

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26-11-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition Nos.6012 and 27076 of 2014

In CrI.O.P.No.6012 of 2014:

Puducherry Environment Protection Association
Represented by its Honorary President
R.Kothandaraman
No.18, Sarkarai Vinayagar Koil Street
Koodapakkam & Post, Puducherry
Pin - 605 502

Petitioner

Vs.

1. Chief Secretray cum Chief Vigilance Officer
Govt of Puducherry
Gubert Avenue
Puducherry
2. State rep. by
The Superintendent of Police
Vigilance & Anti Corruption
Muthialpet
Puducherry
3. State rep by
The Inspector of Police
Vigilance & Anti Corruption
Muthialpet
Puducherry
4. John Stephen

Respondents

(Impleaded as 4th respondent as per order of this Court made in CrI.M.P.No.1 of 2015 in CrI.O.P.No.6012 of 2014 by order dated 16-03-2015)

In CrI.O.P.No.27076 of 2014:

Puducherry Environment Protection Association
Represented by its Honorary President
No.18, Sarkarai Vinayagar Koil Street
Koodapakkam & Post
Puducherry
Pin - 605 502

Petitioner

Vs.

1. Govt of Puducherry
Represented by its Chief Secretary
Secretariat, Gubert Avenue
Puducherry
 2. The Superintendent of Police
Vigilance & Anti Corruption
No.271, MG Road
Muthialpet, Puducherry
 3. The Director
The Central Bureau of Investigation
Anti Corruption Head Quarter
(AC-HQ) Zone
Plot No.5-B, 10th Floor, A-Wing
CGO Complex
New Delhi - 110 003
 4. M/s. Dharsan Dredging &
Constructions, Rep. by its President
Mr.J. Arumairaj,
No.329/A/1, Grace Cottage
New Colony
2nd Street
Chengalpet 603 002
- Respondents

(Impleaded as 4th respondent as per order of this Court made in CrI.M.P.No.1 of 2015 in CrI.O.P.No.27076 of 2014 by order dated 19-01-2015)

Criminal Original Petitions under Section 482, Cr.P.C., to direct the third respondent to register the complaint dated 05-02-2014 and investigate the same and pass orders in accordance with law and praying to withdraw and transfer the complaint dated 16-06-2014 from the file of the second respondent to the file of the third respondent.

For petitioners :: Mrs. Vijayalakshmi Rajarathinam

For respondent :: Mr.M.R. Thangavel,APP (Pondicherry)
for RR1 to 3 in CrI.O.P.6012/2014
and for RR1 & 2 in CrI.O.P.27076/2014

Mr. R.Karthikeyan for R4 in
CrI.O.P.No.6012 of 2014

Mr. K. Srinivasan, Spl.P.P. for
CBI cases for R3 in CrI.O.P.27076/2014

Mr.G.Palani for R4 in CrI.O.P.27076/2014

ORDER

Criminal Original Petition No.6012 of 2014 has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to direct the third respondent herein to register the complaint, dated 05-12-2014. Likewise, CrI.O.P.No.27076 of 2014 has been filed under the said Section praying to withdraw and transfer the complaint, dated 16-06-2014 from the file of the second respondent to the file of the third respondent.

2. The crux of the averments made in the petition filed in CrI.O.P.No.6012 of 2014 are that the petitioner as complainant has given a complaint on 05-02-2014 to the third respondent wherein it is stated that due to criminal conspiracy, the manipulation of forged documents, cheating and also swindling of public money have been done by some Officials of Public Works Department, Puducherry with collusion of one Mr. John Stephen of M/s. Dynamic Engineers.

3. The specific relief sought in CrI.O.P.No.6012 of 2014 is to direct the third respondent to register the complaint, dated 05-02-2014.

4. In the complaint dated 05-02-2014 it is stated like thus:

"Sub: Complaint on large scale criminal conspiracy, manipulation forgery, cheating, cheating with forged document, misappropriation of public funds, Abuse of official position and receipt of illegal gratification by Mr. S. Manohar, Chief Engineer (IC) PWD, Mr. Rajendiran, Executive Engineer, Port Department, Mr Jothi, Assistant Engineer, Port Department, Mr Phillip Ravindran, Junior Engineer, Port Department Puducherry in collusion with one Mr. John Stephan of M/s Dynamic engineers - Request for launching investigating and prosecuting - Reg.

