

(2005) 06 MAD CK 0140

In the Madras High Court

Case No : WAMP. No. 2206 of 2005 and W.A.M.P. No's. 2207 and 2208 of 2005
in W.A. No's. 1204, 1205 and 1206 of 2005

Venu Srinivasan

APPELLANT

Vs

Krishnamachari, Secy., Divya Desaparambariya
Paadhukaappu Peravai, 214, East Uthara Street, Srirangam,
Trichy - 6 and 9 Others

RESPONDENT

Date of Decision : 24-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156(3), 190(1)
(a)

Citation : (2005) 06 MAD CK 0140

Hon'ble Judges : Markandey Katju, C.J.; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Judgement

Markandey Katju, C.J.—These writ appeals have been filed against the common order of the learned single Judge dated 15.06.2005, passed in W.P. No. 13382 of 2005. The prayer in the writ petition was for a mandamus directing the 1st respondent, viz., the Government of Tamil Nadu, to cause registration of the offence against respondents 5 to 10 relating to the destroying of the Sivan Sannadi in Azhagiya Nambirayar Temple, Thiruku-runghudi, Nanguneri Taluk, Tirunelveli District, and for investigating the said alleged offence.

2. In the affidavit filed in support of the writ petition the petitioner alleged in paragraph -4 that there is an ancient temple called "Azhagiya Nambirayar Perumal Temple at Thirukurungudi in Nanguneri Taluk, Tirunelveli District. It is further alleged that there are three Sannadis in the said temple for three different deities. It is alleged in paragraph - 5 of the affidavit that the said temple belongs to Jeer Mutt and is under the control and management of the 6th respondent, who is the head of the Jeer Mutt. It is alleged that on the request of the 6th respondent, the 5th respondent purportedly carried out renovation work in the said temple, and in the pretext of the said renovation work the 5th

respondent demolished the Sivan Sannadi on the night of 01.06.2004, and it has been totally wiped out without any trace. It is further alleged that this was done with the approval of the 6th respondent. It is also alleged that the 5th respondent is now constructing a separate full-fledged temple for the uprooted Sivalingam in the 4th Pragaram of the temple with great speed, and it is against the Agama Principles of Vaishnava Temples. It is alleged that the action of the 5th and 6th respondents are not only illegal but also affect the religious sentiments of Vaishnavites like the petitioner.

3. In paragraph - 10 of the petitioner's affidavit it is alleged that on 05.04.2005, immediately, after the demolition of the Sivan Sannadi, the petitioner gave a complaint before the 3rd respondent - Inspector of Police, Thirukurungudi Police Station, Thirunelveli District to initiate criminal action against the persons who demolished the Sivan Sannadi. The 3rd respondent refused to take the complaint on his file. It is further alleged that Mr. Venu Srinivasan, the 9th respondent in the writ petition, who is a well known industrialist and scion of TVS family which controls large industrial groups in Tamil Nadu consults the 10th respondent in such matters. It is alleged that the 6th, 7th and 8th respondents are recipients directly or indirectly of large contributions from TVS groups of companies and from various descendants of late T.V. Sundaram Iyengar. It is alleged that because of the financial might of the 9th respondent, the 6th, 7th and 8th respondents seem to have accorded their approval for the aforesaid demolition.

4. In paragraph - 16 of the affidavit filed in support of the writ petition it is alleged that respondents 5 to 10 are jointly and severally liable for the destruction of the Sivan Sannadi and are liable to be prosecuted in accordance with law.

5. In the aforesaid writ petition the impugned order was passed directing the State Government to give proper direction to the police authorities to register the offence relating to the destruction of the Si-van Sannadhi in the aforesaid temple against respondents 5 to 10 and investigate the said offence.

6. In the present writ appeals it is alleged that the impugned order was passed without even giving any notice to the appellant and giving him an opportunity of hearing. It is alleged that had the appellant been given an opportunity of hearing he would have placed the correct facts before the Court.

7. We are at this stage not going into the merits of the controversy as we are of the opinion that the writ petition itself should have been dismissed on the ground of alternative remedy.

8. In our opinion, whenever it is alleged that a criminal offence has been committed, the complainant should ordinarily first avail of his remedy of filing an F.I.R, in the police station u/s 154(1) of the Cr.P.C.

9. Under that provision information relating to the commission of cognizable offence can be given to an officer in charge of the police station. Section 154(3)

of the Cr.P.C. states that if an officer in charge of the police station refuses to record the information referred to in sub section (1) of Section 154 of the Cr.P.C. the complainant can send the substance of the information in writing by post to the Superintendent of Police concerned. Thus, if the Station House Officer of a police station refuses to register an FIR, the complainant has an alternative remedy of approaching the Superintendent of Police u/s 154(3) of the Cr.P.C.

10. If the Station House Officer as well as the Superintendent of Police refuse to register the FIR, or having registered it do not hold a proper investigation, the complainant then has a second alternative remedy by filing an application u/s 156(3) of the Cr.P.C. before the Magistrate concerned. On such complaint the Magistrate can direct registration of the FIR and/or proper investigation into the alleged offence, and he can also monitor the investigation, vide *Devarapalli. V. Vs. Narayana*, AIR 1976 SC 167 2, *Madhu Bala Vs. Suresh Kumar and others*,

11. Apart from that, the complainant has a 3rd alternative remedy by way of filing a private complaint u/s 200 Cr.P.C.

12. Thus, there are three clear alternative remedies available to the complainant, if he alleges that a crime has been committed, and hence it is not proper for this Court to straightaway entertain a writ petition without insisting that the complainant first avails of those alternative remedies.

13. In *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others*, the Supreme Court observed that writ application was not the proper remedy without availing the statutory remedies under the Cr.P.C. We have taken a similar view in W.A. No. 909 of 2005 judgment dated 27.04.2005 (*Alliraj Gounder Vs. The Inspector of Police, Udumalpet Town Police Station, Udumalpet, Coimbatore District*, since reported in *Alliraj Gounder Vs. The Inspector of Police and The Superintendent of Police, Special Crime Branch, Central Bureau of Investigation*,

14. In *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, the Supreme Court observed that a Magistrate who receives a complaint u/s 156(3) of the Cr.P.C. and orders investigation and receives a police report may have one of the following three options:-

(i) he may decide that there is no sufficient ground for proceeding further and drop action;

(ii) he may take cognizance of the offence u/s 190(1)(b) of the Cr.P.C. on the basis of the police report and issue process;

(iii) he may take cognizance u/s 190(1)(a) on the basis of the original complaint and proceed to examine the complainant on oath u/s 200 of the Cr.P.C.

15. In view of these statutory remedies, in our opinion, it was not proper for the petitioner to straightaway rush to this Court under Article 226 of the Constitution and make all kinds of allegations without availing of his alternative remedies

stated above. If such writ petitions are entertained in this manner this Court will be flooded with such writ petitions and will be doing no other work but hearing such writ petitions. It is well settled that if there is an alternative remedy ordinarily a writ petition should not be entertained, vide Tamilnadu State Transport Corporation (Villupuram Division II) Ltd. Vs. C. Durai and The Secretary, Regional Transport Authority, We are going to be very strict on this principle otherwise this Court will be flooded with all kinds of such petitions without exhausting the statutory alternative remedies available.

16. Apart from the above, we are prima facie of the opinion that the impugned order should not have been passed without giving notice to the other party. For the above reasons, we are prima facie of the opinion that the impugned order of the learned single Judge is illegal and it is hereby stayed. M/s. C.D. Sugumar & T. Ramkumar takes notice for R-1. Notice to other respondents.