

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.No.279 of 2015 and M.P.No.1 of 2015
and Crl.O.P.No.3694 of 2015

S.Sridharane Petitioner/Accused 1
in Crl.R.C.279/2015
S.PackiryPetitioner/ Accused 2
in Crl.O.P.No.3694/2015

vs.

1. State rep. by
Inspector of Police,
Vigilance and Anti corruption
Police Unit, Puducherry1st respondent in
both Crl.RC. & Crl.O.P.

2.Packiry 2nd Respondent in
Crl.R.C.No.279/2015

3.M.Kander Selvan 2nd respondent in
Crl.O.P.No.3694/2015

Criminal R.C.No.279/2015 filed under Section 397 and 401 of Criminal Procedure Code against the order dated 10.07.2014 made in Crl.M.P.No.1145 of 2013 in Special C.C.No.1 of 2012, on the file of Special Judge, Puducherry.

Crl.O.P.No.3694 of 2015 filed under Section 482 of Cr.P.C., to call for the records and quash the charge sheet in C.C.No.1/2012 passed by the Special Judge, Puducherry.

For Petitioner
in Crl.R.C.No.279/2015 : Mr.B.Kumar, Senior Counsel
for Mr.D.Ravichander

For Petitioner
in Crl.O.P.No.3694/2015 : Mr.P.Kumaresan
for M/s.L.Poompavai

For 1st Respondent : Mr.M.R.Thangavel,
Addl.Public Prosecutor (Puducherry)

COMMON ORDER

This Criminal Revision Case has been directed against the order dated 10th day of July, 2014 passed in Crl.M.P.No.1145 of 2013 in Special Calendar Case No.1/2012 by the Special Judge at Puducherry. Likewise, Criminal Original Petition No.3694 of 2015 has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to quash the proceedings of Special Calendar Case No.1/2012.

2. The averments made in Crl.M.P.No.1145 of 2013 are that the revision petitioner has been arrayed as 1st accused in the Special Calendar Case No.1/2012; the petitioner and another are facing charges under Section 468, 471, 477-A read with 34 IPC and Section 13 (1)(a) r/w.13(2) of Prevention of Corruption Act, 1988; the case of the prosecution is that on 05.04.2006, the petitioner has served as Senior Town Planner and also Member Secretary in Puducherry Planning Authority; with an intention to cause damage to Puducherry Planning Authority, the petitioner forged certain receipts for the purpose of cheating M/s.Bharat Cellular Ltd; the petitioner has handed over the fabricated documents to the said M/s. Bharat Cellular Ltd; the petitioner is an innocent person and in fact in C.F.S.L., report, the alleged act of the petitioner has not been proved; the first respondent has proceeded some further statements; since the petitioner has had no connection whatsoever with the alleged offences, the present petition has been filed for getting the relief sought for therein.

3. In the counter objection filed on the side of the 1st respondent, it is averred that the petitioner and another have fabricated certain receipts and the same have been issued to M/s. Bharat Cellular Ltd. In the statement of the complainer, it has been clearly stated that the petitioner has forged certain documents and there is no merit in the petition and the same deserves to be dismissed.

4. On the basis of the rival contentions put forth on either side, the trial court has dismissed the petition by way of holding that materials are available so as to proceed further against the petitioner. Against the dismissal order, the present Criminal Revision Case has been preferred by the petitioner as Revision Petitioner.

5. The material averments made in Crl.O.P.No.3694 of 2015 are that the petitioner has been arrayed as second accused in Special Calendar Case No.1/2012; the first respondent has registered a case against the petitioner and another by way of stating that they have committed the offence punishable under section 468, 471, 477-A read with 34 IPC and Section 13(1)(a) r/w.13(2) of Prevention of Corruption Act, 1988. The further averments made in Crl.O.P.No.3694 of 2015 are that the main allegation made on the side of the prosecution is that M/s.Bharath Cellular Limited has applied for getting approval from PPA, Puducherry for erecting Mobile Towers in and around Puducherry; the defacto complainant has approached the first accused and he misused his official capacity and thereby, fabricated 8 cash receipts and 5 No Objection Certificates and also attempted to take illegal gratification; the petitioner has served as a Peon during the relevant period; the name of the petitioner is not found in the First Information Report; no witness has deposed against the petitioner; the Special Judge ought not to have taken cognizance against the petitioner; under the said circumstances, the petitioner has filed a discharge petition in Crl.M.P.No.927/2014 and the same has been dismissed and therefore, the present petition has been filed for getting the relief sought for therein.