This is to lodge our complaint on large scale criminal conspiracy, manipulation forgery, cheating, cheating with forged document, misappropriation of public funds, Abuse of official position and receipt of illegal gratification by Mr S. Manohar Chief Engineer (IC), PWD, Mr. Rajendiran, Executive Engineer, Port Department, Mr Jothi, Assistant Engineer, Port Department, Mr Phillip Ravindran, Junior Engineer, Port

Department Puducherry in collusion with one Mr. John Stephan of M/s Dynamic engineers - Request for launching investigating and prosecuting - Reg.

We understand that one Mr John Stephen a mechanic employee for Perfect Dredging Pvt Ltd till 2006 had been funded to float a false letter pad company in the name of Dynamic Engineers by Mr S. Manohar Chief Engineer (IC), PWD, Mr. Rajendiran, Executive Engineer, Port Department, Mr Jothi, Assistant Engineer, Port Department, Mr Phillip Ravindran, Junior Engineer, Port Department, Puducherry, consequent to the criminal conspiracy, the above mentioned government officers awarded work on the letter pad company since 2007 to till date and alibi to had executed work worth more than 7 crores with out actually executing the works and cheated and misappropriate public funds in the disguise of executing dredging work.

S Manohan then director of port had Mr Rajendiran EE port had floated tenders for dredging works since 2007 to till date and awarded the work on dynamic engineers at exorbitantly higher rates / twice the rate for the similar works done at the site and had misappropriated themselves the higher rate given to dynamic engineer as kick since 2007 to till date.

Mr S. Manohar Chief Engineer (IC), PWD, Mr. Rajendiran, Executive Engineer, Port Department, Mr Jothi, Assistant Engineer, Port Department, Mr Phillip Ravindran, Junior Engineer, Port Department Puducherry in collusion with one Mr. John Stephan of M/s. Dynamic engineers had not actually executed the dredging work and had by manipulating and creating false measurements in their M. Books as if the work had been executed by dynamic engineers and Thus misappropriated more than 7 crores of rupees in the name of having done dredging to the volume of 8 lakhs cubic units in five years.

We understand that the above named officials had entered criminal conspiracy dynamic engineers John Stephen to steal the cutter suction motor & pump from the Govt. owned dredger worth Rs.40 lakhs. The above named government servants had now floated a tender for dredging work with condition tha the tenderer shall bring own cutter suction motor & pump and after dredging they can take back their cutter suction motor & pump, Knowing fully well that no firm will bid them tender accepting this condition. it is their ploy that only dynamic engineers will accept this condition of bring in the cutter suction pump as they are in

procession of the Govt. owned pump illegally stolen and removed from the stores of Port department and the government owned dredger anchored at Pondicherry port. we understand that during the 1st tender call no one had accepted the tender condition except dynamic engineers, Mr Rajendiran EE port had been advice by Mr Manohan chief enginer PWD to reject the single tender of dynamic engineers with alibi of single tender and had motivatedly advised for floating the 2nd tender call with out any relaxation knowing very well that only dynamic engineers will come forward to bid accepting the condition.

We under stand that the tender is being finalized in fabruary 2014, at a predetermined higher rates (thrice that is prevailing in the market) in favor of their benami firm the dynamic engineers.

We here in accuse in S. Manohar Chief Engineer, Mr. Rajendiran EE Part Mr Jothi, Assistant Engineer, Port Department, Mr Phillip Ravindran, Junior Engineer, Port Department Puducherry and Mr. Jhon Stephen, the owner of letter pad company M/s Dynamic Engineers of entering in to criminal conspiracy to steal & misappropriating public properties, manipulation of records, cheating & cheating with forged documents abuse official position for receipt of illegal gratification misaappropriation of public funds an breach of trust. We humbly request you to launch a FIR by taking in the cognizable crimes narrated and stated above and investigate this complaint & prosecute the government servants and the private persons for misappropriating the public funds."

A mere reading of the averments made in the complaint would show that some of the Officers of PWD in collusion with private individuals have misappropriated and also swindled public money.

5. The learned counsel appearing for the petitioner has elaborately contended that the Officers mentioned in the complaint in collusion with one M/s.Dynamic Engineers have swindled public money and in fact, the work allotted to that Company has not been executed properly and further, tender has been concluded at higher rate and since huge sum of public money is involved, the complaint, dated 05-02-2014 has been given to the third respondent. But the third respondent, has not so far registered the same. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

6. Per contra, the learned Additional Public Prosecutor has contended that on the basis of the relief sought in the

present petition, this Court has directed to conduct enquiry with regard to allegations in the complaint and accordingly, an enquiry has been conducted and an interim report has been filed, wherein no mention has been made with regard to the said allegations and therefore, the present petition is nothing but frivolous and the same is liable to be set aside.

