

Reserved on : 07.08.2015

Delivered on: 12.08.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM

The Hon'ble Thiru Justice A. SELVAM

Criminal Original Petition No.16226 of 2012
and M.P.No.1 of 2012

Mrs.Sumathi Ravichandran Petitioner

vs.

State rep by
The Inspector of Police,
CBI ACB
Chennai
(RC No.MA1 of 2009 A 0020)

..... Respondents\

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.37 of 2011 on the file of IX Additional Special Judge for CBI Cases, Chennai and quash the same.

For petitioner : Mr.N.R. Elango
Senior Counsel for
Mr.M. Krishnamoorthy

For respondent : Mr.K. Srinivasan
Spl.Public Prosecutor
for CBI Cases

ORDER

A captious litigant, who faced successive discomfiture in various legal proceedings, has filed the present Criminal Original Petition, praying to quash the proceedings of C.C.No.37 of 2011, pending on the file of IX Additional Special Judge for CBI Cases, Chennai.

2. It is averred in the petition that the petitioner has served

as Regional Passport Officer, Chennai from 13.07.2005 to 24.04.2009. It is alleged on the side of the respondent that, one Smt.Fathima Muzaffer has been arrayed as second accused and she acted as Director of M/s Ahmed World Tours and Travels Pvt Ltd, having Office at No.5/11, Habibullah Road, T. Nagar, Chennai. One Lakshmanan has approached the second accused and given a sum of Rs.12,500/- for getting passport and out of the said amount, the second accused has paid a sum of Rs.9,000/- to the petitioner. Further, it is averred in the petition that she has had no connection whatsoever with the second accused and in C.C.No.37/2011, one Mr.P.C. Singh has been examined as P.W.1 and he adduced as follows:

"Even after CVC's recommendation we were not satisfied and there was disagreement between the CVC and the sanctioning authority"

Under the said circumstances, the sanction accorded to launch prosecution against the petitioner is illegal and therefore, the present petition has been filed for getting the relief sought for herein.

3. In the counter, filed on the side of the respondent, it is stated that most of the averments made in the petition are false. It is false to aver that the petitioner has had no connection whatsoever with the offence mentioned in the charge. The petitioner has already filed a petition under Sec. 239 of Code of Criminal Procedure 1973 in CrI.M.P.No.685 of 2011 to discharge her from the proceedings and the same has been dismissed. Against the dismissal order, a Criminal Revision Case in CrI.R.C.No.207 of 2012 has been filed on the file of this Court and the same has also been dismissed. It is false to aver that the sanction accorded to launch prosecution against the petitioner is illegal. There is no merit in the petition and the same deserves to be dismissed.

4. Before contemplating the rival submissions made on either side, it would be condign to look into the previous proceedings taken by the petitioner.

5. It is an admitted fact that the petitioner has been shown as first accused in C.C.No.37 of 2011. During the pendency of the same, she has filed a petition under Sec.239 of Code of Criminal Procedure, 1973, praying to discharge her from the proceedings and the same has been taken on file in CrI.M.P.No.685 of 2011. In M.P.No.685 of 2011, it is averred that the petitioner has no connection whatsoever with the alleged offence mentioned in the charge.

6. The trial court, after considering the rival contentions made on either side, dismissed the petition. Against the dismissal order, a criminal revision case in CrI.R.C.No.207 of 2012 has been filed on the file of this Court and the same has also been dismissed. Now, the petitioner has filed the present Criminal Original Petition

under Sec.482 of Criminal Procedure Code 1973, praying to quash the entire proceedings in C.C.No.37 of 2011.

7. In the present petition, all the averments made in the petition filed in Crl.M.P.No.685 of 2011 are reiterated except the legal plea raised in respect of permission accorded to launch prosecution.

8. The learned counsel appearing for the petitioner has repeatedly contended that in C.C.No.37 of 2011, one Mr.P.C. Singh has been examined as P.W.1 and he has given nebulous evidence with regard to sanction and his specific evidence is that cleavage of opinion has been existence in between CVC and sanctioning authority with regard to granting of sanction. Under the said circumstances, it is presumed that earlier, sanction is refused and subsequently, without furnishing new materials, sanction has been accorded and the same is totally illegal and therefore, the present petition has been filed for getting the relief sought for therein.

9. The learned Special Public Prosecutor appearing for the respondent has equally contended that in the instant case, sanction has not been refused at any point of time and only on the basis of materials furnished by CVC, sanctioning authority has accorded sanction to launch prosecution against the petitioner and other accused and therefore, the contention put forth on the side of the petitioner cannot be accepted.

10. The learned counsel appearing for the petitioner has relied upon the following decisions:

(a) In State of Himachal Pradesh vs Nishant Sareen (AIR 2011 SC 404), wherein in paragraph 12, the Hon'ble Supreme Court has observed as follows:

It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under [Section 19](#) of the 1988 Act or [Section 197](#) of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change

of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

From a mere reading of the decision referred to earlier, it is made clear that once sanction to prosecute is refused, the same cannot be reviewed by the sanctioning authority unless new materials are available.

(b) In *M.S. Vijayakumar vs The Chairman and Managing Director, Indian Overseas Bank and Others* (2012) (1) CWC 929, the Division Bench of this Court has categorically held that once sanction is refused, the sanctioning authority cannot review the same.

