

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.O.P No.10695 of 2014

&

M.P.No.1 of 2014

R.Makeswaran

...Petitioner/Accused

Vs

The State rep. by:

The Inspector of Police,  
Vigilance and Anti Corruption Police Station  
Coimbatore District

...Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the complaint in Spl.C.C.No.3 of 2014 on the file of the Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore and quash the same as far as the petitioner is concerned and quash the same.

For Petitioner : Mr.Raja Kallifullah, Senior Counsel  
for Mr.I.Arbar Md.Abdullah

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed under section 482 of the Code of Criminal Procedure, 1973 praying to call for records relating to Special Calendar Case No.3 of 2014 pending on the file of Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore and quash the same.

2. The material averments made in the petition are that during the relevant period, the petitioner has served as Senior Regional Manager in Regional Office, TASMAL Complex, Goundampalayam. On 10.1.2012, one S.M.Suresh, as defacto complainant, has given a complaint against the petitioner, wherein it is stated that some District Managers have reported that the petitioner has used to receive bribe and also demanded bribe. On the same day, a surprise inspection has been conducted and a sum of

Rs.1,75,000/- has been seized from the table drawer of the petitioner. The respondent police conducted an enquiry and one P.Selvan Amalraj, District Manager of Tirupur, informed that an amount of Rs.2 Lakhs has been demanded as bribe by the petitioner and he managed to bring Rs.1,90,000/- and out of Rs.1,90,000/-, Rs.1,55,000/- has already been given to the petitioner as bribe and Rs.35,000/- has been kept with him for giving the same to the petitioner as bribe. On the basis of the complaint, a case has been registered under sections 7, 13(2) r/w 13(i)(d) of Prevention of Corruption act, 1988. The allegations made against the petitioner are completely false and there should not be any presumption with regard to motives attributed against the petitioner. On the basis of the complaint, investigation has been done and subsequently, a final report has been filed and the same has been taken on file in Special Calendar Case No.3 of 2014. Under the said circumstances, present petition has been filed for getting the relief sought for therein.

3. In the counter filed on the side of the respondent, it is averred that on the basis of the complaint, a surprise inspection has been conducted, wherein a total sum of Rs.3,03,500/- has been seized by the surprise check team and out of Rs.3,03,500/-, Rs.1,75,000/- has been seized from the table drawer of the petitioner and further every District Managers have given statements to the effect that it is the usual practice of the petitioner to demand and receive bribe and accordingly, the investigation has been done and after completing the same, a final report has been laid and the same has been taken on file in Special Calendar Case No.3 of 2014 and there is no merit in the petition and the same deserves to be dismissed.

4. Before contemplating the rival submissions made on either side, it would be more useful to narrate the following admitted facts.

It is an admitted fact that during the relevant period, the petitioner has served as Senior Regional Manager, TASMAC, Coimbatore.

5. The specific contention put forth on the side of the prosecution is that the petitioner has demanded and accepted bribe from District Managers, TASMAC. Under the said circumstances, surprise inspection has been done on 10.1.2012 and ultimately found some unaccounted money.

6. The learned counsel appearing for the petitioner has contended that the specific case put forth on the side of the prosecution is that on 10.1.2012, surprise inspection has been done and accordingly the accused has been found in possession of Rs.1,75,000/- and the alleged tainted money has been seized from the petitioner, but to prove the same, no seizure mahazar has been

prepared. Under the said circumstances, the case of the prosecution cannot be accepted and only with oblique motive, a case has been registered in Crime No.1/2012/AC/CB and therefore the entire proceeding of Special Calendar case No.3 of 2014 is liable to be quashed.

7. In support of the contention raised on the side of the petitioner, a decision reported in 2013 (13) SCC 1 (Yakub Abdul Razak Menon vs. State of Maharashtra is relied upon, wherein in paragraphs 350, 351, 352 and 353, the Hon'ble Supreme Court has observed as follows:

"Recoveries:

350. Mr.Jaspal Singh, learned Senior Counsel for A.1 submitted that based on the statement of Mohd. Hanif (PW 282) and other witnesses as well as confessional statements of the accused, several recoveries were made by the prosecution and in the absence of strict adherence to the procedure, those recoveries are inadmissible in evidence. He also pointed out that the seizure panchnama was not in accordance with the procedure and, more particularly, Section 27 of the Evidence Act. Now, let us consider how far the prosecution has established that the recovered articles/materials were either used or intended to be used for the bomb blasts on 12.3.1993 pursuant to the conspiracy hatched. Apart from the argument of Mr.Jaspal Singh relating to a deficiency in the panchnama. Mrs.Farhana Shah, learned counsel appearing for some of the accused has also raised the same contention.