7. After receipt of complaint, dated 05-02-2014, a communication has been sent to the petitioner by the Office of the Superintendent of Vigilance and Anti-corruption wherein it has been mentioned as follows:

"Your complaint has been perused in detail with care. It seems to be vogue(vague) and not supported with substantial evidence and documents.

Therefore, you are hereby requested to produce any substantial piece of evidence and supporting documents, if any, to proceed further in this regard. You can meet the undersigned with those documents in person for further processing of the same."

8. On receipt of the communication dated 05-02-2014, the petitioner has sent a reply wherein it is stated like thus:

"Subject: Investigation of our Association complaint complainant dated 5/2/2014-Reg.

Ref: (i) Our complaint dated 5/2/2014 on misappropriation in port department dredging works.

(ii) Your office letter No.141/sp(VAC)/PA2014 dated 5/2/2014.

We are in receipt of your office letter cited in Ref (ii) above. We here in humble refute your observation that the complaint is vague and not supported with substantial evidence and documents. We here in humbly submit that we are in possession of many vital evidence and documents to prove our allegations but it will be premature to submit them along with the complaint as we apprehend that the evidences may be tampered if inadvertently exposed to the accused persons. Further we avert that our complaint is not "Vague" as commented upon by your kind self. We humbly submit that the four page complaint was well drafted covering all the crimes committed by the named offender in normal flow of sequences of occurrences and we had also specified in detail the role of the named officials in the criminal conspiracy, manipulation of tenders, falsification of M books, conveying and misappropriation & sharing of public funds in the name of false letter pad company.

We here in humbly request you to Register an FIR as set out in law and set the law in motion from your end as the cognizable crimes were sequentially and pin pointedly narrated in our complaint. Your early and lawful investigating of the cognizable crime reported in our complaint will at least stop further misappropriation of Rs 2 Crores at the hands of named manipulative government officials in our complaint and their benami contractor.

We here in humbly submit that without setting law in motion at your end on our complaint, the starting of any lawful investigation for the gathering of evidence at your end will only bypass the provisions of CrPc. we here in humbly submit that the complaint was lodged in public interest and it is the cast duty of the officer in charge of your police wing to investigate the information disclosed in the said complaint after observing the provisions of Law and Cr.Pc. We had exercised our citizenry right at the earnest in reducing the information available with us, our sole intentions are to save further misappropriation of public money and to recover the funds that are already misappropriated.

We here in humbly submit that we are in possession of vital evidence which we will share during the course of lawful investigation of our complaint as parting with the evidence at the preliminary stage ie., before taking cognizance of the crime reported in our complaint will only expose the material evidences available in public authorities hands to be destroyed by the accused officials. Further we humbly request you to kindly treat our complaint confidentially to avoid any intimidation from the accused named in our complaint.

Further we humbly submit that we are always ready and willing to take part in any lawful investigation of our complaint at your end. We will share the evidence with us as soon as the lawful investigation commences from your end.

Please take this humble submission into your record and set the law in motion to prevent further loss to the government and recovery of the misappropriated government funds. "

In the penultimate paragraph of the said reply dated 14-02-2015, it is mentioned that the petitioner is always ready and willing to take part in any lawful investigation of the complaint.

9. During the pendency of the present petition as per the direction of this Court, the Senior Superintendent of Police(Law and Order, Puducherry) has conducted a detailed enquiry with regard to the allegations made in the complaint and subsequently, submitted an enquiry report and the same reads as follows:

"ENQUIRY REPORT ON THE PETITION FILED BY
'PUDUCHERRY ENVIRONMENT PROTECTION ASSOCIATION', REP. BY ITS
HONORARY PRESIDENT SHRI. R. KOTHANDARAMAN

"As directed by the Hon'ble High Court of Judicature at Madras in Criminal Original Petition Nos.6012 & 27076 of 2014, a detailed enquiry has been conducted on the petition filed by 'Puducherry Environment Protection Association', rep. by its Honorary President Thiru. R. Kothandaraman and the enquiry report is submitted as follows:
Gist of allegations:

It is submitted by the learned counsel for the petitioner that though the prosecution come with the story that Dharsan Dredging and Constructions submitted the tender dated 16.02.2009 and also participated in the tender which was opened on 20.02.2009, the said Dharsan Dredging and Constructions sent a communication dated 14.06.2014 stating that they were not aware of Ariyankuppam River mouth dredging related to Port of Pondy and they have not participated in such tender in Port of Pondy.

