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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.03.2021**

CORAM

THE HONOURABLE **MR. JUSTICE N. ANAND VENKATESH**

W.P.No.6591 of 2021

1. Government of India,
Rep. By Secretary to Government,
Ministry of Home Affairs,
New Delhi-110 001.
2. Government of Tamil Nadu,
Rep. by the Chief Secretary,
Fort St. George,
Chennai 600 009.
3. Government of Tamil Nadu,
Rep. By the Principal Secretary,
Home Department,
Fort St. George,
Chennai 600 009.
4. The Director General of Police-Tamil Nadu,
Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004.
5. The Director General of Police,
Crime Branch CID,
Egmore, Chennai 600 008.

..Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the CB-CID to effectively conduct the investigation in Crime No.1 of 2021, duly monitored by this Hon'ble Court and for a further direction to submit periodical status report on the progress made in the investigation before this Court and to complete the investigation as expeditiously as possible.

For Respondents : Mr. N. Ramesh
Central Government Senior Counsel
for R 1

Mr.AL.Somayaji
Special Senior Counsel
for State of Tamil Nadu

Asst by:

Mr. Jayaprakash Narayanan,
State Government Pleader
for R 2 & R 3

Mr. M.Mohamed Riyaz,
Additional Public Prosecutor
for R 4 & R 5

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ORDER

This Court passed an order on 16.03.2021, expressing its sentiments to the State to consider placing A1 under suspension, and the reasons were also assigned in the said Order.

2. When the matter was taken up for hearing today, Mr. A.L. Somayaji, learned Special Senior Counsel for State of Tamil Nadu brought to the notice of this Court, GOMS No.149 of 2021 dt.18.03.2021, issued by the HOME (SC) DEPARTMENT and submitted that the officer concerned has been placed under suspension with immediate effect. The relevant portions in the Government Order that was relied upon by the learned Special Senior Counsel for State of Tamil Nadu is extracted hereinunder:

"WHEREAS in the Government Order first read above, an enquiry by "Internal Complaints Committee" into the complaint of a lady IPS officer alleging sexual harassment against Thiru Rajesh Das, IPS, then Special Director and the enquiry is in progress:

AND WHEREAS, in the letter second read above, the Director General of Police/Head of Police Force, Tamil Nadu has informed that the Crime Branch CID, Villupuram has registered a criminal case in Crime No1/2021 u/s 354-A(2), 341, 506(i) IPC and section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 on 27.02.2021 against Thiru Rajesh Das, IPS, and another, and it is also pending;

AND WHEREAS, the High Court of Madras has taken suo motu cognisance of the seriousness of the incident and situation and has decided to monitor the investigation and also observed that prima facie materials are available against Thiru Rajesh Das, IPS, then Special Director General of Police and that he was holding the highest post of Special Director General of Police, Law and Order in the State Police Force;

NOW, THEREFORE, the Government of Tamil Nadu, in view of the above circumstances, in exercise of the powers conferred by the sub-rule (3) of rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, hereby places the said Thiru Rajesh Das, IPS, under suspension with immediate effect.

2. It is further ordered that during the period that this order shall remain in force, the Headquarters of Thiru Rajesh Das, IPS, shall be Chennai and the said Thiru Rajesh Das, IPS, shall not leave the said Headquarters without obtaining the permission of the undersigned."

3. This Court, right from the inception has been reiterating the stand that the State as well as this Court will maintain neutrality and will only ensure that the investigation takes

this Court on 16.03.2021, the State has immediately acted upon the same and the delinquent officer has been placed under suspension with immediate effect. This positive action on the part of the State will bring in a lot of confidence in the investigation that is conducted by a subordinate officer. This positive stand taken by the State will also reinforce the confidence in the minds of the general public who are keenly watching the progress of the investigation in this case.

4.The Investigation Officer (hereinafter referred to as I.O.) was present at the time of hearing and the further status report was filed before this Court. The Case Diary was also handed over to enable this Court to peruse the same and to satisfy itself on the progress made in the investigation.

5.Mr.M.Mohammed Riyaz, learned Additional Public Prosecutor (hereinafter referred to as "A.P.P.") appearing on behalf of the I.O. submitted that the I.O. had examined 19 more witnesses in the last one week and till now a total of 87 witnesses have been examined and their statements have been recorded

under Section 161 of the Criminal Procedure Code, 1973. The learned APP also submitted that one more DVR/MVR was also seized and till now 5 DVR/MVRs were seized for CCTV footages, and all these are under analysis and the expert report will be received shortly. The learned APP further submitted that on 15.03.2021, the mobile phone belonging to A1 was also handed over and the same has been placed before the learned Chief Judicial Magistrate, Villupuram. The further status report filed by the I.O. is taken on file.

6.This Court posed a question to the I.O. who was present at the time of hearing as to how much time it will take for the completion of the investigation and for filing the Final Report in this case. The I.O. stated that there are some more witnesses to be examined and the analysis report will have to be received, and it will tentatively take another 6-8 weeks for the completion of the investigation and to file a Final Report in this case.

7.This Court, on carefully going through all the status reports filed by the I.O. and also the Case Diary submitted, is

satisfied in the manner in which the investigation has been carried out in the present case. The I.O. has spent a lot of energy and time in this case, and it is apparent from the fact that within such a short time, the I.O. has recorded the statements of nearly 87 witnesses apart from recording the statements of the accused persons. The I.O. has not reported any interference in the investigation till now and there is also no complaint against the accused persons with regard to their cooperation in the course of investigation. This Court deems it fit to place on record, the appreciable manner in which the investigation has taken place in this case. This Court hopes that the I.O. will be able to complete the investigation and file a Final Report before the concerned court within a period of 8 weeks.

