

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM :

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

Cr1.O.P.No.3038 of 2014

and MP.Nos.1 and 2 of 2014

P.Govindan

.. Petitioner

Vs.

State rep. By
the Inspector of Police,
Crime Branch CID
Dharmapuri Unit,
Dharmapuri.

.. Respondent

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for records of the proceedings pertaining to CC No.285 of 1998 on the file of the Judicial Magistrate, Krishnagiri and quash the same.

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.C.Emalias, APP

O R D E R

A4 is the petitioner herein. The present petition is filed to quash the proceedings in CC.No.285 of 1998 on the file of the Judicial Magistrate, Krishnagiri.

2.The petitioner, while employed as Maintenance Firka Surveyor during 1994 to 1997, was implicated as one of the accused in FIR in Cr.No.1 of 1997 registered for the offences under sections 466, 120(B), 379 IPC and section 4(1) and 21 of the Mines and Minerals (Regulation and Development) Act 1957. The FIR was registered originally against one Rajalakshmi Enterprises and three public officials, one among whom is the petitioner herein, on the basis of the complaint given by the then District Collector, Dharmapuri. The allegations raised in the complaint are that M/s.Rajalakshmi Enterprises having its registered office at Chennai, had been granted a quarrying lease for paradise granite in respect of particular survey number over a specified area at Nagojanahalli for 10 years and the quarry lease was to be expired on 09.06.2005. Whereas, the markings of the leased out

area in FMB sketched have been changed and excess area of about 1.96 acres have been added, after the lease deed was signed and registered and that preliminary enquiry revealed that the Government staff have tampered the Government records to benefit the lessee firm Tvl.Rajalakshmi Enterprises, through act of criminal conspiracy. The FIR was investigated into and charge sheet was filed on 28.8.1998 against 10 accused for various offences in the same line.

3.The gist of the allegations are that A1 Subramanian and A2 Nalliappan along with A3 to A6 conspired together and in furtherance of the same, they obtained quarry lease in favour of M/s.Rajalakshmi Enterprises for mining grey granites and on the strength of the same, they encroached the Government Poramboke land adjoining the leased out land of Rajalakshmi Enterprises at Nagojanahallai and committed act of theft, by carrying out mining of gray granites illicitly, after muddling with the boundary stones and after altering the FMB and sketches appended to the lease deed dated 10.6.1995 by stealing it from the concerned government official, who was in charge of the document and by getting transport permission by cheating the District Collector, Dharmapuri and by evading payment of seigniorage fee payable for mining the granite from government Poramboke land and the Government staff gave false information in respect of the offences of criminal trespass, theft of granites and illicit mining from government poramboke land, in order to avoid criminal prosecution against A1 and A2.

4.As far as the present petitioner is concerned, the allegations raised against him are that he entered into criminal conspiracy with A1 to A3 and he collected the FMB sketch appended to the lease deed by cheating the Government official, who was in custody of the document and altered the same so as to include an extent of 1.96 acres of Government Poramboke land for enabling A1 and A2 to carry out illicit quarrying operation in the same.

5.The petitioner herein has come forward with the present petition for quashing the proceedings on the following grounds: (i)there is unexplained inordinate delay for no fault on the part of the petitioner in proceeding with the case, which is in violation of the concept of speedy trial enshrined in Article 21 of the Constitution of India. (ii)the criminal proceedings against A2 is quashed on the ground of delay and the petitioner is also entitled to the same benefit in terms of equality before law. (iii)there is no valid sanction for initiating prosecution against the petitioner and (iv)there is no legally permissible evidence to substantiate the allegations raised against the petitioner so as to allow the criminal prosecution to proceed against him.

6.Per contra, the relief sought for herein is seriously opposed on the side of the respondent/IO by explaining the circumstances under which the delay was occurred and detailing the progress made in the investigation.

7.Heard the rival submissions made on both sides.

