

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.30711 of 2014

Pattabiraman

... Petitioner/A1

Vs.

1.The State through
Additional Superintendent of Police
Vigilance and Anti Corruption
Vellore. (Crime No.7 of 2014) .. 1st respondent/complainant

2.Sivakumar ... 2nd respondent/Defacto complainant

Prayer:- Petition has been filed under Section 482 Cr.P.C. to call for entire records of the crime No.7 of 2014 on the file of the 1st respondent and to quash the same.

For Petitioner : Mr.V.Balasubramanian
For R1 : Mr.V.Arul Govt. Advocate (crl.side)
For R2 : No appearance

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O R D E R

The first accused has come forward with this petition to quash the F.I.R. in Crime No.7 of 2014 on the file of the first respondent.

2.At the time of admission, by consent of both the learned counsel for the petitioner as well as learned Government Advocate (Crl.side) for first respondent, this Court has passed the order on merits. Notice to the second respondent/defacto complainant is dispensed with.

3.Learned counsel for the petitioner submitted that the petitioner is a Revenue Divisional Officer and the defacto

complainant/second respondent herein is the sand smuggler and he has involved in so many cases and hence, his evidence cannot be looked into. It is further submitted that as per the F.I.R., the first and second demands made by the petitioner were on 13.10.2014 and 14.10.2014 and the complaint was lodged on 15.10.2014. So there was a delay in preferring the complaint. After recovering tainted money, phenolphthalein test was conducted, which was ended in positive. So it is the duty of the trap laying officer to record the statement of accused as per the Rule 47, Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu. In the case on hand, Rule 47 has not been followed and separate statement of the accused has not been recorded by the trap laying officer, which vitiates entire F.I.R. Therefore, he prayed for quashing the F.I.R. and to substantiate his arguments, he relied upon the following decisions:

(i) 2012 (1) T.N.L.R. 193 (Mad) Thulasiram v. State;

(ii) 2012 (1) MWN (Cr.) 448 (R.Venkatraj v. State, rep. by Inspector of Police, Vigilance and Anti-Corruption Wing, Virudhunagar District;

(iii) 2012 (3) MWN (Cr.) 380 (P.Palraj v. State, rep. by Inspector of Police, Vigilance and Anti-Corruption Wing Thoothukudi);

4. Resisting the same, learned Government Advocate (Crl.side) filed a detailed counter and submits that on the basis of the oral statement given by the second respondent, a case in Crime No.7 of 2014 has been registered and in this connection, a trap proceedings was conducted on 15.10.2014. After recovering tainted money from A1, phenolphthalein test was conducted on both the hands of A1 and the same has been proved positive and the tainted money of Rs.10,000/- was seized. The additional document filed by the petitioner is to prove that the second respondent/defacto complainant is sand smuggler, but that document came into existence only on 09.12.2014 that too after the occurrence had taken place. So no reliance can be placed on that document. It is further submitted that there was no delay in preferring the complaint, because in the trap proceedings, delay in preferring complaint is immaterial. As soon as the defacto complainant/second respondent approached the Vigilance and Anti-Corruption Wing, they followed the procedure and received the complaint and registered the case in Crime No.7 of 2014. So the delay in preferring the complaint is not a ground for quashing the F.I.R. He has drawn attention of this Court through page Nos.10 and 11 of the typed set of papers and submitted that they have questioned the accused about the unaccountable money, but he has not stated any plausible explanation, so whether the statement of accused has been recorded to be decided only after examining the trap laying officer at the time of trial and it is not a question of law, it is only a question of fact and that can be decided only at the time of trial and hence, he prayed for dismissal of the petition.

5.Considered the rival submissions made on both sides and perused the materials available on record.

Whether the first respondent is entitled to register the case on the basis of complaint given by the second respondent?

6.The second respondent is alleged to be owner of the tractor bearing registration no.TN32 AF 4721 and the trailer bearing registration No.TN23 AF 4819. In the complaint itself, it was stated that the second respondent was transporting the sand in the tractor by committing theft. He was arrested and remanded to judicial custody. Thereafter, the 2nd respondent has come out of bail and came to know that his vehicle was in the police station and on enquiry, he came to know that he ought to have received the release order from R.D.O. for releasing the vehicle. For the said purpose, he approached the R.D.O., who is the petitioner herein.

7.The case of the prosecution is that on 13.10.2014 and 14.10.2014, the petitioner/first accused made demand of Rs.10,000/- for passing favourable order to the 2nd respondent and hence the complaint was lodged by the second respondent.

