



W.P.(MD) No.3305 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.3305 of 2022

and

W.M.P.(MD) Nos.2905 & 2906 of 2022

M.A.M.Raja

... Petitioner

vs.

- 1.The Special Personal Assistant to
Minister for Law
O/o.The Special Personal Assistant
to Minister for Law
Chennai-600 009
- 2.The Private Secretary to
the Additional Chief Secretary to Government
O/o.The Private Secretary to the
Additional Chief Secretary to Government
Home, Prohibition and Extist Department
Chennai-600 009
- 3.The Advocate General
O/o.The Advocate General
Madras High Court, Chennai
- 4.The District Collector
O/o.The District Collector
Theni, Theni District



W.P.(MD) No.3305 of 2022

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5.The Superintendent of Police
O/o.the Superintendent of Police
Theni, Theni District

6.S.P.M.Ariff Rahuman

7.The Principal Secretary to Government
Home Department
Fort St.George
Chennai-600 009
[R1 to R3 are deleted and R7 is
impleaded vide Court Order dated
10.03.2022 in this writ petition]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of quo warranto as to under what authority the sixth respondent holds the post of Government Pleader for District Munsif Court, Periyakulam and to restrain the sixth respondent from continuing in the said post and remove the sixth respondent from the post of Government Pleader for District Munsif Court, Periyakulam since the sixth respondent is having pending criminal case in C.C.No.239 of 2020, on the file of the Judicial Magistrate, Theni.

For Petitioner : Mr.M.A.M.Raja, Party-in-Person

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader for R4, R5 & R7
Mr.M.Kannan for R6



W.P.(MD) No.3305 of 2022

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ORDER

A writ of quo warranto has been instituted questioning the authority of the sixth respondent to hold the post of Government Pleader for the District Munsif Court, Periyakulam at Theni District and to remove the sixth respondent from the post of Government Pleader since a criminal case in C.C.No.239 of 2020, on the file of the learned Judicial Magistrate, Theni, is pending against him.

2. The petitioner is a practicing Advocate at Madurai Bench of Madras high Court and previously, he was practicing in Theni District. The Government appointed Law Officers vide G.O.(D) No.1176, Home (Courts.VIA) Department, dated 13.10.2021. By the said Government Order, the sixth respondent, namely, S.P.M.Ariff Rahuman, son of Mohamed Sulaiman, has been appointed as Government Pleader for the District Munsif Court, Periyakulam in Theni District.

3. The petitioner appearing in person contended that the sixth respondent has involved in criminal activities along with his wife and mother by throwing a knife shaped object used for the purpose of cutting vegetables



W.P.(MD) No.3305 of 2022

WEB COPY

upon the glass panels fixed in the office room of the petitioner and threatened him by stating that they will kill him. The Inspector of Police, Theni, had registered a case in Crime No.1460 of 2015 against the sixth respondent, his wife and mother, for the offence under Sections 294(b), 427, 447 and 506(ii) I.P.C., and the case was registered only after the petitioner approached this Court by filing CrI.O.P.(MD) No.19971 of 2015. The sixth respondent being a practicing Lawyer at Periyakulam Bar Association had influenced the Inspector Police, Theni, who referred the case as mistake of facts. The petitioner subsequently filed a protest petition before the learned Judicial Magistrate, Theni and after perusal of the records, the learned Judicial Magistrate directed the Inspector of Police to conduct further investigation and file a report within a period of one month. However, the Inspector of Police has not filed any report as per the directions of the learned Judicial Magistrate. Again, the petitioner approached this Court by filing a direction petition in CrI.O.P.(MD) No.1297 of 2019 seeking direction to the Inspector of Police to comply with orders passed by the learned Judicial Magistrate, Theni and thereafter, the Inspector of Police filed a report, which was taken on file by the learned Judicial Magistrate, Theni, in C.C.No.239 of 2020, which is still pending.