8. Mr. Salim, learned counsel appearing on behalf of the accused person submitted that an impleading petition has been filed by A1, explaining his stand in the present case. The learned counsel pleaded that this Court must take into consideration the stand taken by the accused person since, according to him, the entire prosecution is attended with *malafides* and there is a larger conspiracy behind this case. The learned counsel further submitted

that this Court had commented in its earlier order on the availability of *prima facie* materials against the accused persons. Therefore, the stand of the accused person must also be taken into consideration by this Court, while passing orders in this Writ Petition.

9. As a Constitutional Court, this Court has taken upon itself to monitor the investigation in this case, considering the larger public interest and the interest of the police force in the State of Tamil Nadu. In a criminal case, till a Final Report is filed before the concerned jurisdictional court, the investigation is purely within the realm of the I.O. At the best, the Court can only monitor the investigation, and even a Constitutional Court cannot go beyond that and start issuing directions which may interfere with the course of investigation. The Hon'ble Supreme Court has also made this position very clear in *Manohar Lal Sharma v. The Principle Secretary and Ors.* reported in (2014) 2 SCC 532. The Hon'ble Supreme Court made it very clear that investigation is within the domain of the police and courts ordinarily do not interfere unless it is done in breach of statutory provision which puts personal liberty or property

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of the citizen in jeopardy, by improper use of power or abuse of power or it is tainted with animosity.

10. This Court had made an observation on the availability of the *prima facie* materials only based on what has been collected by the I.O. in the course of investigation. Such an observation has nothing to do with the merits of the case and by no stretch can it impact the defence to be taken by the accused. It must be mentioned here that the accused persons may not have any *locus standi* to insist the Court to take into consideration, his stand in the case, during the course of investigation. During this period, the Court is not deciding on the merits of the case and this Court is only monitoring the progress made in the investigation. The defence of the accused person comes into play only during the course of trial in criminal case. If courts are to give any finding based on the stand taken by the accused person during the course of investigation, it will directly interfere with the exclusive domain of the I.O. Therefore, at this stage, this Court cannot take into consideration the stand of the accused persons and at the best, this

Court can only ensure that the investigation is carried on in a free and fair manner.

11. In view of the above, the I.O. is directed to proceed further with the investigation and take all efforts to complete the investigation at the earliest possible time and file a Final Report within a period of 8 weeks. This is only a tentative time fixed by this Court and if there is any difficulty in filing the Final Report within the stipulated time, the same can be brought to the notice of this Court and this Court will extend the time. Time limits should not lead to a hasty investigation and therefore, what is important in this case, is to conduct an effective investigation.

12. Post this case under the caption 'for filing further status report' on 30.04.2021.

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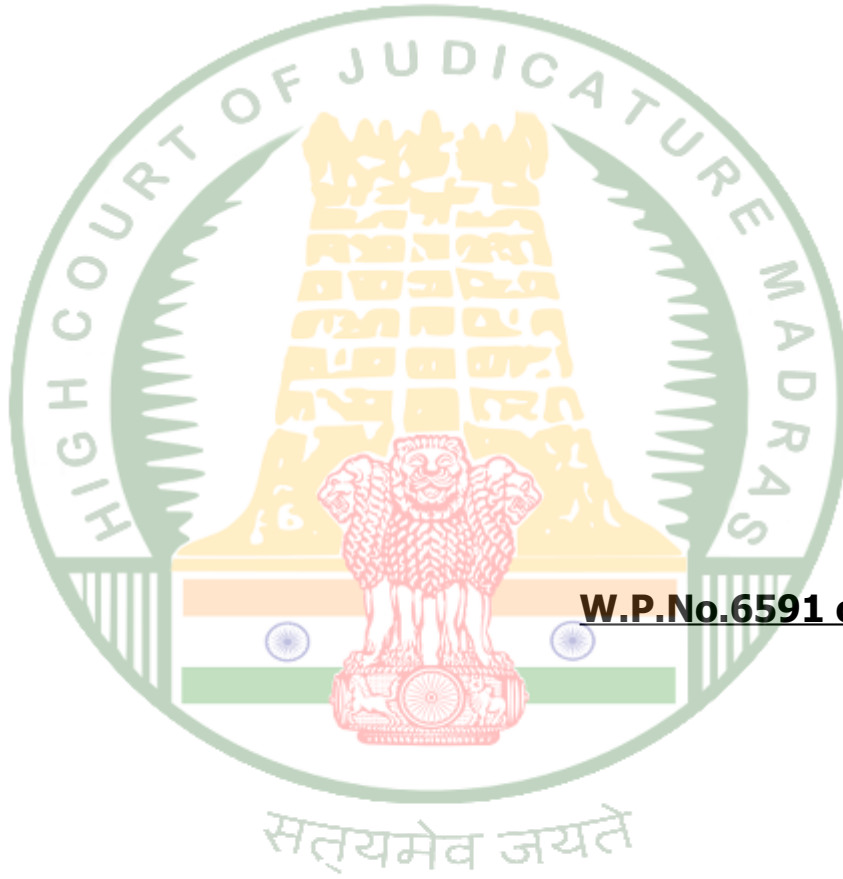
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