8.Learned counsel for the petitioner/first accused submits that the second respondent/defacto complainant, who is the sand smuggler, is facing so many criminal cases and that factum was not considered by the Vigilance Department before registering the case. While perusing the letter from the Tahsildar, Katpadi, the sand theft was committed by the second respondent on 09.12.2014 (i.e.) after the first incident took place on 16.07.2014, so no reliance can be placed on the document, which was placed by the petitioner. Therefore, the argument advanced by the learned counsel for the petitioner that the 2nd respondent is the sand smuggler and his statement cannot be taken as gospel truth by the Vigilance Officer does not merit acceptance.

Delay in preferring complaint:

9.On perusal of F.I.R., it reveals that on 13.10.2014, the second respondent has approached the petitioner/A1, who is the R.D.O., on which date, he demanded Rs.35,000/- and one Vetri/A2, who is an Assistant demanded Rs.3,000/- and they directed the second respondent to bring the amount on 14.10.2014. Since the second respondent unable to mobilise the funds, he approached them again, at that time, A1 demanded Rs.10,000/- and A2 reduced the amount from Rs.3,000/- to Rs.2,000/-. Since the second respondent is not willing to pay bribe to get the release order, he had gone to Vigilance Department and lodged a complaint on 16.10.2014 and on that basis only, the proceedings conducted and a case has been registered. In such circumstances, there was no delay in registering the complaint. So the argument advanced by the learned counsel for the petitioner that the delay in preferring complaint is fatal to the case of the prosecution does not merit acceptance.

10. Now it is appropriate to consider Rule 47, Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu, which is extracted hereunder:

"47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under Section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded. "

11. At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the petitioner/first accused:

(i) In 2012 (1) T.N.L.R. 193 (Mad) Thulasiram v. State), in para-12 and 16, it was held that non recording statement of the accused by the investigating officer immediately after trap is fatal to the case of prosecution. Para-12 and 16 are extracted hereunder:

"12. The learned counsel for the appellant places strong reliance upon a recent decision of this Court rendered by M.Sathyanarayanan.J. in Crl.Appeal (MD) No.189 of 2005 [State rep.by Inspector of Police, Vigilance and Anti-Corruption, Dindigul v. P.Paraman on 25.04.2011 in which the Learned Judge has referred and followed a decision of the Supreme Court as regards observing the settled procedures contained in the manual which is earmarked for the Departmental officials in the matter of investigation in the trap cases. It is contended that as per Rule of 47 of the Directorate of Vigilance and Anti Corruption Manual, immediate version of the accused after trap assumes great importance and non-recording of the statement of the accused immediately after trap, under Rule 47 of the DVAC Manual is fatal to the case of the prosecution.

Rule 47 of the DVAC Manual reads as follows:

"47. Questioning of Accused Officer

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.. ..

16.The learned Judge of this Court has drawn the analogy from the above said decisions to the circumstances of this case before him and held that the officials of DVAC are bound to observe the procedures contained in the DVAC Manual. In the case on hand also, the investigating officer has not recorded the statement of the accused immediately after the trap and as per the above said decisions, it is fatal to the prosecution. "

(ii) The above decision has been followed by the decision of this Court in 2012 (1) MWN (Cr.) 448 (R.Venkatraj v. State, rep. by Inspector of Police, Vigilance and Anti-Corruption Wing, Virudhunagar District), wherein was also held that it is fatal to the case of prosecution. Para-12 and 13 are extracted hereunder:

"12.As far as the explanation given by the Appellant for the possession of tainted currency notes at the time of arrest is concerned, he has stated before PW9 that PW1 voluntarily gave the amount to him. It was accordingly mentioned by P.W.9 in the Mahazar-Ex.P.9. P.W.1 also stated this in his evidence. It is incumbent upon Trap Laying Officer to record the statement from the Accused at the time of arrest under Rule 47 of DVAC Manual which reads as follows:

"47. Questioning of Accused Officer

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.. .. "

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13.In the cross-examination he says that even though he has not recorded such statement from the Appellant, he has mentioned it in Ex.P.9-Mahazar. It shows deviation from the procedure to be adopted by PW9. "

(iii) In 2012 (3) MWN (Cr.) 380 (P.Palraj v. State, rep. by Inspector of Police, Vigilance and Anti-Corruption Wing Thoothukudi), in para-13, it was held as follows:

"13. It is the bounden duty of the Trap Laying Officer to examine the accused immediately after the arrest at the place of trap and failure in following the rule would vitiate the procedures. P.W.7, the Trap Laying Officer did not examine the appellant after the arrest as to his explanation for the possession of money. The tainted money was not recovered from the possession of the appellant, but from P.W.5. In this context, it is advantageous to extract the provision available under Rule 47 of DVAC Manual which reads as follows:

"47. Questioning of Accused Officer

.. ..