W.P.(MD) No.3305 of 2022

WEB COPY

4. The sixth respondent lodged a complaint against the petitioner and his family members and based on the said complaint, a case in Crime No. 414 of 2014 was registered. With the influence of the sixth respondent, the said case was charge sheeted and taken on file by the learned Judicial Magistrate, Theni, in S.T.C.No.2460 of 2019, which is also pending. It is contended by the petitioner that the sixth respondent is fully aware of the pendency of the criminal proceedings pending against him and his family members. He has already influenced the Police Authorities and involved in several illegal activities of manipulating the Court records of the Judicial Magistrate Court, Theni.

5. The petitioner further states that by suppressing the factum regarding pendency of criminal case against the sixth respondent, he applied for the post of Government Pleader and the Superintendent of Police, Theni District / fifth respondent is also fully aware of the entire facts regarding the pendency of the criminal case. Thus, the petitioner sent a representation to the official respondents on 20.10.2021. However, the sixth respondent, even after intimation, returned the postal cover as unserved and evaded the receipt of the notice. With this background, the petitioner states that the sixth



W.P.(MD) No.3305 of 2022

WEB COPY

respondent suppressed the fact regarding pendency of criminal case against him and secured appointment to the public post of Government Pleader at Theni District. The Superintendent of Police / fifth respondent, who recommended the case of the petitioner, also not properly verified the antecedents of the sixth respondent and the Inspector of Police and other Police officials also colluded with the sixth respondent and attempted to manipulate the criminal case and each and every stage, the petitioner was forced to approach High Court for the purpose of getting directions to register the case, conduct investigation and even thereafter, he was unable to proceed with the criminal case effectively. However, it is contended that the criminal case registered against the petitioner was pursued properly by the Police Authorities and charge sheet was filed and the case is in progress. The visible collusion of the Police officials with the sixth respondent, though informed to the Superintendent of Police, he was also remained as a mute spectator without initiating any appropriate action so as to ensure that the investigation is conducted properly and actions are taken in accordance with the Code of Criminal Procedure.

6. The petitioner further states that the sixth respondent is not eligible for appointment to the post of Government Pleader for the District



W.P.(MD) No.3305 of 2022

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7. In view of the fact of serious allegation regarding pendency of the criminal case registered against the sixth respondent, who is appointed as Government Pleader, this Court called the Superintendent of Police / fifth respondent to verify the correct facts and submit a report before this Court and simultaneously, this Court directed the Additional Registrar General (in charge) of this Court to get a report from the learned Judicial Magistrate, Theni, regarding pendency of the criminal case so as to form an opinion with reference to the statement made by the petitioner in his sworn affidavit.

8. The Superintendent of Police / fifth respondent, in response, filed a status report on 03.03.2022, wherein, he states that the sixth respondent had preferred a complaint on 16.09.2014, before the Sub Inspector of Police, Thenkarai Police Station, Periyakulam, in C.S.R.No.524 of 2014, against the petitioner by stating that he threatened the sixth respondent



W.P.(MD) No.3305 of 2022

WEB COPY

with his life on 12.09.2014 and thereafter, on 15.09.2014, at about 10.30 p.m., at the instigation of the petitioner, six unknown persons torn the shirt of the sixth respondent and had taken his cell phone and a sum of Rs.10,000/- from his pocket. The case was transferred to Allinagaram Police Station, Theni and a case was registered in Crime No.414 of 2014, on the file of the Sub Inspector of Police, Allinagaram Police Station, Theni, under Sections 147, 341, 294(b), 323, 379 and 506(i) I.P.C., by arraying the petitioner and six others as accused. After completion of investigation, a final report was filed on 28.09.2014 under Sections 341, 294(b), 323, 506(i) and 109 I.P.C., before the learned Judicial Magistrate, Theni, against the petitioner and three others and the same was taken on file in S.T.C.No.2460 of 2019, which is pending.