8.Here is the case, wherein, the complaint in respect of an occurrence allegedly taken place during 1996 -1997 and was lodged during April 1997. The statement of witnesses was obtained during 1997-98. The charge sheet was filed in 1998 and thereafter, there was no progress in the proceedings till date. When the complaint was filed against one company Tvl.Rajalakshmi Enterprises and public officials by names (i)Sudarsanam (ii)P.Sambath and (iii) S.Govindan, who is the petitioner herein, the charge sheet was filed against 10 individuals both officials and non officials. Out of 10 individuals, A2 Nalliappan is an Auditor cum Businessman and he was implicated in the case in his capacity as one of the partners and power of attorney holder of the firm Tvl.Rajalakshmi Enterprises. A6 Sudarsanam is then Assistant Geologist in the office of the Assistant Director of Geology and Mining, Dharmapuri. Both A2 and A6 have come forward with Crl.OP.Nos.29448/2010 and 8898/2007 respectively for quashing the charge sheet filed against them.

9.While the quash petition filed by A6 was allowed on the sole ground that no ingredient for the offence under Section 201 is made out against him, the quash petition filed by A2 was allowed by order dated 28.03.2012 on more than one ground and one of the grounds is the delay in trial as there was no progress in the proceedings from 1998 onwards and the same is in violation of the fundamental right of the citizen to speedy trial under Article 21 of the constitution of India. The learned brother judge accepted the ground of delay by applying the views of the Hon'ble Apex Court reported in 2006 10 SCC 560 - Mothilal Saraf V. State of J&K and following the order of the learned single judge of this Court in Crl.OP.No.32712 of 2004 which are extracted hereunder :

The Hon'ble Supreme Court has in so far as the delay is concerned in the judgment reported in 2006 10 SCC 560 (cited supra) held as follows :

46. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from

impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

48. This Court in a number of cases has reiterated that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure "reasonable, just and fair" procedure which has a creative connotation after the decision of this Court in Maneka Gandhi case."

The learned single judge of this Court in Crl.OP.No.32712 of 2004 had held thus

"10. The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case as it is already pointed, this case is pending for the last more than two decades without any progress and the complaint to the police pending for investigation is also not in respect of the petitioners herein as the petitioners have not been implicated in the police complaint and added to that the petitioners are in no way responsible for such inordinate delay and as such this Court is constrained to quash the impugned complaint as far as the petitioners are concerned and accordingly, the proceedings pending in P.R.C.No.1 of 1987 on the file of the learned Judicial Magistrate, Gudalur, is hereby quashed insofar as the petitioners are concerned."

10. In the present case, after filing of the charge sheet in the year 1998, there is absolutely no progress in the investigation till date and the reason for the same is neither attributed to the conduct of the accused nor explained on the part of the prosecution. When the proceedings of one of the accused was quashed on the ground of delay the same will enure to the benefit of the present accused also.

11. The next ground raised herein relates to the validity of sanction order granted by the authority concerned for laying down prosecution against the petitioner herein. The present petitioner has on earlier occasion filed Crl.MP.No.1347 of 2005 in CC.No.285 of 1998, before the Judicial Magistrate, Krishnagiri, for his discharge from the criminal proceedings by questioning the legality of the proceedings without obtaining any sanction order for initiating prosecution against the petitioner as contemplated under Section 197(1) of Cr.P.C. The Judicial Magistrate has by accepting the contention raised on the side of the prosecution that the order of sanction was already obtained from the District Collector dismissed the discharge petition. Aggrieved against the same, the petitioner herein preferred

Crl.RC.No.272/2006 before this Court. The learned brother judge has after detailed discussion rejected the contention of the learned Government Advocate (Criminal side) that no sanction for prosecution is necessary for prosecuting the petitioner in respect of the offence alleged.

