

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition Nos.7249 and 7263 of 2015

K. Dheenadhayalan IAS aged 72 years

S/o. Mr. M.Kannayiram

Formerly Commissioner of

Handlooms and Textiles

No.103, Kulasekara Street

Sundaram Colony

East Tambaram

Chennai - 600 059

Petitioner in

Crl.O.P.No.7249/2015

Jasbir Singh Bajaj, IAS (Aged 55 years)

S/o. Late Thirukartar Singh Bajaj

Principal Resident Commissioner

Tamil Nadu House

9, BirTikenderjit Marg

Chanakyapuri

New Delhi - 110 021

Petitioner in

Crl.O.P.No.7263/2015

Vs.

The State Represented by

The Deputy Superintendent of Police

Crime Branch CID, OCU-II

Chennai - 600 008

(Ref Crime No.46/1996 dated 30-10-1996)

..Respondent(in both Crl.OPs.

Criminal Original Petitions under Section 482, Cr.P.C., seeking the relief to call for the records and quash the proceedings in Spl.C.C. No.1 of 2014 pending on the file of X Additional Special Judge Court, Singaravelar Maligai, Chennai for offences under Sections 120-B r/2 409, 409 r/w 109 IPC, 13(2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act 1988 r/w 109, 409, 409 r/w 109 IPC r/w 13(1)(C) & (d) of the Prevention of Corruption Act 1988 and 13(2)r/w 13(1)(d) of the Prevention of Corruption Act 1988 r/w 109 IPC.

For petitioners::

Mr.S. Gopinath, SC

for Mr. A. Gokulakrishnan

for petitioner

in Crl.O.P.No.7249/2015

Mr. A. Natarajan, SC for

Mr. N. Manoharan for petitioner

in Crl.O.P.No.7263 of 2015

For respondent :: Mr. S. Shanmugha Velayutham,
Public Prosecutor assisted by
Mr. P. Govindarajan,
APP(in both Crl.OPs)

ORDER

These criminal original petitions have been filed under Section 482, Cr.P.C., praying to call for records relating to Special Calendar Case No.1 of 2014 pending on the file of the X Additional Special Judge, Chennai and quash the same.

2. The case of the prosecution is that on 30-06-1996, a complaint has been received from one V. Viswanathan, IAS formerly Secretary of Government of Tamil Nadu, Handlooms, Handicrafts, Textile and Khadi Department, Chennai - 600 009 wherein it is alleged that one Jasbir Singh Bajaj, IAS, formerly Managing Director, Tamil Nadu Handloom Weavers Co operative Society Limited (Co-optex) and Chairman of of Purchase Committee and others have flouted the existing Rules in purchasing silk sarees and thereby, caused heavy loss to the Government of Tamil Nadu. The complaint, in question, has been registered in Crime No.46 of 1996 under Sections 120(b) read with 409, IPC and also under Sections 13(2) read with 13(1)(b) of the Prevention of Corruption Act, 1988. The further case of the prosecution is that the respondent has conducted investigation and filed a final report on 12-08-2014. The final report filed on the side of the prosecution has been taken on file in C.C.No.1 of 2014.

3. During the pendency of the same, these Criminal Original Petitions have been filed for getting the relief sought therein.

4. On the side of the respondent in both the petitions, separate counter has been filed wherein it is stated that the petitions filed under Section 482, Cr.P.C., ought to be considered with utmost circumspection and should not be used to stifle a legitimate prosecution as pointed out by the Honourable Supreme Court in various decisions. Since the Investigating Officer has collected more number of evidence, delay in filing final report has occurred and further, due to administrative reasons also such delay has happened. All the accused have committed the offences mentioned in the final report and therefore, there is no merit in the petitions and the same are liable to be dismissed.

5. The learned counsel appearing for the petitioners in both the petitions have uniformly contended that the petitioner in Crl.O.P.No.7249 of 2015 has been arrayed as second accused whereas the petitioner found in Crl.O.P.No.7263 of 2015 has been shown as first accused and the complaint, in question has been registered on 30-10-1996 and after making elaborate investigation, the Investigating Officer has prepared a final

report as "mistake of fact" and the same has been accepted by various higher authorities and thereafter, after lapse of three years without getting new materials, the Investigating Officer has simply filed a report on 12-08-2014 and in fact, the petitioners and others have acted within their limit and in purchasing silk sarees, no loss has occurred to the Government of Tamil Nadu. Under the said circumstances, these petitions have been filed for getting the relief sought therein.