9. The fifth respondent further states that the petitioner preferred a complaint by stating that on 13.09.2014, at about 11.30 a.m., and on 15.09.2014 at about 11.00 a.m., in Theni District Court Campus, the sixth respondent had abused him in filthy language and a complaint was made on 16.09.2014 in C.S.R.No.525 of 2014 and a case was registered in Crime No. 373 of 2014, on 18.09.2014, by the Sub Inspector of Police, Thenkarai Police Station, Periyakulam, under Sections 294(b) and 506(i) I.P.C. Thereafter, the said case was closed as “Mistake of Fact” on 20.09.2014 and a referred charge



W.P.(MD) No.3305 of 2022

WEB COPY

sheet was also filed before the learned Judicial Magistrate, Theni in R.C.S.No. 108 of 2016 and after serving notice, the case was closed on 30.09.2016. Thereafter, the petitioner preferred a petition in Cr.M.P.No.1549 of 2020, on the file of the learned Judicial Magistrate, Theni, seeking further investigation and the same is pending.

10. The fifth respondent further states that the petitioner preferred another complaint on 16.09.2014 in C.S.R.No.623 of 2014, by stating that the wife and mother of the sixth respondent had come to his office by 09.10 p.m., and abused him in filthy language and tried to attack him with Aruvamanai and threatened with his life. Based on the said complaint, a case was registered in Crime No.1460 of 2015, on 15.10.2015, by the Sub Inspector of Police, Theni, under Sections 294(b), 427, 446, 447 and 506(ii) I.P.C. Though the contents of the complaint do not have any specific allegation against the sixth respondent, while registering the case, the name of the sixth respondent was also mentioned as accused. The above investigation was closed as “Mistake of Fact” vide report dated 30.11.2015. Thereafter, the petitioner filed a protest petition before the learned Judicial Magistrate, Theni and the learned Judicial Magistrate, vide order dated 04.12.2020, directed to conduct further investigation and file a report within a period of one month.



W.P.(MD) No.3305 of 2022

Thereafter, further investigation was conducted and final report, dated 27.02.2020, was filed before the learned Judicial Magistrate, Theni, by arraying the sixth respondent's wife and mother and by showing the name of the sixth respondent as person non-charge sheeted and the same was numbered as C.C.No.239 of 2020, on the file of the learned Judicial Magistrate, Theni and the same was posted on 09.03.2022 for service. Though the charge sheet was not filed against the sixth respondent, the learned Judicial Magistrate, Theni, issued summons to the sixth respondent along with the charge sheeted accused. Thereafter, the wife and mother of the sixth respondent preferred a criminal original petition to quash the proceedings in C.C.No.239 of 2020 in CrI.O.P.(MD) No.20719 of 2021, and this Court, by order dated 03.01.2022, dispensed with the personal appearance of the wife and mother of the sixth respondent before the Trial Court and granted an order of interim stay for the further proceedings and the criminal original petition is pending before this Court.

11. The above report of the Superintendent of Police / fifth respondent reveals the case of the jurisdictional Police, which are narrated before this Court. The Superintendent of Police has not conducted any further enquiry or otherwise. However, the Superintendent of Police filed the report



W.P.(MD) No.3305 of 2022

WEB COPY

merely recording the facts available on records maintained by the jurisdictional Police, which cannot be appreciated. When this Court specifically called the Superintendent of Police and requested him to look into the matter personally and file a report regarding the manner in which the investigations were conducted and reports were filed and the other facts and circumstances of the case, the Superintendent of Police had not taken any effort except by informing the facts available in the case records maintained by the jurisdictional Police.

12. The learned Additional Advocate General relying on the report of the Superintendent of Police contended that there is a personal enmity between the petitioner and the sixth respondent as both are practicing lawyers and also they are relatives and therefore, the writ petition is filed due to personal vengeance. The learned Additional Advocate General reiterated the investigations conducted by the Police and the reports filed before this Court by the Superintendent of Police.

13. The learned Additional Advocate General appearing for the official respondents drew the attention of this Court with reference to the first information report, wherein the petitioner himself in his complaint has stated



W.P.(MD) No.3305 of 2022

WEB COPY

that “the wife and mother of the sixth respondent came to his office with Aruvamanai and broken the glass panels and threatened him to life.” However, the name of the sixth respondent was not mentioned even by the petitioner. Even the wife and mother of the sixth respondent alone have been charge sheeted by the Police based on the investigation conducted and therefore, the sixth respondent is not the accused in the criminal case.