Examination of witnesses:

The following witnesses were called for enquiry on various dates:

1. M. Rajendiran, Executive Engineer, Port Department, Govt. of Puducherry
2. R. Jegajothi, Assistant Engineer, Port Department, Govt. of Puducherry
3. G. Philip Ravindran, Junior Engineer, Port Department, Govt. of Puducherry
4. John Stephen, M/s. Dynamic Engineers, Mudaliarpur, Puducherry
5. J. Arumairaj, M/s. Dharsan Dredging & Constructions, Chengalpattu, Tamil Nadu
6. Vimal Kumar, M/s. ABC & Sons Ltd., Mumbai
7. Sivasankar, r/o Pulipakkam village, Chengalpattu, Tamil Nadu.

When Thiru. J. Arumairaj, M/s. Dharsan Dredging and Constructions, Chengalpattu was called for enquiry on 12.12.14, he replied that as he was stationed in Guwahati for his business purpose, he would appear on 15.12.14. However, as the enquiry officer was engaged

on law & order bandobust duty in connection with the Sanipeyarchi Festival at Karaikal from 13.12.14 to 16.12.14, he was asked to appear on 20.12.14 after due consultation with the learned Senior Public Prosecutor for Puducherry at Hon'ble High Court of Chennai; besides sending a letter to him, requesting to obtain additional time from the Hon'ble Court for completing the enquiry and to submit a report.

Thiru. Sivasankar also replied over phone that as he went to Sabarimala pilgrimage, he would appear on 20.12.14.

There is no response received from Thiru. Vimal Kumar, M/s.ABC & Sons Ltd., Mumbai and the telephone numbers in his letter pad are found to be non-functional. However, his e-mail i.d. has been obtained from the Port officials and he was reiterated to respond to the Notice either in person or send his reply through e-mail.

During the examination of witnesses, the officials of Port Department, Government of Puducherry, viz., (i) Thiru. M. Rajendiran, Executive Engineer, (ii) Thiru. R. Jegajothi, Assistant Engineer and (iii) Thiru. G. Philip Ravindran, Junior Engineer, categorically stated that M/s. Dharsan Dredging and Constructions have participated in the tendering process, held on 20.02.2009 and its representative Mr. J. Arumairaj has signed the Tender Schedule with seal and became L2 of the tender. Further, he has only received the Tender Schedule 'in person' from the Port Department by affixing his signature and seal in his application, dated 16.02.2009; besides enclosed with necessary Demand Draft towards Earnest Money Deposit to an amount of Rs.2,42,720/-. Further, on the day of 'tender opening', ie., 20.02.2009, Thiru. Sivasankaran has participated on behalf of the above firm and he has also signed in the Tender Opening Register after affixing the seal of the above firm. The officials of Port Department have also produced an attested copy of the Tender Schedule including the relevant pages of Tender Opening Register.

Thiru. M. John Stephen, Managing Partner, M/s. Dynamic Engineers, Mudaliarpur, Puducherry stated that he was closely associated with Thiru.J. Arumairaj, M/s. Dharsan Dredging and Constructions as both of them were served in a same firm, viz., M/s. Perfect Dredging Pvt Ltd., Chennai from the year 2000 to 2008. From the year 2008, they had started separate firms. During the

