

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

W.P.No.3491 of 2015
and
M.P.Nos.2 and 4 of 2015

Date of reserving the order 31.03.2015	Date of pronouncing the order 06.04.2015
---	---

S.Muthukrishnan

.. Petitioner

Vs.

1.The Director,
Vigilance and Anti Corruption,
Chennai.

2.Inspector of Police,
Vigilance and Anti Corruption,
Tiruppur.

3.Superintending Engineer,
TNEB, Udumalpet.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records held by all the three respondents and quash the charge sheet in Spl.C.C.No.2/2015 on the file of the learned Chief Judicial Magistrate, Tiruppur. (Prayer amended as per order dated 25.03.2015 in M.P.No.3/2015)

For Petitioner : Mr.R.Mathan Kumar
Mr.Manikandan Vathan Chettiyar

For Respondents : Mr.S.Shanmuga Velayutham
Public Prosecutor

ORDER

The writ petition has been filed for issuance of Writ of Certiorari, calling for the records by all the three respondents and quash the charge sheet in Spl.C.C.No.2/2015 on the file of the learned Chief Judicial Magistrate, Tiruppur.

2.The brief facts of the case is as follows:

The petitioner worked as Assistant Engineer, TNEB, Udumalpet. The complainant's wife Kavitha preferred an application to the writ petitioner for one welding service and two lathe service connection in her name for the shops on 11.06.2013 and paid all the prescribed amount and the complainant met the writ petitioner on 12.06.2013. The writ petitioner informed the complainant to meet him after ten days as he has to prepare the estimation. When the complainant met the petitioner on 24.06.2013 and sought about the new service connection, the petitioner demanded Rs.10,000/- as illegal gratification for effecting electricity service connection to the complainant shop. Further on 01.07.2013 when the complainant met the petitioner, he reiterated the earlier demand of Rs.10,000/-. When the complainant expressed his inability, the petitioner reduced the demand to Rs.8,500/- and instructed the complainant to meet him on 03.07.2013 with the bribe amount. Hence, the complainant lodged a complaint on 03.07.2013. A case has been registered in Cr.No.4/2013/AR/TPR on 03.07.2015 and trap proceedings were initiated and the petitioner was arrested on the same day itself. After obtaining sanction from the appointing authority, the charge sheet has been filed. Since the electricity service connection to the complainant has been given to the wife of the complainant on 28.06.2013 itself, there is no necessity for demanding bribe. Hence, he has filed the above writ petition to quash the charge sheet.

3.Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondents and perused the written arguments filed by the petitioner.

4.The learned counsel appearing for the petitioner would submit that the petitioner is an Assistant Engineer in TNEB. The allegation is that he demanded and received bribe for effecting electricity service connection to one Kavitha wife of the complainant, K.V.Babu. A case has been registered on 03.07.2013 and on the complainant, the petitioner was arrested on the same day itself after trap proceeding i.e. 03.07.2013, but whereas the electricity service connection was provided on 28.06.2013 itself. He would further submit between the six days i.e. from 28.06.2013 to 03.07.2013, eight other connections

were issued. So, there is no necessity for him to demand bribe for effecting service connection. Hence, he pray for quashing the charge sheet. To substantiate his case, he relied upon the following decisions:

1. 1992 SCC (Crl.) 426 (State of Haryana and others vs. Bhajan Lal and others)
2. 2011 (7) SCC 59 (Joseph Salvaraj A vs. State of Gujarat and others)
3. Crl.O.P.No.210885 of 2008 (Manickam @ Manicka Sundaram vs. The Inspector of Police, Erode Taluk Police Station, Erode Taluk, Erode District)
4. 2011 (3) SCC 351 (Harshendra Kumar vs. Rebalitakoley and others)
5. Crl.A.No.371 of 2007 (Thangavel vs. State rep. By Deputy Superintendent of Police, Vigilance and Anti Corruption, Salem District)

5. It is pertinent to note that initially the petitioner has filed this writ petition to quash the FIR. But during the pendency of the petition, charge sheet has been laid. Hence, the petitioner filed an amendment petition in M.P.No.3 of 2015 and the same was ordered by this Court on 25.03.2015. Accordingly, the amendment was carried out and the prayer in the writ petition was altered to quash the charge sheet.

