

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05-11-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition No.6515 of 2012

Udhayakumar (M/53 years)

...Petitioner/
Accused No.21

Vs.

Deputy Superintendent of Police
Vigilance and Anti-corruption
Salem
Cr.No.2/AC/2000

...Respondent/Complainant

Criminal Original Petitions under Section 482, Cr.P.C., to to call for the entire records and quash the charges framed by the trial court against the petitioner/accused No.21 in Spl.C.C. No.59 of 2004 pending on the file of the Special Judge/Chief Judicial Magistrate, Salem.

For petitioner : Mr. A.V. Somasundaram for
M/s. Lakshmi Priya Associates

For respondent : Mr. P. Govindarajan, APP

ORDER

This criminal original petition has been filed under Section 482, Cr.P.C., praying to call for records relating to Special Calendar Case No.59 of 2004 pending on the file of Special Judge and Chief Judicial Magistrate, Salem and quash the same.

2. It is averred in the petition that the petitioner has been arrayed as the 21st accused in Special Calendar Case No.59 of 2004. The case of the prosecution is that from 19-11-1999 to 19-03-2000 in various places at Salem District, the petitioner and other accused have contrived themselves so as to allow illicit arrack and toddy. The further case of the

prosecution is that the petitioner and others have allowed to escape real culprits and thereby earned money illegally. Under the said circumstances, the petitioner and other accused are said to have committed offences punishable under Sections 120B read with 109, 167, 466 and 471, IPC and also under Sections 7, 13(2) read with 13(1)(c) and (d) of Prevention and Corruption Act, 1988 and also under Section 8 of the Prohibition Act, 1937. Further, it is averred in the petition that the petitioner is not an Authorised Officer to handle compounding files. The Authorisation Officer is Additional Superintendent of Police and not any other Officer. The investigation has not let in any evidence to prove the alleged involvement of the petitioner in the alleged offences. The petitioner has been falsely implicated in Special C.C.No.59 of 2004. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

3. On the side of the respondent, a detailed counter has been filed wherein it has been clinchingly stated that the petitioner and others during the relevant period have contrived themselves so as to earn ill-gotten money by way of allowing illicit arrack and toddy. The petitioner and others have allowed to escape so many culprits for getting personal gain. Under the said circumstances, the petitioner and others are said to have committed offences punishable under Sections 120B read with 109, 167, 466, 471, IPC and also Sections 7, 13 (2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988 and also under Section 8 of Prohibition Act, 1937. It is false to aver in the petition that there is no incriminating circumstances available in evidence against the petitioner and therefore, the present petition deserves to be dismissed.

4. The learned counsel appearing for the petitioner has contended that in the instant case, the main accused are allowed to escape. The petitioner is nothing but a constable and served in the Prohibition Enforcement Wing, during the relevant period, the petitioner has had no connection whatsoever with the alleged offences and eventhough on the side of the prosecution almost all witnesses have been examined except the Investigating Officer no clinching evidence is available so as to proceed further against the petitioner. Under the said circumstances, the proceeding against the petitioner in Special C.C.No.59 of 2004 is liable to be quashed.

5. The learned Additional Public Prosecutor has also equally contended that during the relevant period, the

petitioner has served as a Constable in the Prohibition Enforcement Wing, Salem. The petitioner and other accused have hatched a conspiracy with a view to allow illicit arrack and toddy and thereby, earned illgotten money and further, in Special C.C.No.59 of 2004, except Investigating Officer, the remaining witnesses have been examined. Under the said circumstances, it is not feasible nor desirable to quash the proceedings of Special Calendar Case No.59 of 2004 and therefore, the present petition deserves to be dismissed.

5(i) In support of his contention, he has drawn the attention of this Court to the decision reported in 2007 (1) LW CrL. 493 (A. Govindarajan Vs. The Inspector General of Police) wherein this Court has held that the points pointed out by the learned counsel appearing for the petitioners are relating to the appreciation of evidence and as such, those points cannot be considered at this stage for quashing the proceedings. This Court cannot exercise the power under Section 482, Cr.P.C., to quash the proceedings at this stage, viz., after the examination of five witnesses. In fact, this Court has followed the decision reported in AIR 1973 SC 799 = 1974 L.W.(CrL.) 40 S.N. (Amar Chand Vs. Shanti Bose).

6. From a close reading of the decision rendered by this Court and also by the decision of the Honourable Supreme Court, the Court can easily come to a conclusion that if a case is in the stage of "part-heard" and most of the witnesses have been examined, question of quashing the proceedings under Section 482, Cr.P.C., is not feasible nor desirable.

7. In the instant case, this Court has called for a report from the concerned Court with regard to stage of Spl.C.C.No.59 of 2004 and accordingly, a report has been filed wherein it has been clearly stated that Spl.C.C.No.59 of 2004, originally pending on the file of Special Judge and Chief Judicial Magistrate, Salem has subsequently been transferred to the file of the Special Court for trial of cases under the Prevention of Corruption Act, Salem and taken over on file in Spl.C.C.No.19 of 2014 and except the Investigating Officer, the remaining witnesses have been examined.

9. From the report submitted by the concerned court, it is easily discernible that in Calendar Case No.19 of 2014, almost all witnesses have been examined except the Investigating Officer. Since almost all witnesses have been examined except the Investigating Officer, it is not possible to quash the proceeding as prayed in the petition.

10. The main contention put forth on the side of the petitioner is that no specific evidence is available against the petitioner. This aspect can be analysed only by the Trial Court. At this stage, as pointed out earlier, in Spl.C.C.No.19 of 2014(originally Spl.C.C.No.59 of 2004), most of the witnesses have been examined and therefore, the contention put forth on the side of the petitioner cannot be accepted at this stage.

11. The next contention put forth on the side of the petitioner is that the prosecution has left out main accused. This point can be urged before the Trial Court.

12. It has already been pointed out that in Special C.C.No.19 of 2014(originally Spl.C.C.No.59 of 2004) most of the witnesses have been examined. Since most of the witnesses have been examined as stated supra, the relief sought in the petition cannot be granted and therefore, the present petition deserves to be dismissed.

In fine, this criminal original petition is dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Deputy Superintendent of Police
Vigilance and Anti-corruption
Salem.

2. The Special Judge/Chief Judicial Magistrate,
Salem.

1 CC to the Public Prosecutor, SR.No. 61340

Criminal Original Petition No.6515 of 2012

MG (CO)
PSI (18.11.2015)