(2015) 08 MAD CK 0231

In the Madras High Court

Case No : Criminal O.P. No. 15095 of 2014

Meena D. Bhattacharya APPELLANT

Vs

The Director, Vigilance and Anti-Corruption and Others RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 154, 482

Citation : (2015) 08 MAD CK 0231

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : A.V. Somasundaram for Lakshmi Priya Associates, for the Appellant; P. Govindarajan, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A. Selvam, J—This criminal original petition has been filed under Section 482, Cr.P.C., praying to direct the respondents to conduct investigation in respect of the complaint alleged to have been given by the petitioner on 16th July 2003 by way of deputing a Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, Kadaianallur.

2. The material averments made in the petition are that the petitioner has been appointed as one of the hereditary trustees of Arulmighu Gopalakrishnaswamy etc. Temples. One Thiru. M. Radhakrishnan has been acting as Managing Trustee. The petitioner and other trustees are appointed by Joint Commissioner, Tirunelveli. After taking over charge of Temple administration, the petitioner and other trustees have found various illegalities and irregularities committed by the Executive Officer Thangapandian and others. On 15-07-2013, the petitioner has given a complaint to the Superintendent of Police, Tirunelveli and copies have been sent to the Deputy Inspector General of Police, Tirunelveli and Honorable Chief Minister of Tamil Nadu. But no fruitful action has come out. The said officials and some private persons are swindling Temple money and their action would come within the purview of criminal law. Under the said circumstances, the

respondents are bound to nominate a Deputy Superintendent of Police to look into the complaint alleged to have been given by the petitioner.

3. In the counter filed on the side of the respondents, it is averred that all the allegations mentioned in the complaint as well as in the petition are false. Further for substantiating the allegations levelled by the petitioner credible documents have not been given and there is no merit in the petition and the same deserves to be dismissed.

4. During pendency of the present petition, a preliminary enquiry has been conducted by the Inspector of Police, Vigilance and Anti-Corruption, Tirunelveli, as per the direction given by the first respondent and consequently a preliminary report has been filed and the same reads as follows:

"3. The preliminary enquiry, conducted by examining the aforesaid witnesses and scrutinising the aforesaid documents disclosed the following:

4. The temple, namely Arulmigu Gopalakrishnasamy temple, Arlumigu Visalatchiamman Visweswarar temple and Arulmigu Sri Anjaneyasamy temple are called "Arulmigu Gopalakrishnasamy Vagaiyara temples". These temples situate at Krishnapuram, Kadayanallur Municipality, Tenkasi Taluk of Tirunelveli District. These temples are under the administrative control of the Executive Officer, Kadayanallur of Hindu Religious and Charitable Endowment Department (HR & CE) of Tamil Nadu Government and these temples is a listed institution published under section 46(i) of the Act 22/59. The then Commissioner, HR & CE Board in B.O. No. 605 dated 25.10.1928 declared these three temples as a public and excepted temples under section 18 and 84(1) of the Madras Act 11 of 1927 and these three temples be treated as an institution. Based on the Board''s order the persons who belongs to 9 families had managed the temples as its hereditary trustees. Since the hereditary trustees were resided in various cities, among them one Tr. K.R. Ramasubramania Iyer acted as a managing trustee, thereafter for administrative convenience of the temple in pro. No. R. Dis 16424/74 dated 21.5.1977 the Commissioner Chennai had appointed a fourth grade Executive Officer under section 45(i) of the Act to this temple and he took charge on 21.8.1977 and the Executive Officer is now looking in to the day to day administration of the temple. The 9 persons who holds the post of hereditary trustees due to their old age one by one passed away and thereafter, from 8.12.1994 no one from the family of the hereditary trustees have come forward to act as hereditary trustees. There upon to fill up the temporary vacancy the Deputy Commissioner, HR & CE, Tirunelveli by his in proc. No. 443/2004/B1 dated 25.3.2004 appointed the Executive Officer of Arulmigu Muppidathiamman temple, Kadayanallur as Fit person of the temple to perform the duties of the hereditary trustees. This version is corroborated by the Tr. Anbumani, the Joint Commissioner.