6. The learned counsel appearing for the revision petitioner has contended that during the relevant period, the revision petitioner has served as Member Secretary, Puducherry Planning Authority. The specific case of the prosecution is that he and another have forged the documents in question for the purpose of getting illegal gratification and in fact, the alleged signatures are subjected to chemical examination and ultimately found that those signatures are not the signatures of the revision petitioner. Under the said circumstances, Crl.M.P.No.1145 of 2013 has been filed on the file of the trial court for getting discharged. But the trial court, without considering the nature of the offences alleged to have been committed by the revision petitioner and also without considering the fact that no sufficient evidence is available so as to proceed further against the revision petitioner has erroneously dismissed the petition and further it is the duty of the complainant to place all records before the Sanctioning Authority for getting sanction and in the instant case, such things have not been done and therefore, the order passed by the trial court is liable to be set aside.

7. The learned counsel appearing for the revision petitioner has drawn the attention of this Court to the decision reported in (2015) 1 Supreme Court Cases (Crl) 344 equivalent to (2014) 14 Supreme Court

Cases 295 [Central Bureau of Investigation Vs. Ashok Kumar Aggarwal], wherein, it is held that mere error, omission or irregularity in sanction is not fatal unless it has resulted in failure of justice or has been occasioned thereby.

8. Further in Paragraph 16, it is observed that in every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

9. Further in Paragraph 21, it is observed as hereunder:-

"In view thereof, CBI, the appellant herein, immediately issued circular dated 6-5-1999 to give effect to the observations made in the said judgment in M.M.Rajendran and directed that all the investigating officers to give strict adherence to the said observations made by this Court. The CBI Manual was amended accordingly, adding Para 22.16, wherein it was directed that in view of the said judgment in M.M.Rajendran, it was imperative that along with the SP's report, the branches must send the copies of all the relied upon relevant material "including the statements of witnesses recorded by the investigating officers under Section 161 Cr.PC., as well as statements under Section 164 Cr.P.C., recorded by the Magistrate to the authority competent to grant sanction for prosecution." Further, the investigating officer concerned shall be deputed to the competent authority to produce the relevant material for perusal of the competent authority and this fact be recorded in the case diary of the case concerned."

10. From a close reading of the decision rendered by the Honourable Supreme Court, it is made clear that mere error, omission or irregularity in granting sanction to prosecute is not fatal to the case of the prosecution. But, however, the prosecuting agency has to place all materials before the sanctioning authority for the purpose of scrutinizing the same.

11. The learned counsel appearing for the petitioner in Cr1.O.P.No.3694 of 2015 has also equally contended that during the relevant period, the petitioner has served as Peon and he has no connection whatsoever with the alleged offence and he has been falsely implicated in the Special Calendar Case No.1/2012 and since the petitioner has had no connection whatsoever with the alleged offence, the present petition has been filed for getting the relief sought for therein.

12. In order to remonstrate the contentions put forth on the side of the revision petitioner as well as petitioner, the learned Special Public Prosecutor, appearing for the first respondent has contended that during the relevant period, the revision petitioner has served as Member Secretary, Puducherry Planning Authority and the petitioner in CrI.O.P.No.3694 of 2015 has served as Peon. With a view to get illegal gratification from M/s.Bharath Cellular Limited, they concocted signatures and thereby attempted to give bogus receipts. Under the said circumstances on the basis of the complaint given by the defacto complainant, a case has been registered in Crime No.4 of 20906 under Sections 468, 471, 477-A read with 34 IPC and Section 13 (1)(a) r/w.13(2) of Prevention of Corruption Act, 1988 and the documents in question have been subjected to chemical examination, wherein, it is found that the signatures found therein are not the signatures of the first accused (Revision Petitioner), but the chemical examination shows that those signatures are the signatures of the second accused (Petitioner in CrI.O.P.No.3694/2015) and further Sanctioning Authority, after scrutinizing all the documents has rightly granted sanction and the trial court, after considering the fact that sufficient materials are available to proceed against the revision petitioner as well as petitioner has rightly dismissed the petitions filed under Section 239 of the Code of Criminal Procedure, 1973, and therefore, the present Criminal Revision Case as well as Criminal Original Petition are liable to be dismissed.

