IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.22428 of 2011
and M.P.No.1 of 2011

A.Chinnasamy ...Petitioner

vs.

1. State: represented by
   Deputy Superintendent of Police,
   Dept. of Vigilance and Anti Corruption
   Crime No.12/AC/2010.
   Salem District.

2. A.Vellaiyan
   (Impleaded as the 2nd respondent as per the order dated 05.04.2013 in M.P.No.1 of 2013 in Crl.O.P.No.22428 of 2011) ...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash the case in Crime No.12/AC/2010 on the file of the first respondent.

For Petitioner : Mr.R.John Sathyan

For Respondents : Mr.S.Gomathinayagam
Additional Advocate General
assisted by
Mr.A.Thambidurai,
Additional Public Prosecutor for R1

No Appearance for R2

O R D E R

The petitioner is the first accused in Crime No.12/AC/2010 on the file of the respondent. On the complaint of A.Vellaiyan, the second respondent herein, the case has been registered in Crime No.12/AC/2010 against the petitioner under Sections 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988.

2. The contents of the F.I.R. are as follows:

2.1. The defacto complainant is running the business of brick-kiln and selling bricks to various persons. The B.D.O. Vazhapadi, who came to his village, asked the defacto complainant whether he could deliver 5.5 lakhs of bricks at a lesser rate and as the defacto complainant was not able to supply such huge quantity, he introduced other brick-kiln owners to the B.D.O and after consulting with those persons the said B.D.O demanded one brick at the cost of Rs.4/-. The brick-kiln owners expressed their difficulty in supplying the bricks at the cost of Rs.4/- and the B.D.O told them that he would arrange for the supply of sand and the brick-kiln owners should deliver bricks at the cost of Rs.4/- and all of them agreed. The said B.D.O also sent a letter to the Tahsildar regarding the digging of sand from patta lands and also gave a copy to the defacto complainant and other brick-kiln owners and on the basis of the report given by the B.D.O, the brick-kiln owners started manufacturing bricks. At that time, the brick-kiln owners received a phone call from the office of the Tahsildar, Vazhapadi, asking to come and meet him personally stating that they should not take sand from the patta lands.

2.2. The defacto complainant and his uncle went to the Tahsildar Office, Vazhapadi on 22.12.2010 and met the Tahsildar at 3.00 p.m in his office. The said Tahsildar, who is the petitioner herein, having got all particulars from the defacto complainant informed them that unless the defacto complainant pay money to him separately, he would not allow them to run brick-kilns and also demanded that the defacto complainant should collect Rs.10,000/- for every brick-kiln. He also informed the defacto complainant that the amount must be given to him within a period of 10 days and as advance, he must pay Rs.20,000/-. The defacto complainant along with his uncle went to the Tahsildar's house and informed him that it would not be possible for them to pay the amount as demanded by the Tahsildar and the Tahsildar told them that he would not allow them to dig sand from the patta lands if they did not pay Rs.10,000/- per brick-kiln. He also informed them to pay Rs.10,000/- as advance and the balance in instalments. As the defacto complainant was not willing to pay bribe, he gave a complaint, which was registered by the respondent police in Crime No.12/AC/2010 on 29.12.2010 for the offence under Section 7 of the Prevention of Corruption Act, 1988.

3. Thereafter, on 30.12.2010, trap was arranged and after giving necessary instructions to the defacto complainant/Vellaiyan, he was asked to go and meet the petitioner at his office at 2.30 p.m and the defacto complainant went to the office of the Tahsildar at 11.15 a.m and enquired about the Tahsildar/petitioner herein and he was informed that the Tahsildar had gone for a meeting and he would return by 2.00 p.m and at about 2.30 p.m, the petitioner came and the defacto complainant along with one witness went to his office and requested him to grant permission for taking sand from the patta lands and the petitioner demanded money for granting permission and the petitioner directed the defacto complainant to pay the amount to

his driver, who is arrayed as the second accused and the defacto complainant handed over Rs.10,000/-, which was coated with phenolphthalein powder to the driver of the Tahsildar/petitioner and he received the money and thereafter, the petitioner informed the defacto complainant to inform him over phone on the next day and take sand from the patta lands.

4. The driver of the Tahsildar, after receiving the money, left the office and went to AXIS Bank. Thereafter signal was given by the witness and along with the police party, the defacto complainant and the witness went into the office of the petitioner and the petitioner was identified by the defacto complainant and at the time, the second accused/driver entered into the office room and he was also identified by the defacto complainant and informed the police that as per the instructions of the petitioner, the amount was received by the driver and the defacto complainant was asked to stand outside and the Deputy Superintendent of Police, Vigilance and Anti-Corruption conducted phenolphthalein test on the petitioner/Tahsildar and the second accused/driver and in respect of the second accused, the phenolphthalein test answered positive and the solution turned pink. After completing the formalities, a Mahazar was prepared on 30.12.2012. This F.I.R is sought to be quashed by the petitioner.