14. The learned Additional Advocate General appearing for the official respondents, in order to sustain the actions initiated by the Police Authorities, made a submission that there are complaint and counter complaint both by the petitioner and the sixth respondent and with reference to the verification done by the Superintendent of Police as per his report, the sixth respondent is not the accused in the criminal case and therefore, there is no infirmity in respect of the Government Order appointing the sixth respondent as Government Pleader for the District Munsif Court, Periyakulam at Theni District.

15. The main contentions of the learned Additional Advocate General are that the sixth respondent is not an accused in any criminal case and the complaint itself was lodged as against the wife and mother of the sixth



W.P.(MD) No.3305 of 2022

WEB COPY

respondent and further, the learned Judicial Magistrate, Theni, has unnecessarily issued summons to the sixth respondent even after filing of the charge sheet against the wife and mother of the sixth respondent.

16. The learned counsel appearing for the sixth respondent also reiterated the arguments advanced by the learned Additional Advocate General. The learned counsel for the sixth respondent states that there is a personal enmity between the petitioner and the sixth respondent and in order to spoil the career of the sixth respondent, the petitioner has filed this writ petition. The sixth respondent is not at all accused in the criminal case and no criminal case is pending against him. Thus, the writ petition is to be rejected.

17. Considering the arguments advanced by the petitioner in person, the learned Additional Advocate General appearing for the official respondents and the learned counsel appearing for the sixth respondent, this Court is of the opinion that the facts and circumstances and the involvement of the sixth respondent in the criminal case are to be considered by this Court.



W.P.(MD) No.3305 of 2022

WEB COPY

18. The questions arise, whether the petitioner has involved in any criminal case, if so, what is the consequence and whether the Authorities Competent, while selecting the Government Pleaders, have assessed the eligibility, suitability and antecedents of the candidates as the post of Government Pleader is a public post and the women and men of integrity and honesty alone must be appointed.

19. With reference to the factual aspect about the involvement of the sixth respondent in the criminal case, let us consider the first information report filed by the Theni Police in Crime No.1460 of 2015, dated 15.10.2015. In the said first information report, the petitioner Mr.M.A.M.Raja is the complainant and Mr.S.P.M.Ariff Rahuman, son of Sulaiman; Mrs.Fathima, wife of Mr.S.P.M.Ariff Rahuman and Mrs.Ayesha Sulaiman, wife of Mr.Sulaiman are shown as accused persons. The first information report itself states that it was registered pursuant to the directions issued by the High Court in CrI.O.P.(MD) No.19971 of 2015. The copy of the complaint given by the petitioner reveals that it was given against “Fathima Ariff Rahuman and Ayesha Sulaiman”. The said complaint was read by the learned Additional Advocate General appearing for the official respondents and the learned



W.P.(MD) No.3305 of 2022

WEB COPY

counsel appearing for the sixth respondent and they have submitted that the complaint is not against Fathima and Ariff Rahuman, but it is against Fathima Ariff Rahuman, who is the wife of Ariff Rahuman and Ayesha Sulaiman, wife of Sulaiman and therefore, the sixth respondent Ariff Rahuman is not an accused in the criminal case.

20. If the above interpretation is taken as a fact, then the question arises, what action was taken by the sixth respondent, when the first information report was filed against three accused persons, including the sixth respondent – Ariff Rahuman, son of Sulaiman as accused. Further, when the petitioner approached this Court for registration of a case by filing W.P.(MD) No.19971 of 2015, after the said case also the sixth respondent had not initiated any action or raised any objection regarding inclusion of his name in the first information report as first accused. The first information report in Crime No.1460 of 2015 was registered on 15.10.2015 and now, after a lapse of seven years, in the present writ petition he is attempting to interpret in such a manner by twisting the vernacular language made in the statement by stating that the sixth respondent is not an accused. Such an interpretation has been now invented after a lapse of seven years to defend the present writ petition, which cannot be trusted upon nor be taken into consideration.