351. Before going into the merits of the oral and documentary evidence led in prosecution, let us consider the salient features of a panchnama and whether the prosecution witnesses strictly adhered to the procedure contemplated for a valid panchnama.

Panchnama

352. The primary intention behind the panchnama is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search, with or without warrant and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. The legislative intent was to control and to check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of article.

Evidential value of panchnama:

353. Panchnama is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime. However, it is not only the recordings of the scene of crime but also of anywhere else which may be related to the crime/offence and from where incriminating evidence is likely to be collected. The documents so prepared needs to be signed by the investigating officer who prepares the same and at least by two independent and impartial witnesses called "panchas", as also by the party concerned. The witnesses are required to be not only impartial but also "respectable". "Respectable" here would mean a person who is not disreputed. One should also check if the witnesses are in their senses at the time of the panchnama proceedings. Only majors are to be taken as witnesses as minors' witnesses may not withstand the legal scrutiny."

8. From a close perusal of the observation made by the Hon'ble Supreme Court, it is made clear that a seizure memo is nothing but a corroborative piece of evidence.

9. In order to remonstrate the contentions put forth on the side of the petitioner, the learned Additional Public Prosecutor has also equally contended that in the instant case, a seizure memo has not been prepared, but tainted money has been seized from the petitioner in the presence of responsible/respectable witnesses and apart from seizure, some of the District Managers have given clear statements to the effect that the petitioner has periodically demanded and accepted bribe from them and further some of them have given statements under section 164 of Code of Criminal Procedure, 1973 and simply because the Investigating Officer has not prepared seizure memo, the Court cannot come to a conclusion that the entire case of the prosecution is false and therefore, the relief sought for in the present petition cannot be granted.

10. In order to buttress the contentions put forth on the side of the respondent, the following decisions are relied upon:

(A) (1974) 1 SCC 34 (POORAN MAL VS. THE DIRECTOR OF INSPECTION (INVESTIGATION), NEW DELHI AND OTHERS, wherein, a larger Bench of the Hon'ble Supreme Court has observed as follows:

"25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income tax authorities against the person from whose custody it was

seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs."

(B) (2004) 5 SCC 729 (STATE REP.BY INSPECTOR GENERAL OF POLICE AND OTHERS VS. N.M.T.JOY IMMACULATE), wherein the Hon'ble Supreme Court has held that 'relevant evidence is not excluded by law on the supposed illegality of the police custody or illegality of the search and seizure."

11. The only point that has to be decided in the present Criminal Original Petition is that in the absence of seizure memo, the entire criminal proceeding initiated against the petitioner is liable to be quashed?

12. It is a humdrum that Sections 93 to 104 of Code of Criminal Procedure, 1973 are dealing with search and seizure. Section 461 of the said Code deals with irregularities, which vitiates the proceedings. For the sake of convenience, the Court has to narrate the entire Section 461 of Code of Criminal Procedure, 1973 and the same reads as follows:

461. Irregularities, which vitiate proceedings

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely.

(a) Attaches and sells property under section 83;

(b) Issues a search warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;

(c) Demands security to keep the peace;

(d) Demands security for good behaviour;

(e) Discharges a person lawfully bound to be of good behaviour;

(f) Cancels a bond to keep the peace;

(g) Makes an order for maintenance;

(h) Makes an order under section 133 as to a local nuisance;

(i) Prohibits, under section 143, the repetition or continuance of a public nuisance;

(j) Makes an order under Part C or Part D of Chapter X;

(k) Takes cognizance of an offence under clause(c) of sub-section (1) of section 190;

(l) Tries an offender;

(m) Tries an offender summarily;

(n) Passes a sentence, under section 325, on proceedings recorded by another Magistrate;

(o) Decides an appeal;

(p) Calls, under section 397, for proceedings; or

(q) Revises an order passed under section 446,

his proceedings shall be void.

13. From a close reading of Section 461 of Cr.P.C, it is easily discernible that mere failure on the part of the Investigating Agency in preparing seizure memo does not vitiate the proceedings.

14. In the instant case, it is an admitted fact that the Investigating Officer has not prepared any seizure memo with regard to tainted money. Only on that basis, present petition has been filed for quashing the entire proceeding of Special Calendar Case No.3 of 2014. It has already been pointed out that the irregularity put forth on the side of the petitioner does not come within the ambit of Section 461 of Code of Criminal Procedure, 1973. Failure to prepare seizure memo is nothing but a flimsy mistake on the part of the Investigating Officer.

15. For better appreciation/adjudication, it would be condign to look into the decision reported in (2002) 4 SCC 380

(Khet Singh vs. Union of India), wherein, the Hon'ble Supreme Court has held that 'when the seizure memo has not been prepared on the spot, but subsequently in the office of the Customs Department, the accused persons had been present throughout, there has been no allegation or suggestion that the contraband article has been in any way meddled with by the officer, the irregularity if any in the search would not vitiate the conviction.'