5. Mr.John Sathyan, learned counsel for the petitioner submitted that as per the judgment of the Hon'ble Supreme Court in State of Harayana and Others v. Bhajal Lal and Others [1992 Supp (1) SCC 335], while exercising inherent jurisdiction under Section 482 CrPC, the Court can look into the materials submitted by the accused to prove that criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. He further submitted that as per the judgment in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568] while exercising jurisdiction under Section 482 CrPC, the Court can take into consideration the unimpeachable evidence submitted by the accused while considering the application for quashing the charge or F.I.R. He therefore submitted that having regard to the unimpeachable evidence of sterling quality of document obtained by the petitioner by invoking the provisions of Right to Information Act, the petitioner is able to prove that prosecution is initiated at the instance of opposite party with an intention to implicate the petitioner in a bribe case and therefore, those materials are to be taken into consideration for quashing the proceedings. The learned counsel for the petitioner, in support of his submissions, filed 5 volumes of spiral bindings and typed set of papers.

6. The submission of the learned counsel for the petitioner is as follows.

6.1. The petitioner took charge as Tahsidar, Vazhapadi on 07.06.2010 and thereafter he was taking stringent action against persons who are indulging in illegally quarrying of sand and imposed fine on various offenders and the owners of brick-kilns, who were affected by the action taken by him, have conspired and arranged a trap as if the petitioner demanded bribe and at the instance of the petitioner bribe amount was demanded and handed over to the second accused.

6.2. The second accused was asked to work as driver of the petitioner at the instance of M/s.SDM Project Private Limited and VNC Private Limited, who were indulging in illegal quarrying and that was evident from the documents produced by him to the effect that immediately after his dismissal from service, he joined duty in M/s.SDM Project Private Limited and VNC Private Limited. Further the second accused was appointed only for the purpose of creating evidence against the petitioner and that was also evident from the proceeding initiated by employment exchange as found in the typed set of papers. Therefore at the instance of M/s.SDM Project Private Limited and VNC Private Limited and with an intention to create evidence against the petitioner, the second accused was asked to work as driver under the petitioner and he also acted according to the instructions of M/s.SDM Project Private Limited and VNC Private Limited as if he received money at the instance of the petitioner.

6.3. On 22.06.2010, the petitioner granted permission to M/s.SDM Project Private Limited and VNC Private Limited for quarrying in the north east portion of S.No.51/1A, however the said M/s.SDM Project Private Limited and VNC Private Limited were quarrying in other areas and therefore, the petitioner sent a letter to the District Collector, Salem dated 07.07.2010 to cancel the permission already granted to M/s.SDM Project Private Limited and VNC Private Limited and on his report, the District Collector initiated proceedings dated 06.08.2010, imposing various conditions. Even thereafter the said M/s.SDM Project Private Limited and VNC Private Limited were carrying quarrying operations beyond the area and therefore, he recommended fine of Rs.5,92,81,600/- to them vide his proceedings dated 23.06.2010 to the District Collector Salem. Therefore, having regard to the action taken by the petitioner against the said M/s.SDM Project Private Limited and VNC Private Limited, the said companies had developed grudge against him and employed their own person with the connivance of Government officials in the office of the petitioner and created records as if the petitioner demanded money. By proceedings dated 18.10.2010, the petitioner also initiated proceedings against the defacto complainant and others and addressed the same to the Revenue Divisional Officer, Salem making complaint against the defacto complainant and others for having contravened the provisions of Mines and Minerals (Development and Regulation) Act 1957 and Tamil Nadu Minor Mineral Concession Rules and recommended imposition of fine on those persons.

6.4. By proceedings dated 21.10.2010, the Revenue Divisional Officer, Salem imposed fine on Nalla Thambi and that was also at the instance and recommendation of the petitioner. In the proceedings dated 25.10.2010, the petitioner has stated in clear terms that he had consultations with brick-kiln owners and they voluntarily offered to supply 5,25,000 bricks at the case of Rs.3.50/- per brick and 6,41,500 bricks were also seized from them. Therefore, having regard to the action taken by the petitioner against the brick-kiln owners and the defacto complainant, the case was foisted against the petitioner.