month of February 2009, Thiru M. John Stephen had decided to participate in a tender, floated by the Port Department, Govt. of Puducherry, for a dredging contract to dredge a quantity of 80000 cum. at the river mouth of Ariyankuppam, with last date of the tender as 20.2.2009. Thiru J. Arumairaj, who had come down to Puducherry, met him on 16.2.2009 and informed him that he had also decided to participate in the tender and requested for financial assistance in the form of Earnest Money Deposit (EMD). He also told him that if he happens to be the L1 in the contract and gets the award of contract, he would sub-contract the same to Thiru M. John Stephen. So, Thiru M. John Stephen had helped him by getting the EMD amount of Rs. 2,42,720/- in the form of Demand Draft from his Indian Overseas Bank Savings Account. On the same day itself, i.e., 16.2.2009, Thiru J. Arumairaj had applied for the Tender Schedule through an application to the Executive Engineer, Port Department, Puducherry and also obtained the same 'in person' from the Port officials. The tender was finalized on 20.2.2009 and three companies, viz., (i) M/s. Dharsan Dredging and Constructions, Chengalpattu, (ii) M/s. A.B.C. & Sons Pvt. Ltd., Mumbai and (iii) M/s. Dynamic Engineers, Puducherry participated in the tender. On behalf of M/s. Dharsan Dredging & Constructions, Chengalpattu, one Mr. Sivasankaran participated in the tender and also signed in the 'Tender Opening Register' along with the other tenderers. On behalf of M/s. A.B.C. & Sons Pvt. Ltd., Mumbai, one Mr. Vimal Kumar participated in the tender. On behalf of M/s. Dynamic Engineers, Puducherry, Thiru M. John Stephen participated in the tender and also won the tender. Hence, his EMD was retained and the EMD of other participants were refunded after adopting usual formalities. Thiru J. Arumairaj later returned the Demand Draft to him since he was not the successful bidder in the contract and Thiru M. John Stephen encashed the amount through his Bank Account. During the month of March 2009, Thiru J. Arumairaj had requested Thiru M. John Stephen for a loan of Rs. 11.00 Lakhs as EMD for participation in a contract, floated by Jammu & Kashmir Lakes and Waterways Development Authority for supply of self-unloading hopper barge, for which Thiru M. John Stephen had transferred the amount to the ICICI Bank Account of M/s. Dharsan Dredging & Constructions from his firm's account in Axis Bank, Puducherry. During the month of May 2009, M/s. Dharsan Dredging & Constructions got an order from the Jammu & Kashmir Lakes and Waterways Development Authority for supply of two numbers of water-master dredger, which were commissioned by

M/s.Dynamic Engineers, Puducherry. In July 2009, M/s.Dharsan Dredging & Constructions took an auction from the Delhi Irrigation & Flood Control Department on behalf of M/s.Deep Sea Dredging, Mumbai and the sub-contract was given to M/s.Dynamic Engineers, Puducherry by Thiru J.Arumairaj. During the month of February 2010, M/s.Dynamic Engineers, Puducherry was appointed as the authorized sub-agent for Water-master dredger by M/s.Dharsan Dredging & Constructions, who was the sole Indian Agent for Water-master dredger. Further, during the month of December 2010, Thiru J.Arumairaj had again requested Thiru M.John Stephen for a financial loan of Rs.10.00 Lakhs, which was transferred from his joint account to the ICICI Bank account of M/s.Dharsan Dredging & Constructions. Over the years, the relationship between Thiru M.John Stephen and Thiru J.Arumairaj got strained. The former alleged that Thiru J.Arumairaj conspired with one Thiru Kothandaraman of 'Puducherry Environment Protection Association' to level some false allegations against him in the Honourable High Court of Madras in order to stop his business growth and also to eliminate him from the dredging field.

Thiru J.Arumairaj, President, M/s.Dharsan Dredging and Constructions stated that Thiru M.John Stephen was the site Manager of his erstwhile firm, viz., M/s.Perfect Dredging Company. When Thiru M.John Stephen resigned his job, Thiru J.Arumairaj started his own firm, viz., M/s.Dharsan Dredging and Constructions at Chengalpattu. Thiru J.Arumairaj categorically stated that he has not participated in the tender, held during the year 2009 as he was unqualified and ineligible to participate in the tender during that period. Further, he has neither purchased the tender documents nor paid the required fee. He accepted his signatures found in the tender documents. However, he alleged that Thiru M.John Stephen might have misused his signatures when they were having cordial relationship. Further, Thiru Sivasankaran was a call Driver and resident of Chengalpattu, whose services were utilized by both Thiru J.Arumairaj and Thiru John Stephen. The former has stopped utilizing his services as he had switched over his business activities to North-East.

Thiru D.Sivasankarna, resident of Chengalpattu, stated that he is working as a Taxi Driver. He knows Thiru J.Arumairaj for the past ten years as they were neighbours. He used to drive the car belonging to Thiru J.Arumairaj. During the year 2009, he was asked by

Thiru J.Arumairaj to hand over a closed envelope at Port Department, Puducherry. Thiru D.Sivasankaran came to Puducherry from Chengalpattu by bus and handed over the closed envelope to the Port authorities; where he was asked to wait for some time to sign in some documents. After waiting for some time, he had signed in a Register and returned back to his home after informing Thiru J.Arumairaj through phone.

Thiru Vimal Kumar, Ex-General Manager, M/s.ABC & Sons, Mumbai replied through e-mail that he had participated in the tender process during the year 2009 along with M/s.Dynamic Engineers and M/s.Dharsan Dredging and Constructions.