.. ..

The failure on the part of the Trap Laying Officer to record statement from the accused immediately after the arrest would vitiate the entire proceedings."

On going through the above decisions, it reveal that both sides witnesses were examined and the trap laying officer, during his cross-examination, fairly conceded that they have not recorded the statement of accused in consensus with the Rule 47. Thereafter, the learned Judge was held that non recording statement of the accused by the investigating officer immediately after trap is fatal to the case of prosecution. In the case on hand, it is only a quash petition and so far no oral evidence have been let in with regard to the statement of accused as per Rule 47. So the above decisions are not applicable to the facts of the present case.

12. Learned Government Advocate (crl.side) has enlighten this Court through page Nos.10 and 11 of the typed set of papers and in page No.11, the petitioner/first accused himself stated that since he is suffering from High blood pressure and also diabetics and sought for permission to take treatment, he was released on his own bond. In para-7 in page No.10, it was stated that "when the trap laying officer questioned the petitioner about the possession of the amount, he has not given any plausible explanation for that unaccountable money".

13.Considering the aforestated circumstances of the case, I am of the view, whether the trap laying officer has recorded the statement of accused and whether the accused has not given any statement and that to be decided only at the time of trial and it is a question of fact. But the question of fact cannot be decided while deciding quash application. In my considered opinion, it is not a fit case for quashing the F.I.R. Therefore, this petition deserves to be dismissed and it is hereby dismissed.

14.In the result, the Criminal Original Petition is dismissed.
The first respondent is directed to investigate the matter and file a
final report as expeditiously as possible.

-s/d-
Assistant Registrar(CS-III)
Dt:26/2/2015

True Copy

Sub-Assistant Registrar

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To

1.Additional Superintendent of Police
Vigilance and Anti Corruption,
Vellore.

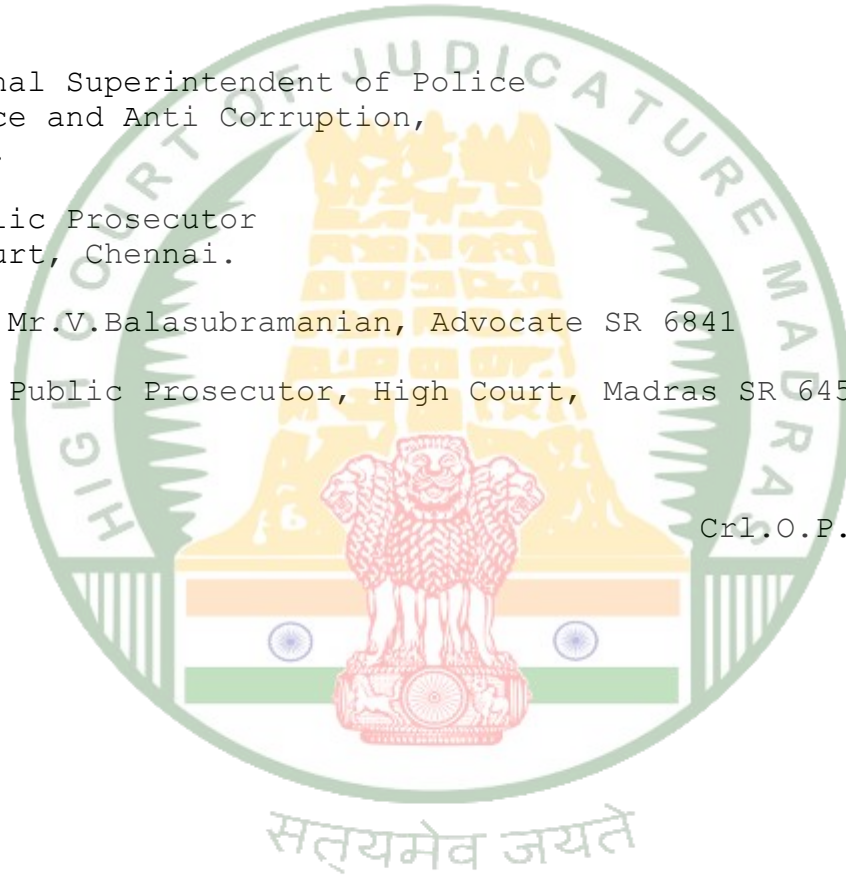
2.The Public Prosecutor
High Court, Chennai.

+ 1 cc to Mr.V.Balasubramanian, Advocate SR 6841

+ 1 cc to Public Prosecutor, High Court, Madras SR 6454

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