6. Resisting the same, the learned Public Prosecutor appearing for the respondents would submit that service connection has been given only on 04.07.2013. He would further submit the even though the petitioner has filed the document wherein it was stated that service connection has been given on 28.06.2013, but actually it has been given only on 04.07.2013. Further, in paragraph No.9 of the counter affidavit filed by the second respondent, it was specifically mentioned that witness No.8 Balasubramniam, Wireman, witness No.13 Nithyanandam, Grade-I, Foreman, witness No.5 Suresh, A.E.E., TANGEDCO, Udumalpet Division, Witness NO.2 K.V.Babu, Witness No.7 Karthikeyan, Foreman, witness No.12 Kavitha have stated that service connection has been given only on 04.07.2013. He further submitted that whether the service connection has been given on 28.06.2013 or 04.07.2013 has to be decided only after letting oral and documentary evidence. So, it is pre-mature to decide the fact that the averment in the complaint was absurd and inherently improbable. Hence, he pray for dismissal of the writ petition. To substantiate his argument, he relied upon the decision reported in 2013 (1) SCC (Crl.) 160 (Gian Singh vs. State of Punjab and another).

7.Considered the rival submissions made on both sides and perused the typed set of papers.

8.Now, this Court has to decide whether it is a fit case for issuance of writ of Certiorari to quash the charge sheet filed in Spl.C.C.No.2/2015?

9.The case of the prosecution is that one Kavitha, who is the wife of the de-facto complainant K.V.Babu, the owner of the two shops has applied for welding service connection at TANGEDCO, Udumalpet Town, Tiruppur District on 02.03.2013 and he obtained it on 30.05.2013. She further applied for one welding service connection and two lathe service connection in her name on 11.06.2013 and also paid the prescribed amount and the defacto complainant, husband of the said Kavitha, met the writ petitioner on 12.06.2013. At that time, the petitioner informed the complainant to meet him after ten days as he has to prepare the estimation. When the complainant met the writ petitioner on 24.06.2013 at 13.30 hours and sought for about the new service connection, the writ petitioner alleged to have demanded Rs.10,000/- as illegal gratification for effecting new electricity service connection to the complainant shop. Further on 01.07.2013 at 13.30 hours, the de-facto complainant met the writ petitioner and sought for new service connection, for which, the petitioner reiterated the earlier demand. When the complainant expressed his inability, the writ petitioner reduced the demand to Rs.8,500/- and instructed the complainant to meet him on 03.07.2013 with the bribe amount of Rs.8,500/- or otherwise he would not give electricity service connection to the shops. So, he was forced to give complaint on 03.07.2013.

10.First and foremost, the learned counsel appearing for the petitioner has taken me through the typed set of papers, wherein a copy of the Register has been filed, which shows that three service connections has been given in the name of the complainant's wife Kavitha which is seen in Sl.Nos.136, 137 and 138 on 28.06.2013 and submits that there is no necessity for the petitioner to make demand for bribe for giving electricity service connection on 01.07.2013. But the Register filed before this Court is only a xerox copy and in the columns, nothing has been mentioned and the document has not been produced by the prosecution. In such circumstances, the genuinity of the copy of the Register has to be decided only at the time of trial after letting evidence.

11.Further, even though the copy of the register filed before this Court shows that service connection has been given on 28.06.2013, but on perusal of the case diary shows, wherein witness No.8 Balasubramniam, Wireman has deposed that on the instructions of

witness No.5, Suresh, A.E.E., TANGEDCO, Udumalpet Division, himself and witness No.13 Nithyanandam, Grade-I, Foreman has given the service connection on 04.07.2013, i.e. after the arrest of the petitioner. Witness NO.13 Nithayanandam has also corroborate the same. So, whether the service connection has been given on 28.06.2013 or 04.07.2013 has to be decided only after considering the oral and documentary evidence. It is also pertinent to note that trap proceeding has been initiated, tainted money has been recovered from the petitioner and the phenolphthalein test was also ended in positive.

12.The learned counsel appearing for the petitioner would also submit that as per Article 20(3) of the Constitution of India, no person or accused of any offence shall be compelled to be witness against himself. He would also submit that as soon as case has been registered, he has a protection under Article 20(3) of the Constitution of India. It is well settled dictum of the Hon'ble Apex Court that the accused shall keep silent and no explanation shall be given by him provided the prosecution has to prove the guilt of the offence beyond all reasonable doubt. But here as prima facie the respondents have made out that the writ petitioner has possessed tainted money, phenolphthalein test was also positive and after obtaining sanction, charge sheet has been filed. In such circumstances, I am of the view that prima facie case has been made out for framing of charges.

13.At this juncture, it is appropriate to consider the decision relied upon by learned counsel appearing for the petitioner in 1992 SCC (Crl) 426 (State of Haryana and others vs. Bhajan Lal and others), wherein it was held that when the allegations made in the FIR or complaint as so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. It is appropriate to incorporate paragraph No.102, which reads as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a 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."

But the above citation is not applicable to the facts of the present case since investigation has been done, during the enquiry witness No.5, Suresh, A.E.E., TANGEDCO, Udumalpet Division, witness No.8 Balasubramniam, Wireman and witness No.13 Nithyanandam, Grade-I, Foreman have stated that they effected service connection on 04.07.2013 and further taint money has been recovered from the writ petitioner and phenolphthalein test is positive.