Findings of the enquiry:

On 10.2.2009, the Port Department, Government of Puducherry invited 'Short Tender Notice' from eligible firms/contractors for the work "Emergency Dredging with the Departmental Dredger at the Ariyankuppam river mouth/channel 2008" through leading dailies as well as hosting in the official website of the Government. Accordingly, three tenderers, viz., (i) M/s.Dharsan Dredging and Constructions, Chengalpattu, (ii) M/s.Dynamic Engineers, Puducherry and (iii) ABC & Sons Ltd., Mumbai submitted their tenders and also participated in the 'tender opening' held on 20.2.2009. M/s.Dynamic Engineers, Puducherry was the successful bidder among the three tenderers.

It revealed from the examination of witnesses and perusal of documents, produced by the officials of Port Department, Government of Puducherry that M/s.Dharsan Dredging and Constructions, Chengalpattu took part in the tender for the above work. Its President Thiru J.Arumairaj has applied for the Tender Schedule through his signed application, dated 16.2.2009 after affixing the seal of his firm. In the same application itself, he endorsed that "Received the Tender Schedule". Further, he has signed and affixed his firm's seal in each and every page of the Tender Schedule, which contains a total number of 71 pages. Thiru J.Arumairaj also accepted his signatures found in the tender documents. However, he alleged that Thiru John Stephen, M/s.Dynamic Engineers, Puducherry might have misused his signatures when they were having cordial relationship. This is false because Thiru J.Arumairaj obtained the Tender Schedule from the Port Department 'in person' on 16.2.2009 by affixing his signature and seal with the endorsement in his application that

"Received the Tender Schedule" and submitted the Tender Schedule on 20.2.2009 through his Call Driver Thiru D.Sivasankaran, who corroborated this in his Statement. However, Thiru J.Arumairaj obtained the Demand Draft towards 'Earnest Money Deposit' through Thiru M.John Stephen using his relationship. Even after the tender process during the month of February 2009, both of them had resumed their business relationship as per the Statement and documents produced by Thiru M.John Stephen. During the month of March 2009, Thiru J.Arumairaj had requested Thiru M.John Stephen for a loan of Rs.11.00 Lakhs as EMD for participation in a contract, floated by Jammu & Kashmir Lakes and Waterways Development Authority for supply of self-unloading hopper barge, for which Thiru M.John Stephen had transferred the amount to the ICICI Bank Account of M/s.Dharsan Dredging & Constructions from his firm's account in Axis Bank, Puducherry. Further, the plea of Thiru J.Arumairaj that he had not participated in the tender under the pretext of 'unqualified' or 'ineligible' could not be substantiated because the officials of Port Department had issued the Tender Schedule only after analyzing the firm's eligibility criteria.

In view of the facts enumerated above, it is confirmed that M/s. Dharsan Dredging and Constructions, Chengalpattu had participated in the tender, floated by the Port Department, Government of Puducherry during the month of February 2009.

The statements of witnesses and copies of the documents, submitted by them are enclosed for kind perusal.

Submitted please."

10. From a mere perusal of the enquiry report, the Court can easily discern that on 10-02-2009, the Port Department, Puducherry has invited a tender notice from eligible firms/contractors for the work of emergency dredging with Departmental dredger at Ariyankuppam river mouth/channel through leading dailies as well as hosting in the Official Website of the Government. In pursuance of the same, three tenderers have participated and one M/s. Dynamic Engineers, Puducherry have become successful bidder. Further, it is seen from the enquiry report that the said Dynamic Engineers have started their work and due to financial stringency, the particular work has not been completed. In the enquiry report, it has not been specifically stated that the allegations mentioned in the complaint are proved nor prima facie evidence is available. Considering the fact that for the purpose of proving the

allegations mentioned in the complaint, sufficient documents are not available on the side of the petitioner and also considering that in the enquiry report, no such materials are available so as to proceed further, it is very clear that the impugned complaint cannot be registered, so as to conduct further enquiry. Therefore, the arguments advanced on the side of the petitioner is not having merit and altogether, Crl.O.P.No.6012 of 2014 is liable to be dismissed.

11. Now the Court has to analyse the relief sought in Crl.O.P.No.27076 of 2014. As stated earlier, the specific relief sought therein is to withdraw and transfer the complaint dated 16-06-2014 from the file of the second respondent to the file of the third respondent for conducting investigation in accordance with law. In the complaint dated 16-06-2014, it is stated like thus:

"Sub: Complaint on the large scale criminal conspiracy in awarding the dredging work on nomination basis of M/s.KSMDCL & subsequent subletting of dredging work by KSMDCL leading to Revenue loss to government of the order of more than Rs.2 crors-Request to investigate the complaint.