6. In order to remonstrate the contentions put forth on the side of the petitioners, the learned Public Prosecutor has contended that the complaint, in question has been registered on 30-10-1996 and after making investigation, the Investigating Officer has filed a final report stating as "mistake of fact" during March 2011 and subsequently, collected some new materials to the effect that the present petitioners and others have caused heavy loss to the State Government and further, the accused and others have placed orders to certain fictitious Companies and obtained personal gains and since sufficient materials are available so as to proceed further against the petitioners, these petitions cannot be allowed.

7. On the basis of the divergent submissions made on either side, the Court has to look into as to whether the respondent after filing closure report has collected new materials so as to proceed further or the present petitioners and others have caused heavy loss to the State Government in purchasing silk sarees ?

8. It is an admitted fact that the Investigating Officer has submitted a report on 05-04-2004 wherein at Paragraph No.4, it is stated like thus:

"However, when the materials gathered so far in this case have been scrutinized thoroughly, it came to light some irretrievable shortcomings, which would prove fatal to prosecution in the event of launching of prosecution. A detailed report narrating the shortcomings is enclosed. The report and the C.D files were already perused by Senior Legal Advisor, CBCID and approved."

9. The Inspector General of Police has submitted a report on 28-04-2004, wherein it is stated thus:

"During investigation, no evidence has come forth whether the accused public servants had gained any pecuniary benefit following the commercial decision taken by the accused in the purchase of silk sarees, directly purchased from the two Societies (i) M/s. Mahalakshmi Silk Handloom Weavers Co-operative Society, Bangalore and (ii) M/s. Kamakshipala Silk Handloom weavers Production and Sales Co-operative Society Ltd., Bangalore,

Karnataka State. Further witnesses have clearly spoken that the sarees procured from the two Societies were good in quality and there is no material available to establish that Co-optex actually incurred loss due to the transaction made with the two Societies.

It is further stated that due to efflux of time and change of circumstances it will not throw any new light in this case even if further investigation is conducted."

10. In a confidential report it is stated like thus:

"On the assumption that the various lacunae are found upon the records perused by me, I am of the considered opinion that in the context of the short comings in the investigation, the case may not be pursued further and further action against all the accused may be dropped."

11. In the concluding report, it is stated that,

"During investigation, no evidence has come forth whether the accused public servants had gained any pecuniary benefit following the commercial decision taken by the accused in the purchase of silk sarees directly purchased from the two societies (i) M/s. Mahalakshmi Silk Handloom Weavers Co-operative Society, Bangalore and (ii) M/s. Kamakshipalya Silk Handloom weavers Production and sales Co-operative Society Ltd, Bangalore, Karnataka State. Further witnesses have clearly spoken that the the sarees procured from the two Societies were good in quality and there is no material available to establish that Co-optex actually incurred loss due to the transaction made with the two Societies."

12. Further, it is observed in the concluding report that "Dropping of further action as Mistake of fact."

13. In Official Memorandum of Superintendent of Police, Special Units, Chennai it is stated that,

"In the circumstances stated in your report cited, the case in CBCID, Hqrs Crime No.46/1996 u/s. 120(B)r/w 409, 409 r/w 109 IPC, Sec 13(2) r/w 13(1)(D) of Prevention of Corruption ACT 1988 is referred as "Mistake of Fact".

In Confidential report of Additional Director General of Police to Principal Secretary to Government, it is stated that,

"It is therefore decided to drop further action in this case by treating the case as "Mistake of Fact". In order to file Final Report before the

concerned court in this case, the referred charge sheet is sent herewith for your acknowledgement. Kindly acknowledge the receipt of the RCS notice and send the copy of this office for submission before the court."

14. From a cumulative reading of the report of the Investigating Officer and other communications, it is discernible that the complaint in question has been registered on 30-10-1996 under Sections mentioned supra. The Investigating Officer after making thorough investigation has found that there is no lapses on the part of the accused and ultimately, concluded to the effect that no materials are available so as to proceed further. On the basis of his report, the authorities have closed the case registered in Crime No.46 of 1996 as 'mistake of fact' during March 2011. After lapse of three years, all of a sudden, on 12-08-2014, the respondent has filed a final report in the concerned Court and the same has been taken on file in C.C.No.1 of 2004.