16. From a mere reading of the decision rendered by the Hon'ble Supreme Court, it is made clear that if there is any irregularity in preparing seizure memo, it would not belittle or vitiate the case of the prosecution.

17. In the instant case, as stated in many places, with regard to seizure of tainted money from the petitioner, seizure memo has not been prepared. It is nothing but a flimsy mistake on the part of the Investigating Officer, but at the same time, the Court has to look into the statements alleged to have been given by some District Managers, wherein it has been clearly mentioned that most of them have given bribe to the petitioner. Further, the petitioner has also been examined and he has not given proper explanation as to how he has been in possession of huge amount in his office. In short, he has not given proper explanation with regard to his possession.

18. It has already been pointed out that mere omission on the part of the Investigating Officer in preparing seizure memo would not vitiate the entire proceedings. Further, as per the decision referred to by the learned counsel appearing for the petitioner, seizure memo can be used as a corroborative evidence. Therefore, it is quite clear that it is not a substantive piece of evidence. Since seizure memo can be used as a corroborative evidence, mere omission on the part of the Investigating Officer in preparing the same would not militate the case of the prosecution.

19. In the instant case, for proceeding further against the petitioner, plethora of documents are available. Further, as stated supra, some of the material witnesses have given statements under section 164 of Code of Criminal Procedure, 1973 before the concerned Magistrate. Therefore, viewing from any angle, absence of seizure memo would not affect the case of the prosecution and mere absence of the same would not create suspicion with regard to alleged involvement of the petitioner. Under the said circumstances, the contentions put forth on the side of the petitioner are not having merits and altogether the present Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed.  
M.P.No.1 of 2014 is closed.

Sd/-  
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ajr

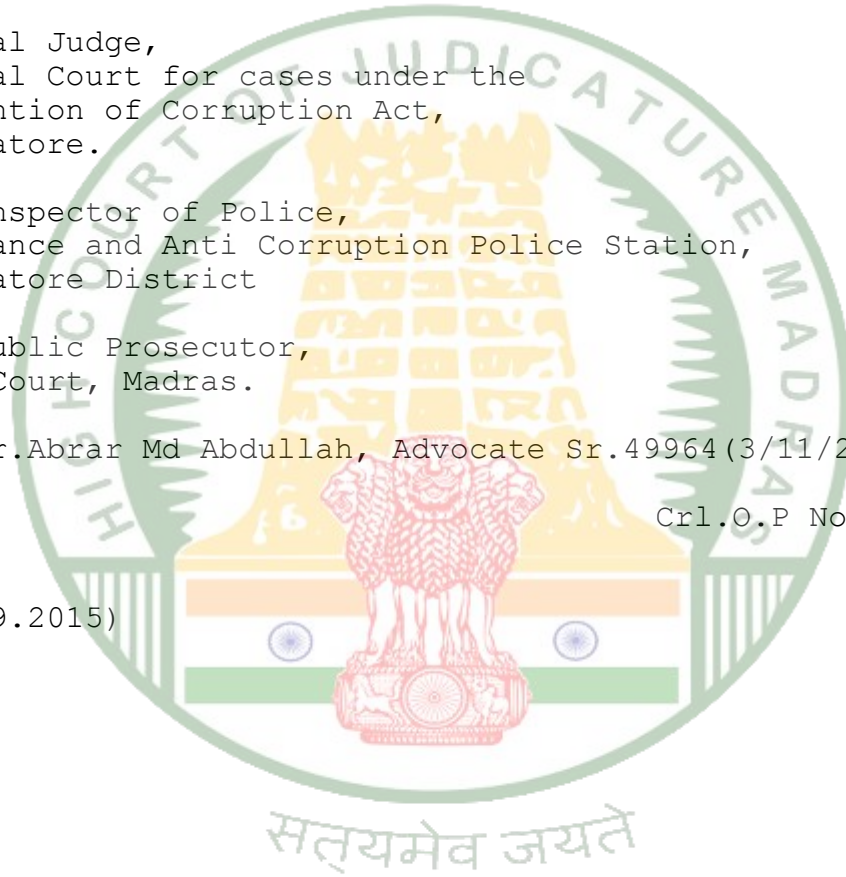
To

1. Special Judge,  
Special Court for cases under the  
Prevention of Corruption Act,  
Coimbatore.
2. The Inspector of Police,  
Vigilance and Anti Corruption Police Station,  
Coimbatore District
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.Abrar Md Abdullah, Advocate Sr.49964(3/11/2015)

Cr1.O.P No.10695 of 2014

PUR (CO)  
PSI (23.09.2015)



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