This is to lodge our complaint against Mr Rajendran EE port, Mr Manohar Director port, Mr Marie china Rani Director fisheries, Mr. Sundarvadivel special secretary fisheries, Mr. P.R. Meena IAS secretary port and Mr. Rajendran Managing Director KSMDCL, Government of Kerala. we came to understand that the above named officials of Govt. of Puducherry and Govt. of Kerala had entered into criminal conspiracy to fabricate and manipulate an inflated estimate for dredging of Ariyankuppam river mouth in the month of April 2014 to May 2014 at all time high cost of Rs.318/cubic meter+ service tax and mobilization charges of Rs.25 lakhs for the dredging of 2 lakhs cubic meters sand. Consequent to their criminal conspiracy in may 2014. The EE port Mr Rajendran under instructions from S. Manhoar Director of port had prepared a highly manipulated and unjustified estimate at Rs.318/cubic meter of sand dredging and had passed it on to the fisheries director Mrs marie china Rani without getting the statutory technical sanction for the estimate from office of chief engineer as per CPWD manual provisions. Mr Marie Chinna rani along with Mr Sundravadivel Special Secretary fisheries and the port secretary Mr P.R.Meena IAS had Co-conspired along with KSMDCL managing director Mr. Rajendran to give the dredging work under nomination to M/s. KSMDCL at higher rates than prevailing rates i.e. more than Rs.118/cubic

meters quoted by M/s. IMS shipping in January 2014 @ Rs.200/ cubic meter. In addition to Rs.118/Cubic meters in excess than the normal prevailing rates of around Rs.200/- per cubic meters. The above official had also conspired to grant a mobilization charges of Rs.2500000/- to KSMDCL without any justification.

The award of nomination work to KSMDCL at Rs.318/cubic meter is totally unjustified and also illegal as the estimate was not at all technically approved along with rare justification by chief engineers office as per CPWD manual provisions.

It is understood from the available information at our hand The KSMDCL had already floated a tender to sublet the dredging work received as nomination from Puducherry Govt. It is submitted that Government work/contract cannot be sublet by the nominated contractors. But knowing fully well about this fact of subletting of Govt. work is illegal KSMDCL had been going on to float a open tender to sublet the dredging work at much cheaper cost to its favorite contractors to share and misappropriate Puducherry Govt. funds worth more than Rs.2 crores at the rate of Rs.118 cubic meters for total volume of Rs.2 lakhs cubic meters.

We humbly submit that the illegal floating of tender notice by KSMDCL to sublet the dredging work order received from Govt. of Puducherry will lead to unnecessary revenue loss of more than Rs.2 crores to Govt. of Puducherry. we herein accused Mr.P R. Meena, IAS, Secretary port, Mr Sundravadivel, Special secretary fisheries, Mr Manohar Director port, Mrs Marie china Rani Director fisheries Mr Rajendran EE port of having had common criminal motives to co-conspire along with Mr Rajendran Managing director KSMDCL to fabricate and manipulate estimate at higher cost without technical sanction and award the jacked up and unjustified rate of dredging as nomination work to KSMDCL without resorting to competitive tender knowing fully well that competitive tenders will fetch better rates of mere Rs.220-225/cubic meter, thus had knowingly avoided competitive tenders which is against the government Procurement policy as not work can be awarded without call for tender above a value of Rs.50000/- as per GFR provisions.

The above named officials had also knowingly allowed KSMDCL to sublet the work by openly calling for tenders which is against the procurement policy of the

Govt. Puducherry and against the provisions of GFR and CPWD manual for tendering.

We herein accuse the above named Govt. officials of entering into large scale criminal conspiracy to award government work on nomination basis at higher costs and misappropriate public funds worth more than Rs.2crores with the false alibi of emergency nature of work with Chief Minister's instructions. We request you office to register this complaint and investigate the same at the earliest.

Your early investigation of the crime reported above will save the misappropriation of public funds worth more than Rs.2 crores at the hands of manipulative Govt. officials in the name of executing public works through their benami contractors."

12. The learned counsel appearing for the petitioner has contended that in respect of dredging work, a large scale of criminal conspiracy has been hatched and huge amounts of Government money are involved. Under the said circumstances, the complaint dated 16-06-2014 has been given to the second respondent. But the second respondent has not conducted proper investigation and therefore, the present petition has been filed for getting the relief sought therein.

