in the final report are witnesses procured by the police either on their own or on being supplied by the accused themselves. All these allegations, to say the least, are baseless. All that the petitioner wanted is to call for the records of the above two crime numbers for this Court to see and decide the issues involved in the case and the allegations made by him. To say the least, the kind of prayer sought by the petitioner cannot be granted in a petition filed under the guise of public interest litigation and it looks that the petitioner is using this forum only to gain publicity or has personal vendetta against the officers concerned. The petitions of such busybodies deserve to be thrown out by rejection at the threshold with exemplary costs, as observed by the Supreme Court in B.SINGH's case (cited supra).

11. The petitioner was not even able to make correct statement of facts in the petition, as could be seen from ground No.(ii), since, in the said ground, he has stated that an advocate Abdul Rashid, practising at Kerala, was murdered at Salem and the investigation in the said case was conducted by C.B.I. on the directions of the Court. It is, no doubt, true that one Abdul Rashid, an advocate, was murdered, but he was not from Kerala, as he was a practising advocate at Karnataka. The petitioner has conveniently omitted to mention the fact that the said case, though conducted by C.B.I., has ended in acquittal even at the trial stage, which was later confirmed by the appellate Court. From the above, this Court cannot infer on the basis of the averments made in the petition that wherever there is an acquittal, the police officers are incompetent in conducting investigation in the said crime and the C.B.I. is also incompetent, as the case relating to the murder of Abdul Rashid also ended in acquittal. If the contention of the petitioner is to be accepted, then every police officer/ investigating agency,

who/which conducts investigation will find himself/itself like a rat in the trap, since, if the case ends in acquittal, he/it cannot escape the kind of adverse remarks that will be made against him/it and such a situation will lead to demoralisation of the entire police force in the country and the petitioner cannot be allowed to go scot-free by making such wild allegations. In fact, he has stated in ground no (iii) that "the entire investigating officers involved in murder cases either did defective investigation or not doing investigation, with an intention to save the real accused and are unable to cope up with the Indian Penal Code Crime Murder cases". The ground, to say the least, is all pervasive and takes within its fold the entire investigating agency in the country, which investigates the murder cases as wholly inefficient. The petitioner has used avoidable language by calling the officers as "wanton boys" and according to him, though being fences, they swallow the crops and that the investigation carried out by the police is defective and therefore, the Tamil Nadu police and in particular, 1987 batch police officers, who are promoted as Inspectors, are to be declared as incompetent to conduct investigation. We are of the view that making such blanket allegations against the entire batch of police officers of the year 1987, who were, according to him, subsequently promoted from 1996 onwards, leaves a bitter taste in our mouth and the said allegations could have been made only on account of his personal vendatta against the officers, who conducted investigation in crime Nos.151 of 1998 of Air Port Police Station and 237 of 2001 of K.K.Nagar Police Station in Tiruchi District.

11. On account of the conduct of the petitioner in filing the above writ petition, the valuable time of this Court was lost and the grievance of the genuine litigants could not be considered as their petitions could not be taken up, which, in our view, could be compensated only by imposing exemplary costs, as directed by the Supreme Court in the judgments cited supra. Therefore, while dismissing the writ petition on the ground that it lacks bona fides and had been made with personal vendatta and as a publicity-oriented petition, we are constrained to impose a cost of Rs.25,000/- and the said cost of Rs.25,000/- will be paid by the petitioner to the Tamil Nadu State Legal Services Authority within four weeks from to-day, failing which, appropriate action shall be initiated against him for recovery of the same. Consequently, WP.M.P.No. 34094 of 2004 is also dismissed.

Index : Yes

Internet: Yes

(sra)

To

1. The Home Secretary to Government of Tamilnadu, Secretariat, Chennai-9.
2. The Director General of Police,

Tamilnadu, Chennai-4.

3. The Additional Director General of Police,
Crime Branch

CID, Admiralty House, Government Estate, Chennai-2.

4. The Commissioner of Police, Tiruchirapalli City Police,
Tiruchirapalli-620 001.

5. The Director, Central Bureau of Investigation,Block No.4,
6th Floor, CGO Complex,
Lodi Road, New Delhi-110 003.

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