W.P.(MD) No.3305 of 2022

WEB COPY

21. Regarding the status report of the Superintendent of Police, Theni District / fifth respondent is concerned, it is nothing but an extraction of Police records. The Superintendent of Police unfortunately has not verified the manner in which the investigation was conducted, referred charge sheet was filed, the learned Judicial Magistrate ordered for further investigation and further charge sheet was filed against the wife and mother of the sixth respondent. Contrarily, the Superintendent of Police has not verified the procedures adopted by the Investigating Officer with reference to the Code of Criminal Procedure and just recorded the facts as per the case records, which has not provided any better assistance to this Court to verify and ascertain the manner in which the investigation was conducted and the active and passive collusion of the Police Authorities while dealing with the criminal case against the petitioner as well as the sixth respondent and his family members. Though this Court made a specific request about the investigation conducted, the Superintendent of Police has not taken any effort to cull out the truth in this regard.

22. Let us now consider the two reports submitted by the learned Judicial Magistrate, Theni. The first report in D.No.227/2022, dated

Page 16 of 32



W.P.(MD) No.3305 of 2022

25.02.2022, reveals that in C.C.No.239 of 2020, first information report was registered in Crime No.1460 of 2015, under Sections 294(b), 427, 447 and 506(ii) I.P.C. on 15.10.2015 against A1 – Fathima Ariff Rahuman, A2 – Ariff Rahuman, son of Sulaiman and A3 – Ayesha Sulaiman and in the said case, a negative final report was filed before the learned Judicial Magistrate as “Mistake of Fact”. Subsequently, the *de facto* complainant filed a protest petition and the learned Judicial Magistrate ordered further investigation by order dated 01.12.2018. As per the said order, the Investigation Officer conducted further investigation and filed his report before the learned Judicial Magistrate on 02.03.2020. The said report was returned and the final report was submitted again on 27.11.2020. On 04.12.2020, the case was taken on file in C.C.No.239 of 2020, under Sections 294(b), 427, 447 and 506(ii) I.P.C., against A1 to A3. It is pertinent to note that the accuseds were neither arrested nor they obtained bail. Hence, while issuing summons to the accused, they were directed to execute bond for Rs.10,000/- each along with sureties, each for like sum under Section 88 Cr.P.C. The learned Judicial Magistrate further stated that the summons not yet served to the accused till date. Sofar the accused persons not appeared before him. In the meanwhile, (A1) Mrs.Syed Ali Fathima @ Fathima and (A2) Mrs.Ayesha Sulaiman preferred a criminal original petition in CrI.O.P.(MD) No.20719 of 2021, before this



W.P.(MD) No.3305 of 2022

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Court, to quash the charge sheet filed in C.C.No.239 of 2020 and this Court, by order dated 03.01.2022, dispensed with the personal appearance of the accused persons and granted an order of interim stay for the further proceedings and the case is pending as on date.

23. Being not satisfied with the said report, this Court further directed the learned Judicial Magistrate, Theni, to verify the records thoroughly and submit a report clarifying whether Mr.Ariff Rahuman / sixth respondent is an accused in the criminal case or not. Pursuant to the said direction, the learned Judicial Magistrate, Theni, submitted second report in D.No.251/2022, dated 01.03.2022. In the said report also, the learned Judicial Magistrate, Theni, has clearly stated that the case in C.C.No.239 of 2020, F.I.R. was registered in Crime No.1460 of 2015 on 15.10.2015 against (A1) Fathima, wife of Ariff Rahuman; (A2) Ariff Rahuman, son of Sulaiman and (A3) Ayesha Sulaiman, wife of Sulaiman. Reiterating the facts stated in the first report, the learned Judicial Magistrate has elaborated by stating that after careful perusal of the entire records, the case was taken on file on 04.12.2020 in C.C.No.239 of 2020 against “A1 – Fathima Ariff Rahuman, A2 – Ayesha Sulaiman, wife of Sulaiman and A3 – Ariff Rahuman, son of Sulaiman as *prima facie* materials filed against all the accused”. The accused were



W.P.(MD) No.3305 of 2022

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neither arrested nor they obtained bail. The learned Judicial Magistrate specifically stated further that A3 – Ariff Rahuman is a practicing Advocate and summons were not yet served to the accused persons by Police till date and the accused have not turned up before the Court and the case was adjourned to 09.03.2022 as “stayed by High Court”.