© In *Ravikumar and another vs State* rep by the Deputy Superintendent of Police, SPE/CBI/ACB/Chennai reported in 2012(2) MWN (Cr.)141, this Court has held that sanction to prosecute has already been refused by the Commissioner of Income Tax and on the same ground, the Chief Commissioner of Income Tax cannot grant a new sanction.

11. From the cumulative reading of the said decisions, it is made clear that once sanctioning authority has refused to grant sanction, on the same ground, it cannot be reviewed, but at the same time, on the basis of new materials, sanction can be accorded.

12. With these legal backdrops, the Court has to analyse as to whether previous request of the respondent to launch prosecution has been refused by the sanctioning authority.

13. It is true that P.W.1 in C.C.No.37 of 2011 has given evidence to the effect that a cleavage of opinion has been in existence in granting sanction in between CVC and the sanctioning authority and that itself is not a basis for coming to a conclusion that the sanctioning authority has initially refused to grant

sanction.

14. Since the above legal point has been urged on the side of the petitioner, this court has called for the concerned privileged file from the trial Court and accordingly, the same has been submitted.

15. In fact, this Court has perused the entire file and ultimately found that on the basis of the materials available on record, the sanctioning authority has accorded permission to launch prosecution against the petitioner and in the said file, no material is available for coming to a conclusion that the sanctioning authority has earlier refused to grant permission.

16. As adverted to earlier, if prior permission is refused, the sanctioning authority has no power to review the same on the basis of the materials furnished earlier, but at the same time, on the basis of new materials, the sanctioning authority can very well grant permission.

17. In the instant case, as mentioned supra, since the sanctioning authority has not passed any refusal order, it is needless to say that the facts mentioned in the decisions are totally alien to the facts of the present case and therefore, the decisions, referred to earlier, cannot be attuned in the present petition.

18. Even at the risk of repetition, the Court would like to point out that by way of perusing the concerned file, this court is of the considered view that proper permission has been accorded by the sanctioning authority to launch prosecution against the petitioner and in fact, there is no illegality or flaw in the sanction granted by the sanctioning authority.

19. Under such circumstances, the present criminal original petition deserves to be dismissed.

In fine, this Criminal Original Petition is dismissed. Registry is directed to send the concerned file (privileged file) to the IX Additional Special Judge for CBI Cases, Chennai in a sealed cover.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The IX Additional Special Judge for CBI Cases, Chennai
(along with Privileged file in a Sealed Cover)

2. The Inspector of Police,
CBI ACB
Chennai
(RC No.MA1 of 2009 A 0020)

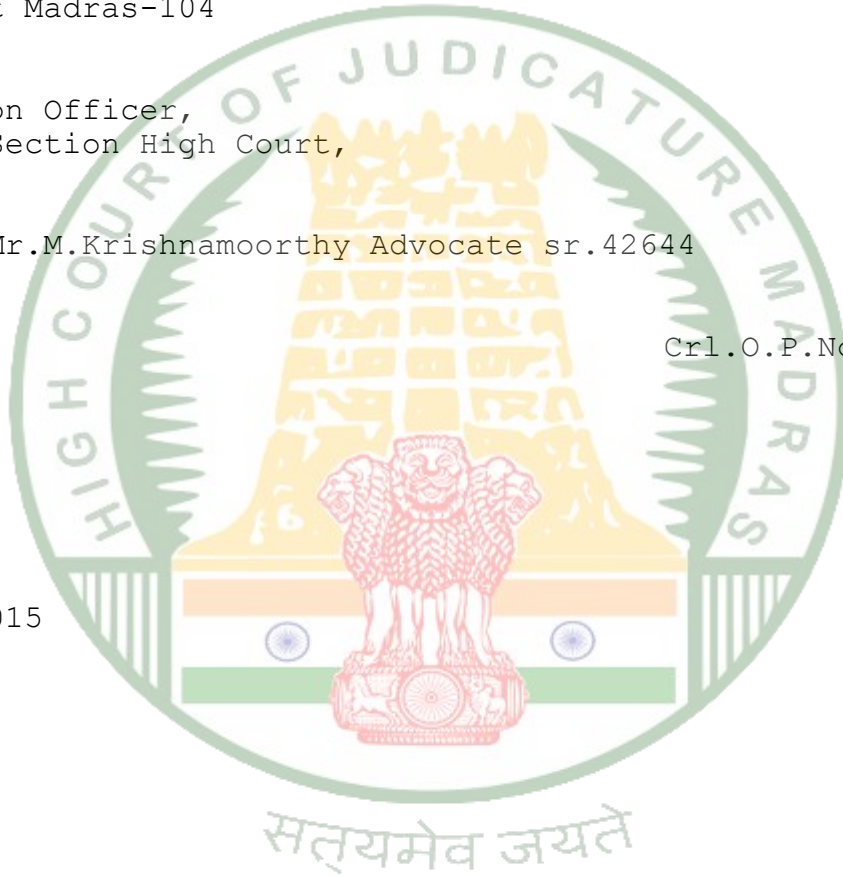
3.The Special Public Prosecutor for CBI Cases
High Court Madras-104

copy to:
The Section Officer,
Criminal Section High Court,
Madras

+1 cc to Mr.M.Krishnamoorthy Advocate sr.42644

Cr1.O.P.No.16226/2012

tej(co)
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