15. The main contention expressed on the side of the petitioners is that the petitioners and others have purchased silk sarees from two Societies viz., Mahalakshmi and Kamatchipalaya in Bangalore and no loss has occurred to the State Government and Investigating Officer has made thorough investigation and ultimately, concluded to the effect that no materials are available so as to proceed further and on the basis of the report, the case register in Crime No.46 of 1996 has been closed as 'mistake of fact' and for the reasons best known to the respondent, a new final report has been filed without collecting new materials.

16. The consistent case put forth on the side of the respondent is that the petitioners and others have purchased silk sarees from fictitious Societies and thereby caused loss to the State Government.

17. In fact, this Court has perused the report prepared by the Investigating Officer, wherein this aspect has been considered and ultimately, found that the two Societies, viz., Mahalakshmi and Kamatchipalaya are in existence in Bangalore and no loss has occurred in purchasing silk sarees. Therefore, it is quite clear that the case registered in Crime No.46 of 1996 has been thoroughly investigated by the Investigating Officer and prepared a final report stating that no incriminating materials are available to proceed further against the accused therein. Further, as stated supra, the higher authorities have also accepted the report of the Investigating Officer and recommended for filing a final report into Court as "mistake of fact".

18. The learned Public Prosecutor has vehemently contended that in purchasing silk sarees, the accused have caused heavy loss to the State Government. In support of the contention

raised on the side of the respondent a Tabular Column available in Paragraph No.67 of the final report is relied upon. But the said Tabular Column is not related to the Societies from which the accused and others have purchased silk sarees. To put it in short, on the side of the respondent it has not been positively established that sufficient/new materials are available so as to file a new final report against the petitioner and others. Since, no sufficient/new materials are available after closure of investigation as 'mistake of fact', it is needless to say that the present petitioners have been falsely implicated in C.C.No.1 of 2014.

19. The learned counsel appearing for the petitioners have drawn the attention of the Court to the following decisions:

(a) 2001 SCC (Cri) 787 (Seeta Hemchandra Shashittal V. State of Maharashtra), wherein the Honourable Supreme Court has held that offence of affecting public servant to commit offence under Section 13(2) of Prevention of Corruption Act alleged against two old ladies aged 80 and 81 years. On factual circumstances, prosecution against them is liable to be quashed under Section 482, Cr.P.C.

(b) In 2009 CrI.LJ 1731 (Vakil Prasad Singh V. State of Bihar) the Honourable Supreme Court has held that the prosecution sleeping over matter for almost seventeen years, constitutional guarantee of speedy investigation and trial has been violated. Under the said circumstances, investigation is liable to be quashed.

20. From the conjoint reading of the decisions mentioned supra, if there is any inordinate delay in conducting investigation on the basis of factual circumstances, the concerned proceeding is liable to be quashed. In the instant case, the First Information Report has been registered on 30-10-1996. After lapse of eight years a final report has been filed on 12-08-2014 and that too, after closure of investigation as "mistake of fact". Therefore, on the ground of delay also the proceedings initiated against the petitioners is liable to be quashed.

21. The learned Public Prosecutor has also equally drawn the attention of the Court of the following decisions:

(i) 2010 (9) SCC 368 (Sahan Kumar Vs. Central Bureau of Investigation), the Honourable Supreme Court has observed as follows:

"Though delay may be a relevant ground, however, in light of materials available before Court through CBI, without testing the same at trial, proceedings cannot be quashed merely on the ground of delay."

(ii) 2013 (5) SCC 762 (Vinay Tyagi Vs. Irshad Ali alias Deepak and others) the Honourable Supreme Court has observed as follows:

"In the present case, where initial investigation was carried out and primary report filed by Delhi Police, and further investigation by CBI was directed by High Court, based whereon closure report was filed by CBI, High Court had passed no order or direction staying further investigation by Delhi Police or proceedings before court of competent jurisdiction or striking out primary report filed by Delhi Police from record. On the contrary, High Court had noticed explicitly in its order that it was a case of supplementary/further investigation by CBI and envisaged filing of a supplementary report by CBI. Once High Court took such view there is no question of treating first report/primary report as being withdrawn, cancelled or capable of being excluded from records by implication."