24. On perusal of the above two reports of the learned Judicial Magistrate, Theni, a question arises whether notice was issued to the *de facto* complainant under Section 173(2)(ii) Cr.P.C., which is mandatory and whether there is any reason for deletion of the name of the sixth respondent in the charge sheet filed in the criminal case and whether materials are available on records about the involvement of A3, who is sixth respondent in this writ petition.

25. Admittedly, no notice was issued to the *de facto* complainant / petitioner herein under Section 173(2)(ii) Cr.P.C., which is mandatory. In respect of deletion of the name of the sixth respondent from the criminal case, the Superintendent of Police, in his report, has not stated that notice under Section 173(2)(ii) Cr.P.C., was issued to the *de facto* complainant. Contrarily, the Superintendent of Police states that in respect of



W.P.(MD) No.3305 of 2022

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the referred charge sheet filed at the first instance as mistake of fact, such notice was issued. Therefore, it is apparently clear that the mandatory notice under the provisions of the Code of Criminal Procedure had not been issued to the *de facto* complainant / petitioner for deletion of the name of the sixth respondent from the list of accused persons in the charge sheet filed after re-investigation.

26. In the case of ***Alagarsamy.P. vs. State of Tamil Nadu***, reported in **1999 (III) CTC 464**, this Court, with reference to Section 173(2)(i) Cr.P.C., has held as follows:

“80. The first report shall be filed before the Magistrate under Section 173(2)(i) Cr.P.C.. The report may be a positive report or a negative report. On a positive report being filed to the effect that the offence had been committed by a particular person, the Magistrate may do either one of the three things: (1) he may accept the report and take cognizance of the offence; or (2) he may disagree with the report and drop the, investigation; or (3) he may direct further investigation and require the police to make a further report.

81. In the event of the police filing a negative report to the effect that no offence has been committed



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W.P.(MD) No.3305 of 2022

by a particular person, the Magistrate may do either one of the three things: (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence; or (3) he may direct further investigation to be made by the police under Section 156(3) Cr.P.C.

82. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence, the informant should not be prejudicially affected because cognizance of the offence was not taken by the Magistrate for the offence alleged.

83. But, if the Magistrate decides to accept the the negative report of the police officer and to drop the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the first informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part.

84. Similarly, if the learned, Magistrate decides to take cognizance for some offences and to drop the proceeding in respect of other main offences, then also, the first informant would certainly be prejudiced.



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W.P.(MD) No.3305 of 2022

85. So, under those circumstances, the learned Magistrate on consideration of the report made by the officer-in-charge of the police station under sub-section (2)(ii) of section 173, is not inclined to take cognizance of the main offences the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance in respect of other offences also.

27. The learned Judicial Magistrate, Theni, in his report, in unambiguous terms, has stated that ***prima facie materials are available against all the accused persons***, including the sixth respondent – Ariff Rahuman. The accused persons were neither arrested nor they obtained bail. The sixth respondent – Ariff Rahuman is a practicing Advocate and the Police has not served summons till date and the accused persons have not even appeared before the Court. The clear report of the learned Judicial Magistrate, Theni, reveals that the Police have acted in a biased manner with a motive to help the sixth respondent and his family members for escaping from the clutches of the criminal proceedings. The manner in which the referred charge sheet was filed and even after passing of order for re-investigation by the learned Judicial Magistrate, Theni, the Police filed charge sheet only as against the wife and mother of the sixth respondent and at that point of time,



W.P.(MD) No.3305 of 2022

WEB COPY

the learned Judicial Magistrate found that as per the charge sheet filed by the Police, there is absolutely no reason for the deletion of the sixth respondent from the list of accused persons. The Investigating Officer has not recorded any reason for deletion.

28. It is needless to state that when the Investigating Officer is of the opinion that the name of the accused is to be deleted from the charge sheet, sufficient reasons must be recorded. The reasons must be supported with the facts, circumstances and evidences investigated. Therefore, the investigation, which is a live-link for filing charge sheet, must contain reasons for deletion of the name of the accused person. However, in the present case, the learned Judicial Magistrate has clearly stated that there are *prima facie* materials against all the accused and the Investigating Officer has not assigned any reason for deleting the name of the sixth respondent from the list of accused persons.

