

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

CrI.O.P.No.11431 of 2015

V. Balakrishnan
Junior Engineer (Under suspension)
Public Works Department (W.R.O.)
No.56/1A,Kamarajar Street
Bye-pass Road
Vaniyambadi
Vellore District.

Petitioner

Vs.

The State rep by
The Deputy Superintendent of Police
Crime Branch, CID
Vellore

Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Spl.Case No.8 of 2011 on the file of the Honourable Chief Judicial Magistrate, Thiruvannamalai and quash the same.

For petitioner :: Mr. A.R. Suresh

For respondent :: Mr. P. Govindarajan, Addl.PP

ORDER

This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973('Cr.P.C.' in short) praying to call for records in Special Case No.8 of 2011 pending on the file of the Chief Judicial Magistrate, Thiruvannamalai and to quash the same.

2. It is averred in the petition that the petitioner has served as Junior Engineer. The Government of Tamil Nadu by virtue of G.O.Ms.No.699 PW (S2) Department, dated 18-10-1996 has given approval with regard to work, 'formation of a Reservoir across Kamadalar River near Shenbagathope Village, Polur Taluk, Thiruvannamalai District'. The said project has been awarded to M/s. Chandragiri Constructions, a partnership firm. The terms of the agreement entered into in between the parties and accordingly, 40% of the quoted price has to be paid to the contractor on delivery of materials at dam site, 50% has to be paid on erection for the equipments and satisfactory test of erected parts of complete set, the balance has to be paid on final acceptance of the gates after satisfactory commissioning under full reservoir level condition and after issuance of completion certificate. The respondent on the basis of the First Information Report registered

in Crime No.4 of 2007 has conducted investigation and a final report has been filed under Section 120B read with Sections 167, 409, 420, 468, 471, 477A read with Section 109, IPC and also under Sections 13(2) and 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 read with Section 109, IPC, wherein the present petitioner has been arrayed as fifth accused. On 23-03-2006, Chief Engineer (General) PWD, has conducted inspection of site and reported that erection of embedded parts for seven gates are found fixed. The petitioner has done his duty properly and there is no deviation on his part. But he has been falsely implicated in the present case. Further a departmental enquiry has been conducted and finally, recommended for exonerating the petitioner. Under the said circumstances, the present petition has been filed for getting the relief sought for herein.

3. The learned counsel appearing for the petitioner has contended that during the relevant period, the petitioner has served as Junior Engineer and he has done his duty properly. Further, he has not committed any lapse. In the departmental enquiry initiated against him, he has been exonerated from the charges. Under the said circumstances, he has been falsely implicated in the present case and in fact, no materials are available so as to inculcate the petitioner in the offences mentioned in the charges and therefore, the present petition has been filed for getting the relief sought for therein.

4. In order to controvert the contentions put forth on the side of the petitioner, the learned Additional Public Prosecutor has contended that sufficient materials are available so as to arrive that the petitioner is also one of the accused and further due to erroneous measurement taken by the petitioner and other accused, heavy loss has occurred to the Government and further, the decision of the departmental enquiry is not an embargo to proceed against the petitioner and under the said circumstances, the present criminal original petition is liable to be dismissed.

5. Before perpending the rival submissions made on either side, the Court has to perorate the following admitted facts. It is an admitted fact that during the relevant period, the petitioner has served as Junior Engineer. It is also equally an admitted fact that as per G.O.Ms.No.699 PW (S2) Department dated 18-10-1996, erection work has been given to one M/s.Chandragiri Construction. After completion of work, measurements have been taken by the Engineers including the petitioner. It is also an admitted fact that the petitioner and others are facing charges punishable under Section 120B read with Sections 167, 409, 420, 468, 471, 477A read with Section 109, IPC and also under Sections 13(2) and 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 read with Section 109, IPC.

6. The specific contention put forth on the side of the petitioner is that he has no connection whatsoever with the alleged offences and even in the departmental enquiry he has been exculpated from the charges.

R. Manickam, Superintending Engineer, Water Resources Organisation, Pollachi wherein it has been specifically stated that the present petitioner and other accused have recorded false measurements.

8. From the statement alleged to have been given by the said R. Manickam, the Court can easily come to a conclusion that a prima facie case is in existence against the petitioner. Further, as pointed out earlier, the petitioner and others are facing charge under Section 120(B), IPC, along with other Sections of law. Under the said circumstances, the alleged criminal conspiracy can be proved only at the time of trial, by way of adducing relevant evidence on the side of the prosecution. The learned counsel appearing for the petitioner has mainly contended that in the departmental enquiry, the charges framed against the petitioner have not been proved and ultimately he has been exonerated and therefore, the present proceeding is totally unwarranted.

9. It is a settled principle of law, that if the accused is exonerated from the charge(s) in departmental proceeding, there is no impediment to initiate criminal proceeding against him. The learned counsel for the petitioner has drawn the attention of the Court to the following decisions:

(i) 2006 (5) SCC 446 (G.M. Tank Vs. State of Gujarat and others), wherein the Honourable Supreme Court has held that an employee has got honourable acquittal in criminal trial during pendency of disciplinary proceeding wherein no evidence is available and under the said circumstances, his dismissal is held as illegal.