5. On 16.5.2012, the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Tirunelveli approved the appointment of (1) Tmt.

Meena D. Bhattacharya (2) Tr. M. Radhakrishnan, (3) Tr. R. Subramanian (4) Tr. K.G. Subramanian and (5) Tr. E. Sivakumar as the hereditary trustees of the said Gopalakrishnasamy Vagaiyara temples, vide, his proceedings No. 13559/2010/A2, dt. 16.5.2012. As per the above order of the Joint Commissioner, the aforesaid 5 persons took charge as trustees of the said temples from 9.7.2012 onwards.

6. The suspected officer Tr. A. Thangapandian, the Executive Officer of Arulmigu Gopalakrishnasamy Vaigaiyar Temples alone is a public servant. Tr. A. Thangapandian, the Executive Officer of Thiruvilanjikumarar Thirukoil, Ilanji hold the additional charge as the Executive Officer of Arulmigu Gopalakrishnasamy Vagaiyara Thirukoilgal, Krishnapuram between the period 11.5.2012 and 22.5.2013. Now he has been working as Executive Officer in Sorimuthaiyanar temple, Singampatti, Karaiyar since 2.7.2013. Among the other two suspected persons Tr. K.P. Raman, residing at Krishnapuram, Kadayanallur, he worked as a Teacher and retired from his service on 1994. He is one of the sincere devotees of this temple. By the perusal of the temple records he had not held any authorized position in the above said temple. S.O-3 Tr. S. Muthukrishnan is a temporary Accountant in Mupidathiammankoil at Kadayanallur. Also he was maintained accounts in Arulmigu gopalakrishnasamy Vagaiyara temples at Krishnapuram since 1982.

7. After getting permission from the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Tirunelveli, vide order No. e.f. vz; 6806/2012/C5 dt. 25.5.2012, 5 shops housed in the premises of Sri Anjaneyasamy temple were leased out on open-tender for one year to 5 persons. Details are as follows: (1) One shop was leased out to one Tr. Ragavendra Maheswaran of Srivilliputhur for Rs. 5,55,108/- for sale of Tulsi (2) One shop was leased out to one Tr. G. Ramachandran of Sankarankoil for Rs. 7,00,000/- for sale of coconut, butter, ghee-light, fruit etc.(3) one shop was leased out to one Tr. S. Rajan of Sankarankoil for Rs. 4,56,666/- for sale of Anjaneyasamy photos, Pooja songs books (4) One shop was leased out to one Tr. Kannan of Sankarankoil for Rs. 6,54,000/- for the sale of holy thread and Chendooram and (5) one shop was leased out to one Tr. R. Murugan of Kovilpatti for Rs. 5,70,000/- for sale of prasadam and water bottles. Thus, all the 5 shops were leased out for a total lease amount of Rs. 29,35,774/-. The total lease amount of Rs. 29,35,775/- was collected on 7.6.2012 and deposited in the SB account No. 8399 of Tirunelveli District Central Cooperative Bank, Kadayanallur Branch on 8.6.2012, held in the name of trustees of the said temple, and thereafter, the amount was transferred to SB A/c. No. 2230 of the said bank, held in the name of the Executive Officer of the said temple on 28.6.2012.

8. When examined, Tr. R. Ganapathy Murugan (W4, present Executive Officer) stated that the Hindu Religious and Charitable Endowment Department gave permission to lease out the shops on tender for the sale of things, and that the lease amount was deposited in the nearest bank only from the year 2012

onwards. He further stated that prior to 2012, no procedure on record was followed to lease out the shops.

