

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

rl.O.P.No.31890 of 2014

M.Anil Kumar

... Petitioner/Accused No.4

Vs.

1.State rep. By
Station House Officer
Vigilance and Anti-Corruption Unit
Puducherry. ... 1st respondent/complainant

2.The Chief Executive Officer
Puducherry Slum Clearance Board
Puducherry. ... 2nd Respondent/Defacto complainant

Prayer:- Petition filed under Section 482 Cr.P.C. to call for records relating to Crime No.2 of 2008 dated 29.02.2008 for alleged offences under Sections 408, 464, 420, 468 read with 34 IPC and 13(d)(ii) of Prevention of Corruption Act, 1988 on the file of the first respondent and to quash the same.

For Petitioner : Mr.M.Palani
For R1 : Mr.M.Thangavel
Addl. Public Prosecutor (Puducherry)

O R D E R

This petition is filed to quash the F.I.R. in Crime No.2 of 2008 dated 29.02.2008 for alleged offences under Sections 408, 464, 420, 468 read with 34 IPC and 13(d)(ii) of Prevention of Corruption Act, 1988 on the file of the first respondent.

2.The case of the prosecution is that A1 is the Senior Accounts Officer, posted as Accounts-cum-Administrative Officer in Puducherry Slum Clearance Board. A4/petitioner herein is the Junior Engineer and A5 is the Sub-Inspector of Survey in the same Board. The Puducherry Perunthalaivar Kamaraj Centenary Housing Scheme for the house less poor was introduced in the year 2003 to provide financial assistance to the beneficiaries who satisfy all the terms and conditions as specified in the guidelines. The son and daughter of A1 had availed financial assistance for construction of the house as if they are house less poor. Therefore, A1 had abused his official position to

avail the facility of financial assistance under the said Housing scheme in the name of his son/A2 and A3/daughter and recommended them. The duty of the petitioner/A4 is spot inspection and photographing of site and recording of inspection report in application, but he has not followed the procedure. On that basis, loan has been sanctioned to A2 and A3. Even though loan has been repaid by them, the case has been registered in Crime No.2 of 2008 on the file of the first respondent.

3.Learned counsel for the petitioner submitted that the petitioner has nothing to do with the alleged commission of offence and he is only Junior Engineer, Puducherry Slum Clearance Board for implementation of Perunthalaivar Kamarajar Centenary Housing Scheme. It is further submitted that only disciplinary proceedings alone has to be initiated and no criminal action can be taken, since A1 has paid entire amount. To substantiate his arguments, he relied upon the decision of this Court in Crl.R.C.Nos.1005 and 1002 of 2007 dated 02.09.2009.

4.Resisting the same, learned Additional Public Prosecutor (Puducherry) filed a counter submitting that A2 and A3 are not house less poor, but the petitioner herein as the Junior Engineer made spot inspection and gave false report, on the basis of the same, subsidy has been sanctioned to A2 and A3. Even though A1 had paid entire amount, A1 and A4 abusing their official position, thereby committed the offence under Section 13(2) read with 13(1)(d) of the P.C.Act. Hence, mere repayment of the amount shall not be exonerated the criminal liability. Investigation has already been completed and now they obtained sanction for A1 and the case file was placed before the competent authority for obtaining sanction for A4. He further submits that the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case, because both the Courts below have convicted the accused, against which, the accused preferred revisions and the revisions were allowed by setting aside the judgment of conviction and sentence passed by the Courts below stating that disciplinary proceedings has to be initiated for irregularity committed by the concerned officers, who were posted as special officers for additional duty. Therefore, he prayed for dismissal of the petition.

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

6.The case of the prosecution is that A1, who is the Senior Accounts Officer, posted as Accounts-cum-Administrative Officer in Puducherry Slum Clearance Board, is the father of A2 and A3. A4 is the Junior Engineer and A5 is the Sub-Inspector of Survey in the Board. The Puducherry Perunthalaivar Kamaraj Centenary Housing Scheme for the house less poor was introduced in the year 2003 to provide financial assistance to the beneficiaries who satisfy all the terms

and conditions as specified in the guidelines. An amount of Rs.40,000/- was extended to the beneficiaries meant for construction of houses. Due to increase in cost of building materials and to provide sanitation facilities the financial assistance was enhanced to Rs.50,000/- in phase-III of the housing scheme. A2 and A3 had applied for the housing scheme as if they are house less poor and subsidy has been sanctioned to them.

7.The duty of the petitioner/A4 is mentioned in page No.9 of the typed set of papers, which is as follows:

"Junior Engineer : For spot inspection, photographing of site and recording of inspection report in application."

Sub-Inspector of Survey: For scrutiny of document submitted by beneficiary namely land, document, income certificate, ration card copy, I.D.card copy etc. may also make spot verification.

Chairman is the final authority for approval. "

As already stated that A1 is the Senior Accounts Officer-cum-Administrative Officer and A2 and A3 are his son and daughter. A4/petitioner herein having fully known that A1 is the Senior Accounts Officer and A2 and A3 are his son and daughter had make false report and on the basis of that report only, subsidy has been sanctioned to A2 and A3. It is true, the loan amount was repaid by them.

8.It is seen that the case has not only been registered with I.P.C. Offences and also with P.C.Act stating that A4 abusing his official capacity colluded with A1, had given false report facilitating A2 and A3 to avail loan and enjoying the subsidy.

9.As per the decision of this Court in CrI.R.C.Nos.1005 and 1002 of 2007 dated 02.09.2009, the accused therein is the special officer, who was posted as an additional in-charge, at that time, it was alleged that he had committed irregularity. Even though both the Courts have confirmed the conviction of the accused, this Court came to the conclusion that there were 5 special officers and none of the Special Officers had any connection with regard to the misappropriation committed by the accused. In such circumstances, the above decision is not applicable to the facts of the present case.

10.On perusing the counter filed by the first respondent, it reveals that what is the overt act made by the petitioner. Further, investigation has already been over and sanction has been obtained for prosecuting A1 and now the case file is pending for want of sanction for A4 and the charge sheet is yet to be filed. Now the papers relating to the petitioner/A4 have been placed before the

appointing authority for obtaining sanction for prosecuting him. In such circumstances, I do not find any reasons to quash the F.I.R. Hence, this Criminal Original Petition deserves to be dismissed and it is hereby dismissed. The trial Court shall pass an appropriate order on merits without influenced by any of the findings made by this Court.

-s/d-

Deputy Registrar(J)

Dt:11/3/2015

True Copy

Sub-Assistant Registrar

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To

1.The Station House Officer
Vigilance and Anti-Corruption Unit
Puducherry.

2.The Chief Executive Officer
Puducherry Slum Clearance Board
Puducherry.

3.The Public Prosecutor
Puducherry.

+ 1 cc to Mr.M.Palani, Advocate SR 10747

bvr(co)
prk13/3

Cr1.O.P.No.31890 of 2014

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