29. The conditions necessary for issue of a writ of quo warranto are as follows:

- (i) The office must be public and it must be created by a statute or by the constitution itself.



W.P.(MD) No.3305 of 2022

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- (ii) The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
- (iii) There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

30. The fundamental basis of the proceeding of Quo Warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is, however, a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case.

31. It is made clear that vast powers are vested with the judiciary to control the administrative action when it infringes the fundamental rights of the citizen or when it goes beyond the spirit of Grundnorm of our country i.e., Constitution of India, which ensures the Rule of Law and proper check and balances between the three organs of our democratic system. The philosophy of writs is well synchronized in our Constitutional provisions to ensure that rights of citizens are not are not suppressed by an arbitrary administrative or judicial action.



W.P.(MD) No.3305 of 2022

WEB COPY

32. Considering the above principles, this Court is of the considered opinion that beyond the educational qualifications, verification of antecedents, eligibility and suitability of the candidates are of paramount importance for filling up the public posts. Even for appointment to the post of Grade-II Police Constable in Tamil Nadu Police Service, the antecedents, suitability and eligibility of the candidates are verified and even in cases, where an order of acquittal was passed by the Criminal Courts against the candidates, the Competent Selection Committee is rejecting the candidature on the ground of suitability and eligibility. The Courts have held that even acquittal in a criminal case is not a bar for making independent assessment by the Selection Committee for appointment to the public posts. The Constitutional Courts across the country emphasized and re-emphasized that the public posts are to be filled up only with women and men of integrity and honesty. Thorough verification of antecedents, character, conduct, suitability and eligibility of the candidates are to be made and there should not be any compromise in this regard and the Authorities concerned are bound to verify these aspects and submit a report for the purpose of appointing a person to the public posts.



W.P.(MD) No.3305 of 2022

WEB COPY

33. In the above context, the Superintendent of Police, Theni District, has failed to act by performing his duties diligently. The Superintendent of Police, who recommended the case of the sixth respondent, failed to verify the antecedents of the sixth respondent before making recommendations for appointment to the post of Government Pleader in Theni District. Even in the status report filed by the present Superintendent of Police, except the facts available in the Police records, the Superintendent of Police has not taken any effort to find out whether there is any collusion or otherwise on the part of the Investigating Officer in dealing with the criminal case against the sixth respondent. To coverup the misdeeds, the Police has conducted a corrupt investigation and deleted the name of the sixth respondent from the charge sheet without assigning any reason.

34. But, the report of the learned Judicial Magistrate provides a clear picture about the manner in which the case was registered and about the materials available against the sixth respondent and non-furnishing of any reason for deletion of the name of the sixth respondent from the list of accused and further about the conduct of the sixth respondent by not even appearing before the Court knowing the fact that he is an accused in the criminal case.



W.P.(MD) No.3305 of 2022

WEB COPY

Contrarily, the sixth respondent made an attempt to pretend as if he is not the accused in the criminal case and filed a quash petition before this Court by his wife and mother, who all are other accused. Therefore, this Court is of the opinion that the conduct of the sixth respondent throughout with reference to the complaint given by the petitioner and the manner in which the criminal case was dealt with by the Police Authorities are not satisfactory. It is a clear case where there is a visible collusion on the part of the Investigating Officer with the sixth respondent and they made an attempt to cover up misdeeds with an ulterior motive to pave way for the sixth respondent to escape from the clutches of the criminal proceedings.