12.In that case, the sanction order was not produced along with the charge sheet. However, the copy of the sanction order obtained for prosecuting against the petitioner was annexed to the counter statement filed in Crl.MP.No.1347 of 2005 and the same was signed by Assistant Director of Survey, Dharmapuri on 18.03.2005 much after the filing of the charge sheet and much after taking cognizance of the same during October 1998. The learned brother judge by pointing out the relevant dates has in para 14 observed that neither the original nor the certified copy of the sanction order purportedly obtained prior to filing of the charge sheet was produced before this court and the certified copy of the sanction order signed on 18.03.2005 by the Assistant Director of Survey, Dharmapuri would only go to show that no order of sanction could have been obtained prior to the filing of the charge sheet. The learned brother judge has in para 15 of his order discussed about the validity of the sanction order dated 20.06.1998 allegedly obtained prior to the filing of the charge sheet and observed as follows: (i)the said order does not disclose the application of mind by the sanctioning authority (ii)District Collector is not the appointing authority for Firka Surveyor and hence, he is not the competent authority to sanction prosecution; and (iii)the very same officer namely, Mr.Mohan Piyare, IAS, District Collector, Dharmapuri District was both the complainant as well as the sanctioning officer. The learned brother judge has accepted all the above three grounds raised on the side of the petitioner and held that the petitioner is entitled to the order of discharge as prayed for.

13.The learned brother judge has in para 17 discussed in detail the manner in which the order of sanction was passed without due application of mind and held :-

"17. According sanction for prosecution should not be understood to mean a mere ritual or formality. The principle underlying the requirement of sanction for prosecution under Section 197(1) is that public officials should not be unnecessarily harassed by launching prosecution for their acts committed while acting or purporting to act in discharge of their official functions without the sanction of the competent authority. The said right of the public servants that they should not be prosecuted for any such offence committed by them while acting or purporting to act in discharge of their official functions without obtaining sanction for prosecution under Section 197(1) Cr.P.C., is a valuable right which cannot be whistled down by a

stereo-type order devoid of necessary particulars. The order shall indicate the application of mind by the sanctioning authority. It should also contain the particulars of the materials considered by the sanctioning authority. It is quite clear that the copy of the order produced along with the counter statement is devoid of all such particulars. When the sanction order, at the outset, is bereft of all such particulars and it is patent that there is non-application of mind, it shall not be justifiable to direct the accused (petitioner herein) to face trial despite the apparent vitiating factors found in the sanction order. Therefore as rightly pointed out by the learned counsel for the petitioner, the petitioner shall be entitled to an order of discharge as prayed for by him."

14.The learned brother judge hence set aside the impugned order of the Judicial Magistrate and allowed the discharge petition in Crl.MP.No.1347 of 2005 whereby A4 was discharged, with liberty given to the respondent to apply to the competent authority once again to get necessary sanction order to prosecute the petitioner. In pursuance of the same, relevant records were forwarded to the Assistant Director, land survey (District land survey department) and fresh sanction order was obtained on 22.8.2008.

15.As rightly argued by the learned counsel for the petitioner, fresh sanction obtained during 2008 suffers from the same vices as that of the earlier sanction order and there is no indirection in the order about the application of mind by the sanctioning authority. The order does not refer to the allegations made in the complaint and the material collected by the investigating agency. The order granting sanction for prosecution is not supported by any reasoning and it is almost a non speaking order the order containing 3 paras, the first two paras refer to the objection of the earlier sanction order and the discharge of the petitioner on that ground and third para containing four lines which proceeds to say that the Director General of Police has sought for sanction for initiating prosecution against Govindan and the sanction was hence granted.

16.It is once again a stereo typed order and devoid of necessary particulars and such order is likely to frustrate the very object of Section 197(1) Cr.P.C. and is hence invalid. In that event, the accused cannot be subjected to face any ordeal of trial despite the vitiating factors apparently found in the sanction order and the criminal prosecution initiated against the petitioner is hence legally unsustainable for want of valid sanction order.

