

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-06-2015

CORAM

THE HONOURABLE MR. JUSTICE P.DEVADASS

Criminal Original Petition No.31243 of 2014

S.Parthiban

.. Petitioner

vs.

State Represented by the
Inspector of Police,
Vigilance and Anti Corruption,
Special Investigation Cell,
Chennai.

... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records in S.C.No.5 of 2014 on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Thiruvallur and quash the entire.

For Petitioner : Mr.D.Rajagopal

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

O R D E R

Petitioner, who is A-2 in Special Case No.5 of 2014 on the file of the learned Special Judge/Chief Judicial Magistrate, Thiruvallur seeks quashment of the said criminal proceedings so far as he is concerned.

2. A-2 is a Sub Inspector of Survey in Madhavaram. A-1 is a private individual. The de facto complainant Durai (Witness No.2) lodged complaint with the Vigilance and Anti Corruption that in connection with the issuance of patta, Rs.3,000/- has been demanded as illegal gratification. A case was registered. Trap was conducted on 3.1.2013 in the Office of A-2. It proved positive. Phenolphthalein test was conducted, scientific evidence was collected. After completing the investigation, the Investigation Officer filed the Final Report as against A-1 for an offence under Section 8 of the Prevention of Corruption Act, 1988 and as against A-2/public servant for an offence under Section 10 of the said Act. A-1 is alleged to have acted as a conduit pipe for A-2. A-2 is alleged to have used A-1 to collect bribe money for him.

3. The learned counsel for the petitioner contended that in the complaint lodged by the said Durai, there is no specific averment that A-2 had demanded money nor A-1 demanded it for and on behalf of A-2. Complaint implicated Tahsildar and other Officials.

4. Learned counsel for the petitioner would also contend that when the trap was conducted A-2 had already left his Office to participate in a condolence. Absolutely there is no incriminating material to implicate A-2 in this case.

5. Prosecution filed counter.

6. Learned Additional Public Prosecutor would submit that A-1 almost acted like a broker for A-2. He is A-2's man. In connection with the patta when Witness No.2 called on the Office of A-2, he happened to contact the said broker/A-1, who was doing liaisoning for A-2. A-1 having been used for a murky affair by A-2 also has been spoken by his colleagues.

7. Learned Additional Public Prosecutor further submitted that in the statement recorded under Section 161 Cr.P.C., Witness No.6 (Jeyachandran), Witness No.10 (Rajagopal), Witness No.11 (Kalidoss), Witness No.12 (Ganesan) and Witness No.13 (Dhanakodi) have stated about his unholistic alliance between the A-1 and A-2.

8. I have anxiously considered the rival submissions and perused the Police (Final) Report and the materials on record.

9. A-2 seeks quashment of the criminal proceedings against him. The Court has to see whether the materials collected disclose any cognizable offence as against the accused. However, while doing so, Court cannot shift the evidence nor discuss any defence material, it has to consider the materials presented by the Investigation Officer along with the Final Report and find out whether there is any prima facie case against the accused. Thus, it cannot act like a Trial Court. It cannot pre-empt the job of the Trial Court.

10. In this case, A-2 was elsewhere when the trap was operated. The trap was conducted in the Office of A-2. A-1 is a private individual with whom Witness No.2 Durai first came into contact. In his statement, it is stated that A-1 stated to him that it is necessary to grease the palms of the public servant for the issuance of patta.

11. Witness Nos.6, 10, 11, 12 and 13 are colleagues of A-2. They have stated about A-1 having been used by A-2 and the liaison between both in connection with the discharge of the official duty of A-2. The materials, prima facie, disclose the offence alleged as against A-2.

12. In the circumstances, the quashment sought for cannot be acceded to. It is made clear that uninfluenced by the discussions in this order, the Trial Court shall proceed to dispose of this case in accordance with law at an early date. The petitioner is at liberty to raise the points raised in this petition before the Trial Court at the appropriate stage.

13. Accordingly, this criminal original petition is disposed of with the said liberty.

Svn

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Chief Judicial Magistrate cum Special Judge, Tiruvellore.

2. The Public Prosecutor, High Court, Madras 104.

+ 1 cc to Mr.D.Rajagopal, Advocate SR 29670

+ 1 cc to Govt.Pleader SR 29903

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