35. As discussed above, the antecedents, suitability and eligibility of the sixth respondent have not been verified properly by the Competent Authorities. No doubt, the seventh respondent had no information about the pendency of the criminal case against the sixth respondent or about the facts and circumstances regarding the investigation or otherwise. Thus, based on the recommendations of the Authority Competent, the Government issued the Government Order appointing the sixth respondent as Government Pleader for the District Munsif Court, Periyakulam at Theni District. Thus, this Court has no hesitation in forming an opinion that the antecedents, character, suitability



W.P.(MD) No.3305 of 2022

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and eligibility and pendency of the criminal case against the sixth respondent have not been verified properly and the Government was absolutely under the erroneous opinion that the sixth respondent has clear records of practice and no criminal case was pending against him. The perception made by the Government based on the records became erroneous on account of filing of the present writ petition by the petitioner, who is also a practicing Advocate. This petition is noway connected with the family or personal disputes between the petitioner and the sixth respondent. Several instances are noway connected with the writ of quo warranto. However, if it is brought to the notice of this Court that a person appointed to the public post has no authority to hold the post on account of his involvement in the criminal case or otherwise, the same is to be considered for the purpose of issuing a writ of quo warranto.

36. In view of the fact that the petitioner has impleaded the respondents 1 to 3 unnecessarily, the learned Additional Advocate General raised an objection by stating that the respondents 1 to 3 are noway connected with the appointment of the sixth respondent as Government Pleader. The objection of the learned Additional Advocate General was considered by this Court and the petitioner himself agreed to delete the respondents 1 to 3 from the array of parties and in lieu, the Principal



W.P.(MD) No.3305 of 2022

WEB COPY

Secretary to Government, Home Department, Fort St.George, Chennai-600 009, who issued the Government Order appointing the sixth respondent as Government Pleader, has been impleaded as seventh respondent in this writ petition.

37. In view of the facts and circumstances considered with reference to the pleadings of the respective parties to the lis on hand, this Court is of undoubted opinion that the seventh respondent had no occasion to verify the antecedents, character, conduct, suitability and eligibility of the sixth respondent at the time of appointing him as Government Pleader for the District Munsif Court, Periyakulam at Theni District. The recommendations of the Authorities Competent were relied on and the Competent Authorities had not furnished the correct information and particulars about the sixth respondent before the seventh respondent for consideration. Thus, this Court has no hesitation for arriving a conclusion that the sixth respondent has no authority to continue in the post of Government Pleader for the District Munsif Court, Periyakulam at Theni District.

38. In the result, the writ petition is allowed and the Government Order in G.O.(D) No.1176, Home (Courts.VIA) Department, dated 13.10.2021,



W.P.(MD) No.3305 of 2022

WEB COPY is quashed insofar as it relates to the sixth respondent – S.P.M.Ariff Rahuman, son of Mohamed Sulaiman, in Serial No.8 of the said Government Order alone.

No costs. Consequently, connected miscellaneous petitions are closed.

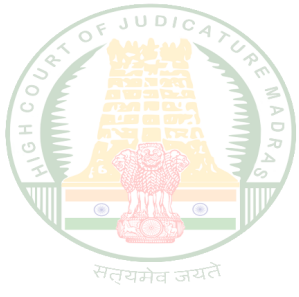
15.03.2022

Index : Yes / No
Internet : Yes / No

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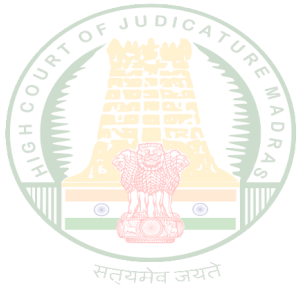
- 1.The Special Personal Assistant to Minister for Law,
O/o.The Special Personal Assistant to Minister for Law,
Chennai-600 009.
- 2.The Private Secretary to
the Additional Chief Secretary to Government,
O/o.The Private Secretary to the
Additional Chief Secretary to Government,
Home, Prohibition and Extist Department,
Chennai-600 009.
- 3.The Advocate General,
O/o.The Advocate General,
Madras High Court, Chennai.
- 4.The District Collector,
O/o.The District Collector,
Theni, Theni District.
- 5.The Superintendent of Police,
O/o.the Superintendent of Police,
Theni, Theni District.



W.P.(MD) No.3305 of 2022

WEB COPY

6.The Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 009.



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W.P.(MD) No.3305 of 2022

S.M.SUBRAMANIAM, J.

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W.P.(MD) No.3305 of 2022
and
W.M.P.(MD) Nos.2905 & 2906 of 2022

15.03.2022