13. The learned Additional Public Prosecutor has contended that even in respect of the allegation levelled in the complaint dated 16-06-2014 as per order passed by this Court, a preliminary enquiry has been conducted and accordingly, a status report has been filed wherein it has not been specifically mentioned that prima facie evidence is available so as to proceed further and therefore, the present petition deserves to be dismissed.

14. The learned counsel appearing for the petitioner has drawn the attention of this Court to the following decisions:

(i) In 2008 (3) SCC 542(Divine Retreat Centre V. State of Kerala) the Honourable Supreme Court has held that even anonymous petition seeking direction for investigation sent directly in the name of the Judge of High Court ought not to have been entertained under Section 482, Cr.P.C.

(ii) In 2009 (10) SCC 488 (D. Venkatasubramaniam Vs. M.K. Mohan Krishnamachari) it is held that jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in provision itself.

15. During the pendency of this petition, this Court has directed to file a status report with regard to allegations mentioned in the complaint and accordingly, a status report has been filed wherein it has been specifically mentioned to the effect that the following allegations are culled out on the basis of averments made in the complaint:

"(i) Cheating and misappropriating public funds of Rs 7 crores without actually executing the dredging works of eight lakhs cubic meters in five years by the C.E., PWD and the EE, (Ports) with his sub-ordinate officers.

(ii) Entering into criminal conspiracy with a private firm to steal the cutter motor of worth Rs 40.00 lakhs from the department owned dredger

(iii) The Port officials had recently floated a tender for dredging work with the condition that the tenderer shall bring his own cutter suction motor & pump knowing fully well that no firm will accept this condition except M/s Dynamic Engineers, since Mr. John Stephen is in possession of the stolen motor. In the first call of the tender no one had quoted for the tender except M/s Dynamic Engineers. The Executive Engineer Mr. Rajendiran had been advised by the Chief Engineer Mr. Manohar to reject the single tender of M/s Dynamic Engineers with the alibi of single tender and had motivatedly advised for floating the 2nd call knowing very well that only M/s Dynamic Engineers will come forward to quote for the work.

(iv) One Mr. John Stephen, a mechanic employee for M/s Perfect Dredging Company Pvt Ltd till 2006 had colluded with the Port officials to float a false letter pad company in the name of M/s Dynamic Engineers and executed dredging works to the volume of 8 lakh cum worth more than Rs 7 crores. Mr. John Stephen had not actually executed the dredging work and had by manipulating and creating false measurements in their M.Book had misappropriated more than Rs 7 crores."

In fact, this Court has perused the entire status report wherein it has been specifically stated that the allegations made in the complaint to the effect that no work has been executed are totally groundless, unsubstantiated and with ulterior motive. Further, the status report has dealt with each and every allegation made in the complaint and more than in one place it

has been specifically stated that the allegations made in the complaint are baseless. Further, it is stated that only due to lack of finance, the execution of concerned work has been delayed. Therefore, it is needless to say that the complaint itself is not liable to be registered. Since the complaint itself is not liable to be registered, the relief sought in this petition cannot be granted and altogether, the present Crl.O.P.No.27076 of 2014 is liable to be dismissed. Further, in the interim report filed in Crl.O.P.No.6012 of 2014, it has been specifically mentioned that no deviation has been done. Therefore, viewing from any angle, the contention put forth on the side of the petitioner is not liable to be entertained.

In fine, both the criminal original petitions are dismissed.

(Note to the Registry: The file submitted by the respondents is ordered to be returned forthwith.)

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To

1. Chief Secretary cum Chief Vigilance Officer
Govt of Puducherry
Gubert Avenue, Puducherry
2. The Superintendent of Police
Vigilance & Anti Corruption
Muthialpet, Puducherry
3. The Inspector of Police
Vigilance & Anti Corruption
Muthialpet, Puducherry
4. The Director,
The Central Bureau of Investigation,
Anti Corruption Head Quarters (AC/HQ) Zone,
Plot No. 5-B 10th Floor, A wing CCo Complex,
New Delhi 110 003.

+1cc to Mrs.Vijayalakshmi K.Rajaratnam, Advocate Sr.64102
+1cc to Mr.R.Karthikeyan, Advocate Sr.64146
+2cc to Government Pleader cum Public Prosecutor for
(Pondicherry) Sr.64356,64363
+1cc to Mr.G.Palani, Advocate Sr.64614

Criminal Original Petition
Nos.6012 and 27076 of 2014

tej[co]
srg 11/12/2015



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