9. It is ascertained that a total amount of Rs. 30,00,000/- inclusive of the lease amount of Rs. 29,35,774/- was deposited as Fixed Deposits on various dates in various Banks. Details as to the name of the Bank, Fixed Deposit Number & Date, Fixed Deposit amount, percentage of interest payable for the F.D. are given in the following tabular statement.

It is seen from the above that major amount namely 14,93,082/- had been deposited in the Andhra Bank, Thoothukudi, (Nationalised Bank) which pays interest at the rate of 9.40%, when the Tirunelveli District Central Cooperative Bank, Kadyanallur Branch pays higher percentage of interest (i.e.) 10.5%, the difference being 1.1%. It is ascertained from the records that after the expiry of one year, the amount deposited in the Andhra Bank, Thoothukudi had been withdrawn on 21.10.2013 prematurely, and transferred to Tamilnadu Mercantile Bank, Limited, Kadyanallur Branch. As per calculation, had AO1 deposited Rs. 15 Lakhs on 23.7.2012 in the local Bank namely Tirunelveli District Central Cooperative Bank, Kadayanallur Branch instead of depositing that amount in the Andhra Bank, Thoothukudi which is out of the district, the deposit amount would have fetched excess interest of Rs. 20,625/-. Assuming that A.O-1 had deposited all the money in the Tirunelveli Central Cooperative Bank, Kadayanallur Branch itself, deposit amount could have fetched an additional income of Rs. 20,625/- by way of interest to the Temple account. However, there is no guide line or mandate on the Banks to which fixed deposits can be deposited by the EO.

11. When examined, Tmt. Palanithai (W5, Manager Tirunelveli, Central Cooperative Bank, Kadayanallur Branch, Kadayanallur Branch) stated that as per their Bank records, SB A/c. No. 8399 (operated by the trustees)(I-Account) was held in the name of Thakkar of Gopala Krishnasamykoil and that Rs. 5,05,108/- was deposited in the said S.B. A/c on 7.6.2012, that Rs. 5,00,666/-, Rs. 5,00,000/- and Rs. 5,93,200/- were deposited on 8.6.2012, that Rs. 94,150/- was deposited on 11.6.2012, that Rs. 100/- was deposited on 12.6.2012, that Rs. 2,00,000/- and Rs. 50,000/- were deposited on 13.6.2012, that Rs. 2,70,000/- and Rs. 2,30,000/- were deposited on 14.6.2012, that Rs. 8,046/- was deposited on 19.6.2012, that Rs. 50,142/- was deposited on 23.6.2012 and that Rs. 4,890/- was deposited on 25.6.2012. Tmt. Palanithai (W5) further stated that totally Rs. 29,43,124/- was deposited in between the period on 7.6.2012 and 25.6.2012.

12. Tmt. Palanithai further stated that an amount of Rs. 31,50,000/- was transferred from the SB A/c. No. 8399 (I-Acc.) to SB A/c. No. 2230 (operated by E.O. of the temple) (II-Acc.) of their branch on 28.06.2012. She stated with reference to the statement of SB A/c. No. 2230 on 19.07.2012 that Rs. 15,00,000/- was transferred to Andhra Bank, Muthu Nagar Branch at Thoothukudi District, vide Cheque No. 883084, that towards this transaction, Rs. 6,918/- had been collected as commission charges, that on 23.07.2012, cash of

Rs. 5,12,000/- had been debited from S.B. A/c. No. 2230 (operated by E.O. of the temple) (II-Acc), that Rs. 5,00,000/- had been deposited in their branch as fixed deposit (FD No. 400490), and that on 24.08.2012, Rs. 10,00,000/- had been transferred to Tamil Nadu Transport Development Finance Corporation Ltd., at Chennai, vide Cheque No. 923203.

13. Tmt. Palanithai further stated that Tr. A. Thangapandian (AO1), the then Executive Officer of Arulmigu Gopalakrishnasamy Temple, Krishnapuram had deposited cash of Rs. 6,918/- as fixed deposit (FD No. 23951 on 04.09.2012) in the name of Executive Officer, Arulmigu Gopalakrishnasamy Thirukoilgal, Krishnapuram to make good the loss sustained by the temple towards commission charges levied by the Tirunelveli District Central Co-operative Bank.