17. On facts, the petitioner is alleged to have entered into conspiracy with main accused and it is the petitioner, who is alleged to have deceitfully collected the documents from the custody of LW10/Ramesh. The evidence of LW10 is to the effect that it is he who brought the sketch from the Government office to the mines office and it is he who restored the same after getting it altered by the petitioner Govindan. In that event, he ought to have impleaded as one of the accused along with A3/Raja and A4/Govindan and there is no explanation offered on the side of the prosecution for not implicating LW10 as one of the accused in the present case. The failure to implicate him as one of the accused herein amounts to serious discrimination. The other witness who speaks about the role played by A4 is LW12/Pounraj. It is his evidence that he was informed by A4/Govindan as if he was cheated by auditor Nalliappan by paying Rs.50,000/- as against Rs.2,00,000/- as agreed for altering the sketch. In my considered view, the statement of the above two witnesses appears to be bald, vague and not specific to make out any ingredient of the offences charged against the petitioner. Except these two witnesses, there is no other witness to speak about that part of the criminal act committed by the present accused and there is also no other legally permissible evidence to make out any prima facie case against the petitioner for the charges stated above against him. Further it is not spoken by the witnesses that the present accused has in any other manner helped the main accused to trespass and to enter into the Government department to carry on illicit operation to benefit themselves. It is pertinent to mention at this juncture that since the custody of the document ie., lease deed along with sketch is with different department the petitioner, having been not attached to that office having no access to the document in the absence of any definite material to prove the role played by the petitioner the criminal prosecution initiated against the petitioner amounts to abuse of process of law that too after much delay and without obtaining any valid sanction order for prosecution. As such, this is the fit case wherein the proceedings against the petitioner cannot be allowed to go on and the same is hence liable to be quashed.

18. In the result, this criminal original petition is allowed and the criminal proceedings in CC.No.285 of 1998 on the file of the Judicial Magistrate, Krishnagiri stands quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rk/tsh

To

1.The Judicial Magistrate, Krishnagiri.

2. Do thro the Chief Judicial Magistrate
Krishnagiri

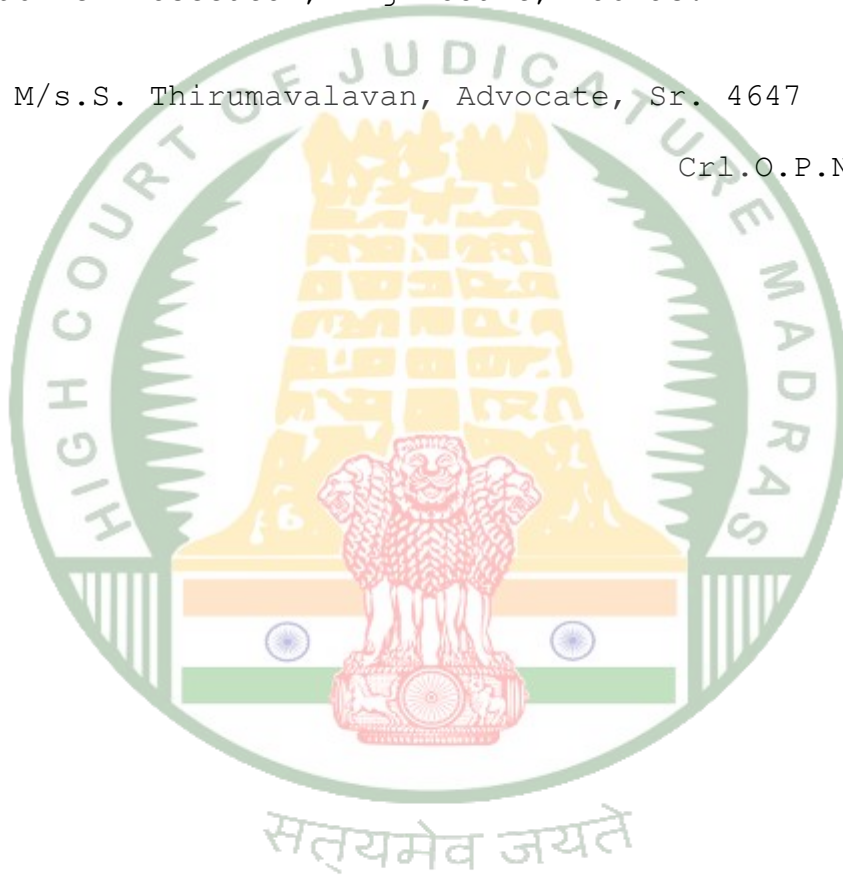
3.The Inspector of Police,
Crime Branch CID, Dharmapuri Unit,
Dharmapuri.

4.The Public Prosecutor, High Court, Madras.

1 cc to M/s.S. Thirumavalavan, Advocate, Sr. 4647

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