14.He has also relied upon the decision reported in 2011(7) SCC 59 (Joseph Salvaraj A vs. State of Gujarat and others), wherein the matter is purely civil in nature, there appears to be no cheating or dishonest for deliver of property or breach of trust and it is abuse of process of law. It is appropriate to incorporate paragraph Nos.16 and 20, which reads as follows:

"16.Thus, from the general conspecturs of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.

20.Thus, looking into the matter from all angles, we are of the considered opinion that the prosecution of the appellant for commission of the alleged offences would be clear abuse of the process of law. The FIR under the circumstances deserves to be quashed at the threshold. We accordingly do so. The appeal is, therefore, allowed. The order of the learned Single Judge is set aside. The FIR dated 05.09.2006 lodged by respondent 4 complainant with Odhav Police Station, Ahmedabad stands quashed and all criminal proceedings emanating therefrom also stand quashed."

But the above citation is not applicable to the facts of the present case.

15.He has also relied upon the order of this court passed in CrI.O.P.No.210885 of 2008 (Manickam @ Manicka Sundaram vs. The Inspector of Police, Erode Taluk Police Station, Erode Taluk, Erode District), wherein the petitioner has filed a petition to quash C.C.No.676 of 2002 wherein he was alleged to have committed theft on 25.11.2001. But whereas, as per the records, from 09.11.2001 to

27.12.2001 he was confined in Central Prison, Tiruchirapalli. Hence, there is no possibility for committing the theft on 25.11.2001. So, this Court has quashed the charge sheet. But here, the demand was made on 24.06.2013, 01.07.2013 and then on 03.07.2013 complaint has been given, trap proceeding has been initiated in which tainted money has been recovered, currencies in the entrustment mahazar and recovery mahazar was tallied and phenolphthalein test also ended in positive. In such circumstances, I am of the view that the above decision is not applicable to the facts of the present case.

16.He has also relied upon the decision reported in 2011 (3) SCC 351 (Harshendra Kumar vs. Rebalitakoley and others), wherein it was held that on the date when offence was committed by Company, the appellant was neither Director of Company nor had anything to do with affairs of Company. Hence, it was held if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice and tantamount to abuse of process of court. Hence it was quashed. But, here trap proceeding has been initiated, tainted money has been recovered and phenolphthalein test also ended in position. In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case.

17.He has also relied upon the judgment of this Court in CrI.A.No.371 of 2007 (Thangavel vs. State rep. By Deputy Superintendent of Police, Vigilance and Anti Corruption, Salem District), wherein it was held that presumption cannot be raised in absence of proof of demand. But the above decision is not applicable to the facts of the present case because in the appeal it was decided on appreciation of evidence. But here this petition has been filed to quash the charge sheet whether the petitioner made any demand has been proved only after letting oral and documentary evidence. In such circumstances, I am of the view that the above decision is not applicable to the facts of the present case.

18.The learned Public Prosecutor relied upon the decision reported in 2013 (1) SCC (CrI) 160 (Gian Singh vs. State of Punjab and another), wherein it was held that in respect of serious offences like murder, rape, dacoity or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. It is appropriate to incorporate paragraph No.58, which reads as follows:

"58.Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled

although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

19. In such circumstances, I am of the view that whether electricity service connection has been given on 28.06.2013 as stated by the learned counsel appearing for the petitioner or it was given on 04.07.2013, after the trap proceeding has been conducted to be decided only at the time of trial after letting oral and documentary evidence since it is a question of fact and also the fact that tainted money has been recovered which tally with the Entrustment Mahazar,

phenolphthalein test ended in positive and after concluding the investigation and after obtaining sanction from the appointing authority, charge sheet has been filed. Therefore, I am of the considered view that there is no reason for issuing writ of certiorari to call for the records and quash the charge sheet in Spl.C.C.No.2/2015 on the file of the learned Chief Judicial Magistrate, Tiruppur and hence, the writ petition is liable to be dismissed.

20.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

- 1.The Director,
Vigilance and Anti Corruption, Chennai.
- 2.Inspector of Police,
Vigilance and Anti Corruption, Tiruppur.
- 3.Superintending Engineer,
TNEB, Udumalpet.

to be substituted to
the order already
despatched on
15.04.2015

Corrected order
issued on 17.4.2015
Counsel letter
dated 17.4.2015

1 cc to Mr.R.Mathan Kumar ,Advocate, SR.No.18977
1 cc to The Public Prosecutor,
High Court, Madras Sr.18908, 19083

W.P.No.3491 of 2015
and M.P.Nos.2 and 4 of 2015

rsi(co)
pmk.17.4.2015

WEB COPY