22. In the instant case, as pointed out in many places, the Investigating Officer has done thorough investigation and submitted his report stating no materials are available so as to proceed further against the petitioners and others, and the same has been accepted by the concerned authorities and further recommended for filing a final report stating as "mistake of fact." But, after a lapse of three years, a new final report has been filed stating that the petitioners and others have committed offences mentioned therein. Even at the risk of repetition, the Court would like to point out that no new materials have been collected by the Investigating Officer, so as to file a final report afresh. Further, all the allegations made on the side of the respondent are proved to be false, even as per the report filed earlier by the Investigating Officer. Therefore, viewing from any angle, the contentions put forth on the side of the respondent cannot be accepted.

23. The present petitions have been filed under Section 482, Cr.P.C., praying to quash the proceedings of C.C.No.1 of 2014 in respect of the present petitioners. It has already been pointed out abundantly, that on the part of the petitioners, no lapse is found out and no loss has been created in purchasing silk sarees and the petitioners have not flouted the existing procedure in purchasing silk sarees. Under the said circumstances, this Court is of the considered view that the proceeding against the petitioners in C.C.No.1 of 2014 is totally unwarranted and the same is liable to be quashed.

In fine, these criminal original petitions are allowed.
The proceeding of C.C.No.1 of 2014 against the petitioners alone
is quashed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

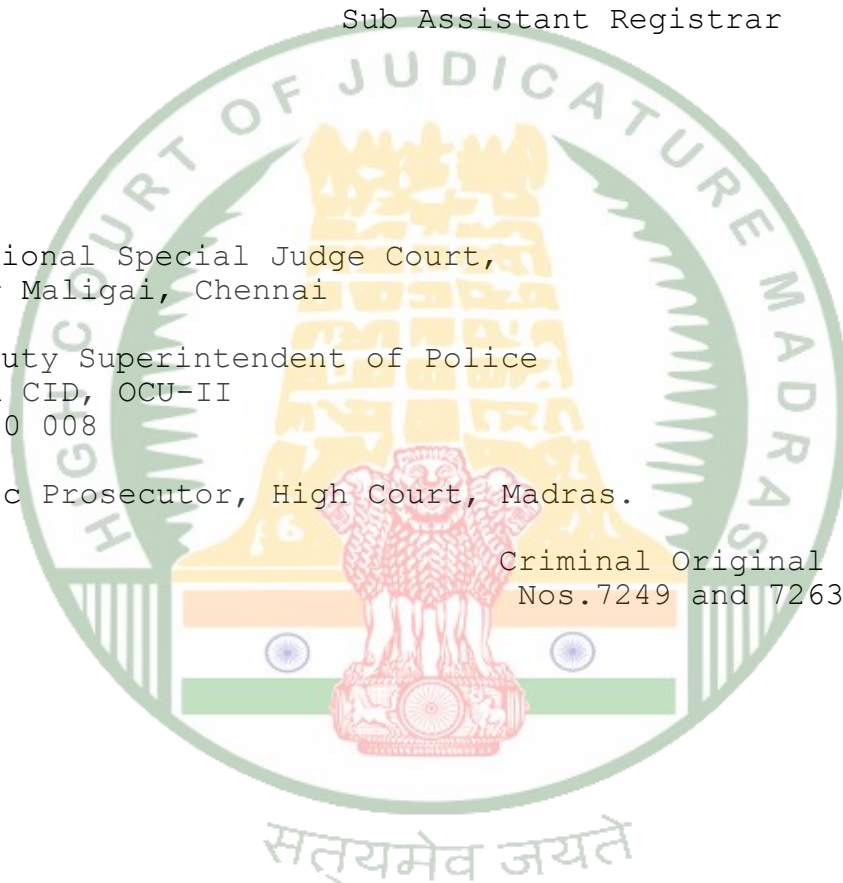
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To

1. X Additional Special Judge Court,
Singaravelar Maligai, Chennai
2. The Deputy Superintendent of Police
Crime Branch CID, OCU-II
Chennai - 600 008
3. The Public Prosecutor, High Court, Madras.

Criminal Original Petition
Nos.7249 and 7263 of 2015

KJI(CO)
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