6.5. The second accused was an employee in the office of M/s.SDM Project Private Limited and VNC Private Limited and it is evident from the letter dated 05.07.2011 sent by M/s.SDM Project Private Limited and VNC Private Limited. He also brought to my notice the letter sent by Mr.Adi Shankar, M.P. dated Nil wherein he complained about the petitioner and an enquiry was conducted and the District Collector (In-charge), District Revenue Officer Salem sent proceedings dated 19.07.2010 to the Secretary to Government, Revenue Department stating the facts and the petitioner also sent a communication dated 24.09.2010 to the District Collector stating that the Salem Deputy Superintendent of Police, Vigilance and Anti-Corruption threatened him that he would foist a false cast against him and send him to jail if he did not cooperate with the ruling party and also threatened him that he would be sent to jail before the end of December 2010 and the said Deputy Superintendent of Police registered the case against the petitioner and proceeded with the investigation.

7. The learned counsel for the petitioner therefore submitted that having regard to all the proceedings filed by the petitioner in the typed set of papers, the petitioner has proved that prosecution is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge and therefore, the case is liable to be quashed as against the petitioner.

8. Heard learned Additional Advocate General Mr.Gomathinayagam and he submitted that the particulars furnished by the petitioner cannot be looked into at this stage and during investigation, if the petitioner produces the materials, that would be considered. He also submitted that allegations made in the complaint make out a clear case of demand and receipt of bribe and hence the FIR cannot be quashed at this stage. He further submitted that investigation is almost over and within a short period final report will be filed.

9. I am unable to accept the contention of the learned counsel for the petitioner. No doubt, in the judgment in State of Haryana and Others v. Bhajan Lal and Others [1992 Supp (1) SCC 335], the

Hon'ble Supreme Court laid down certain guidelines while exercising inherent jurisdiction under Section 482 CrPC and one of the ingredients is where criminal proceeding is manifestly instituted with an ulterior motive or for wreaking vengeance against the accused and with a view to spite him due to private and personal grudge, the case can be quashed. In that case, the Hon'ble Supreme Court was concerned with quashing of the F.I.R and in that context, the above guidelines were given by the Hon'ble Supreme Court.

10. In the judgment in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568], it was held that in rare and exceptional cases, the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 CrPC.

11. The materials supplied by the petitioner only substantiated that conspiracy has been hatched against the petitioner by various persons including villagers and others Government Officials and pursuant to that conspiracy, trap was laid and the petitioner was implicated in the foisted case. According to me, the materials now furnished by the petitioner cannot be considered at this stage to quash the charge, as the materials did not lead to the conclusion that the offence could not have been committed by the petitioner and at the most, it may create a suspicion that the petitioner would not have indulged in demanding bribe and it may also suggest that the petitioner is an honest Government servant. No material has been furnished by the petitioner to disprove the allegations made in the F.I.R and the petitioner has only provided materials to the effect that having regard to the stand taken by him earlier and having regard to the fact that he has developed wrath against such persons, the case has been foisted against him.

12. According to me, it may be a good defence for the petitioner to project all the materials during trial and at this stage, on the basis of those materials, F.I.R cannot be quashed. It is settled law that for quashing F.I.R, the Court has to consider the allegations mentioned in the F.I.R and the Court cannot take into consideration the extraneous materials which only suggest a motive for foisting a case against the petitioner and such materials cannot be considered while quashing F.I.R. unless such materials lead to the inference that the prosecution case is a false one. In other words, the demand of bribe was spoken to by the defacto complainant and one Nalla Thambi and trap was laid in the presence of witness and one witness accompanied the defacto complainant and requested the Tahsildar to show him some concession and according to the evidence of trap witness, the petitioner demanded money and at the instance of the petitioner, money was handed over to the driver. Whether such allegations are false or not cannot be considered at this stage and I cannot come to the conclusion that having regard to previous enmity, the case has been foisted against the petitioner. Further the case is under investigation and charge sheet has not been filed and in a

criminal case, it is always open to the accused to produce materials in his favour before the Investigating Officer for consideration and in such event, the Investigating Officer shall file final report after considering the materials. Further in this case, while filing the Criminal Original Petition, the petitioner filed one typed set in respect of orders passed by him or petitions received against him between June 2010 and December 2010 and later in 2012, filed another typed set in respect of things happened in 2011. But during final argument, now the petitioner filed five typed set of papers and relied those typed sets. According to me, had those materials been placed before the Investigating Officer, he would have had occasion to go through them and examine those persons with reference to the documents and that would have helped the petitioner. However, the petitioner failed to furnish those documents to the Investigating Officer during investigation.

13. I do not find any merit in this petition. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Asst. Registrar (CS-III)
Dt: 24.3.2015

/true copy/

Sub Asst. Registrar.

To

The Deputy Superintendent of Police,
Dept. of Vigilance and Anti Corruption
Crime No.12/AC/2010.
Salem District.

+ 1 cc to Mr.R.John Sathyan, Advocate SR 15878

+ 1 cc to the Public Prosecutor, High Court, Madras SR 15835

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