14. Tmt. Palanithai further stated that had the Executive Officer of the temple chosen to deposit the entire amount of Rs. 30,00,000/- in their Branch on 28.6.2012 (i.e.) on the date of transfer of Rs. 31,50,000/- from the SB A/c. No. 8399 (I-Acc.) to SB A/c. No. 2230 (II-Acc.), they would have given the following higher rate of interest which would have derived excess income to the temple as set out below.

15. From the above chart it could be ascertained that if the EO had deposited the lease amount from SB Account to FD Account on the above mentioned date, there could had been an additional income of Rs. 21,370/-. Further it is also clearly established that EO had not withdrawn any amount from the SB A/c. and had transferred the entire amount through cheques into FB A/c. hence the question of misappropriation of Temple fund from the lease amount does not arise as alleged by the petitioner.

16. As stated earlier in para 7 of this report, the total lease amount of Rs. 29,35,774/-, collected on 07.06.2012 had been deposited in the SB account No. 8399 of Tirunelveli District Central Co-operative Bank, Kadayanallur Branch on 08.06.2012, held in the name of trustees of the said temple, and thereafter the amount had been transferred to the SB A/c. No. 22230 of the said bank, held in the name of the Executive Officer of the said temple on 28.06.2012. Hence, the question of misappropriation does not arise as alleged by the petitioner.

17. As per the averments in paragraph ''two'' and ''four'' of the complaint dated 16.07.2013 alleged to have been lodged by the petitioner are not correct. As per the statement of witnesses Tr. Ganapathy Murugan, the suspected person No. 2 Tr. K.R. Raman is not having any post in the Gopalakrishnasamy Vagaiyara Temples. The HR & CE Department also has not given any post to him.

18. The averments in paragraph ''three'' of the complaint dated 16.7.2013 alleged to have been lodged by the petitioner are not correct. The complainant/ petitioner herself admits that HR & CE Department has suspended the trustee Tr. Ramkrishnan as per the order in No. e.f. 9923/79 A1 dated 07.04.1982 of the Deputy Commissioner, HR & CE. The above said suspended trustee himself has voluntarily declared Tr. K.V. Subramanian as his heir to the trust. This fact his

also disclosed and admitted by the complainant/petitioner. The complainant/ petitioner has not given any explanation, why the above said suspended trustee did not prefer any appeal against the said suspension before the HR & CE Department. Moreover she has also admitted that no hereditary trustee turned up towards the temples till 2010. The above facts are spoken by witness Tr. Anbumani, Joint Commissioner of Hindu Religious & Charitable Endowment Department, Tirunelveli.

19. The averments in paragraph ''five'' of the complaint are admitted. The petitioner and 4 others are appointed as hereditary trustees as per the proceedings in br. K.e.f. 13559/2010 m2 dated 16.05.2012. This fact is also spoken by witness Tr. Anbumani, Joint Commissioner, Hindu Religious & Charitable Endowment Department, Tirunelveli.

20. The averments in paragraph ''six'' of the complaint are not correct. The petitioner has raised allegation against suspected officer-1 and suspected person-3 stating they have jointly committed malpractices, mismanagement and misappropriated temple funds and thereafter destructed all the documents. To substantiate this allegation she has not produced any oral or documentary evidence. Hence, the allegation seems vogue without any material documents. The petitioner herself admits that S.O-3 is fell ill and not attending the temple administration. The statement given by Tmt. Bharathi, Regional Audit Officer of Hindu Religious @ Charitable Endowment, Tirunelveli his against the allegation of the petitioner. She has stated that from 01.07.1982 to 2011 temples and it has been done in the said temples. In the said audit period till the year 2008 there is no malpractices in the accounts and administration of the above temples. This statement falsifies the said allegation of the petitioner."