13. As pointed out earlier, during the relevant period, the Revision Petitioner has served as Member Secretary of Puducherry Planning Authority and the petitioner in Criminal Original Petition has served as Peon.

14. The specific case of the prosecution is that both of them have fabricated 8 xerox copies of cash receipts and 5 xerox copies of No objection certificates and torn the originals and handed over the same to M/s.Bharath Cellular Limited for getting illegal gratification, so as to grant approval.

15. The entire contention put forth on the side of the Revision Petitioner is that in the report obtained from CFSL, Hyderabad, it is stated that the handwriting of the Revision Petitioner does not tally with the disputed signature.

16. The specific contention put forth on the side of the first respondent is that those signatures are tallied with the signatures of the petitioner in Criminal Original Petition No.3694 of 2015.

17. As stated in many places, during the relevant period, the Revision Petitioner has served as Member Secretary of Puducherry Planning Authority and the Petitioner in Criminal Original Petition No.3694 of 2015 has served as Peon under the Supervisory Control of the Revision Petitioner. Simply because in the report of CFSL, it has been stated that the handwriting of the Revision Petitioner has

not tallied with the disputed signature, the court cannot come to a conclusion that the Revision Petitioner has no connection whatsoever with the forged documents.

18. It has already been pointed out that the petitioner in CrI.O.P.No.3694 of 2015 has served under the Supervisory control of the Revision Petitioner.

19. The specific allegation made on the side of the first respondent is that the Revision Petitioner and the Petitioner have committed offence punishable under Sections 468, 471, 477-A read with 34 IPC and Section 13(1)(a) r/w.13(2) of Prevention of Corruption Act, 1988.

20. Since Section 34 of the Indian Penal Code has been included along with other sections of law, the alleged common intention of both the Revision Petitioner as well as the Petitioner in Criminal Original Petition can be proved only at the time of trial and at this stage, the court can have only inference.

21. The court below in the discharge petition filed by the Revision Petitioner, has clearly held that sufficient materials are available so as to proceed further against the Revision Petitioner. Further it is seen from the records that the petitioner in Criminal Original Petition No.3694 of 2015 has already filed a discharge petition and the same has also been dismissed.

22. In fact, this Court has perused the sanction order, wherein, it has been clearly mentioned that all materials are placed before Sanctioning Authority and the Sanctioning Authority, after having satisfaction has accorded permission. Therefore, viewing from any angle, the contentions put forth on the side of the Revision Petitioner as well as Petitioner in Criminal Original Petition cannot be accepted.

23. Even at the risk of repetition, the Court would like to point out that Revision Petitioner, during the relevant period has served as Member Secretary of Puducherry Planning Authority and the petitioner in CrI.O.P.No.3694 of 2015 has served as Peon. The specific case of the first respondent is that both of them, in furtherance of common intention have fabricated the receipts in question for getting illegal gratification from M/s.Bharath Cellular Limited.

24. Considering the fact that the disputed documents are emanated from the Office of both the Revision Petitioner as well as the Petitioner, the Court cannot accept the contentions raised either on the side of the Revision Petitioner or on the side of the Petitioner in Criminal Original Petition No.3694 of 2015. Therefore, both the Revision Petition and Criminal Original Petition are liable to be

dismissed.

25. In fine, both the Criminal Revision Petition and Criminal Original Petition are dismissed. Consequently, connected MP is closed.

-s/d-

Assistant Registrar(CSIII)
dt:29/9/2015

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Vigilance and Anti-corruption Police Unit, Puducherry
2. The Special Judge, Puducherry.
3. The Public Prosecutor Puducherry

+1 cc to Senior Government Pleader-cum-Senior
Public Prosecutor for puducherry sr.49518/15

+1 cc to MS.L.Poompavai Advocate sr.49637/15

Cr1.R.C.No.279 of 2015
and M.P.No.1 of 2015
and Cr1.O.P.No.3694 of 2015

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