(ii) 1999 (3) SCC 679 (Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and another) it is held that if an accused is acquitted in a criminal proceedings, the finding given in departmental proceedings in ex parte cannot be sustained.

(iii) In 2015(3) SCC 101 (General Manager (Operations) State Bank of India V. R. Periyasamy) it is observed as follows:

"11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is wekk known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur¹, this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. The view was upheld by this Court in SBI v. Ramesh Dinkar Punde². More recently, in SBI v. Narendra Kumar Pandey³, this Court

1(1972 (4) SCC 618 = 1972 (2) SCR 218)

2(2006 (7) SCC 212 = 2006 SCC (L&S) 1573)

<https://hcservices.ecourts.gov.in/hcservices/>

3(2013 (2) SCC 740 = 2013(1) SCC (L&S) 459)

observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt."

From a cumulative reading of the decisions referred to earlier, it is made clear that mere exoneration of charges in a departmental enquiry is not a bar to proceed criminal proceedings. Further, standard of proof in a criminal case is totally different from standard of proof in a departmental proceeding.

10. In the instant case as pointed out earlier replete prima facie evidence is available against the petitioner to proceed further in Special Case No.8 of 2011. Since abundant materials are available to proceed against the petitioner it is highly impossible and also improbable to quash the proceedings of Special Case No.8 of 2011. Further, as noted down earlier, mere exoneration of the petitioner from departmental proceeding is not at all a basis to close the present criminal proceeding. Therefore, viewing from any angle, the contentions put forth on the side of the petitioner cannot be accepted and altogether, the present criminal original petition is liable to be dismissed.

In fine, this criminal original petition is dismissed. The connected M.P.No.1 of 2015 is also dismissed.

After pronouncing of order, a request has been made on the side of the petitioner so as to dispose of Special Case No.8 of 2011, as early as possible.

2. Considering the request made on the side of the petitioner, the Chief Judicial Magistrate, Thiruvannamalai, is strictly directed to dispose of Special Case No.8 of 2011 before the end of December 2015 and report the same to the Registry without fail.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

msk

To

1. The Chief Judicial Magistrate
Thiruvannamalai

2. The Deputy Superintendent of Police
Crime Branch CID Vellore

3. The Public Prosecutor,
High Court, Madras

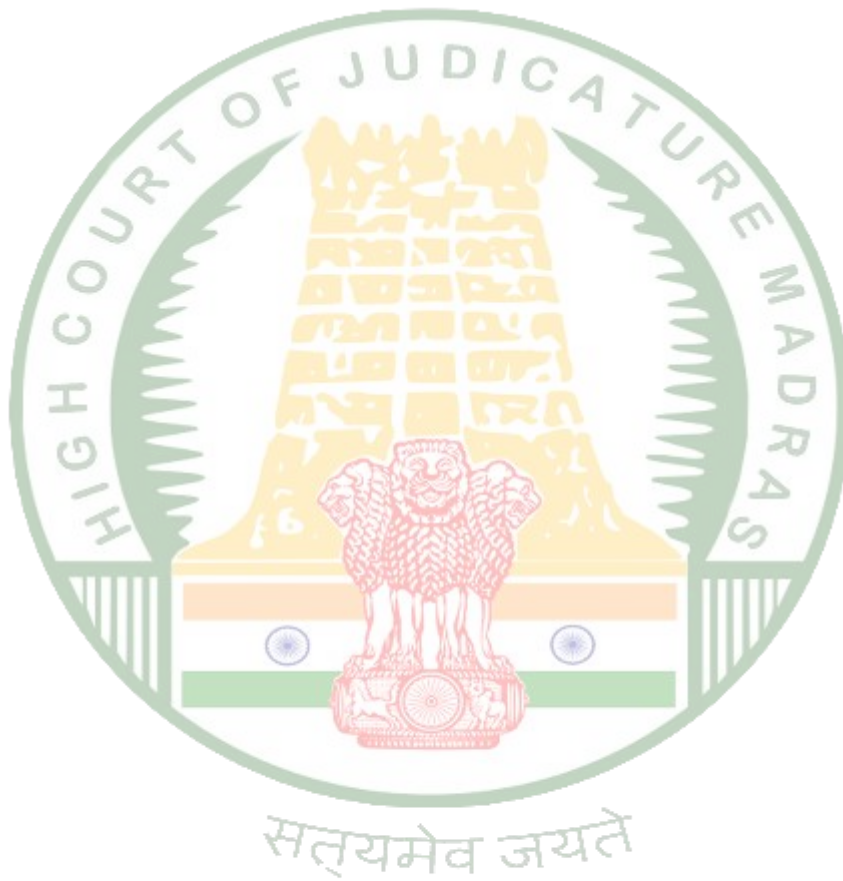
Copy to

The Section Officer
Criminal Section
High Court, Madras

1 cc to Mr.A.R. Suresh, Advocate, Sr. 44882

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