The learned counsel appearing for the petitioner has repeatedly contended that in the complaint dated 16-07-2013, various allegations have been levelled against the then Executive Officer, Thangapandian and others and specifically it is alleged that they misappropriated huge amounts belonging to the Temples mentioned in the petition. Under the said circumstances, the complaint, in question, has been given by the petitioner. On the basis of belated direction, the concerned Inspector of Police has conducted an eyewash preliminary enquiry and in fact, some material aspects have been suppressed and for preliminary enquiry, a detailed objection has been filed and even the complainant/petitioner has not been enquired properly by the Inspector of Police who is said to have conducted a preliminary enquiry and further the same has been reported to the higher officials and therefore, the present petition is liable to be allowed.

5. The learned Additional Public Prosecutor has also equally contended that on the basis of the complaint dated 16-07-2013, the Inspector of Police has conducted a detailed preliminary enquiry for the purpose of ascertaining the genuineness of allegations made in the complaint and in fact, the Inspector of Police has examined various persons including the complainant and also examined various documents and since the complainant has not given proper

documentary evidence so as to substantiate the allegations levelled against the persons mentioned in the complaint, the Inspector of Police has rightly filed preliminary report stating that there is no substance in the allegations made in the complaint and therefore, the relief sought for in the present petition cannot be granted.

6. The entire contentions put forth on the side of the petitioner is based upon the decision reported in Lalita Kumari Vs. Govt. of U.P. and Others, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 wherein the Honorable Supreme Court has observed as follows:

"i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

From a close reading of the observations made by the Honorable Supreme Court it is made clear that if the First Information Report discloses commission of any cognizable offence, a primordial duty is cast upon the Police Officer to register the same. The Police Officer cannot avoid his duty to register First Information Report. If such First Information does not disclose a cognizable offence the investigating agency has to conduct a preliminary enquiry.

7. In the instant case, the specific allegations made in the complaint are that one Thangapandian, the then Executive Officer of the Temples mentioned in the complaint and others have swindled huge amounts belonging to Temples mentioned in the petition.

8. The complainant has also been examined by the Inspector of Police.

9. She has given a statement to the effect that without following regular procedure the said Thangapandian and others to achieve their oblique motive have deposited Temple funds in various Banks. In the preliminary enquiry report it has been simply stated that all deposit receipts are available. Further, it is stated in the preliminary enquiry report that the petitioner has not produced any document for the purpose of proving the allegations levelled against the officials mentioned in the complaint.

10. The main gravamen expressed on the side of the petitioner is that she has not been given sufficient opportunity to produce relevant documents and further the Inspector of Police has conducted only slipshod enquiry so as to cover up the alleged malpractices done by the Officials mentioned in the complaint.

11. As pointed out earlier, even in the statement alleged to have been given by the petitioner before the Officer, it has been clearly stated that without obtaining prior permission from Trustees, the Executive Officer and others have managed to make deposits. But that aspect has not been touched by the Enquiry Officer.

12. The learned counsel appearing for the petitioner as stated supra has contended that the Inspector of Police has not enquired the complainant properly

and sufficient opportunities have not been given to her so as to produce documentary evidence and further, the attitude of the Inspector of Police has been reported to higher officials.

13. Considering the fact that so many allegations have been levelled in the complaint dated 16-07-2013 and also considering the fact that the petitioner is not satisfied with the preliminary enquiry done by the Inspector of Police, this Court is of the view to give following directions for the purpose of giving quietus to the complaint, in question.

In fine, the respondents are directed to conduct a denovo preliminary enquiry. The petitioner is strictly directed to furnish all documents as well as oral evidence to Enquiry Officer. On the basis of evidence(both oral and documentary), to be adduced by the petitioner, Enquiry Officer is directed to proceed further in accordance with, if any cognizable offence is made out.

The criminal original petition is disposed of accordingly.

