



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.O.P.(MD).No.16863 of 2015

C.Manikandan : Petitioner/Accused No.7

Vs.

State rep by its,
The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Kanyakumari Detachment,
Nagercoil. : Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Spl.Case No.9 of 2014 on the Chief Judicial Magistrate, Kanyakumari Division at Nagercoil and quash the same as illegal with regard to the Petitioner.

For Petitioner : Mr.C.Bharathi

For Respondent : Mr.P.Kannithevan
Government Advocate (crl.side)

ORDER

The Petitioner/A7 has focussed the instant Criminal Original Petition seeking for issuance of an order by this Court to call for the records relating to Special Case No.9 of 2014 on the file of Chief Judicial Magistrate Court, Kanyakumari at Nagercoil and to quash the same.

2.According to the Learned counsel for the Petitioner/A7, it is the case of the prosecution that the complainant is the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Kanyakumari Detachment, Nagercoil, who had registered a case in Crime No.6 of 2012 against seven individuals, wherein the Petitioner is the 7th accused, for the alleged misappropriation in the execution of the contract works of the Highways Department.

3.The Learned counsel for the Petitioner submits that A1 to A6 are the Engineers serving in various Departments in the Highways and the Petitioner is a Contractor and is arrayed as A7 in the case.

4.The Learned counsel for the Petitioner urges before this Court that the allegations levelled against the Engineers of the Department are that they sanctioned the amount for the Bill raised by the Petitioner/A7 without the execution of the Contract work and thereby misappropriated a some of Rs.11,09,000/- for which the Respondent had registered a case in respect of the purported offences under Section 120(b), 420 r/w 109, 167,



406, 409, 468, 471, 477(A) of IPC and Section 13 (2) r/w 13(1)(c) of Prevention of Corruption Act, 1988.

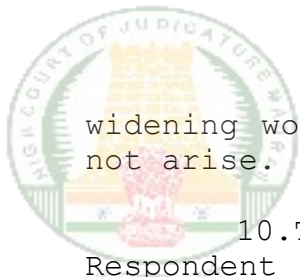
5.The real grievance of the Petitioner/A7 is that he is noway connected with regard to the allegations or the charges levelled against him and in fact, the offences specified in the charge sheet filed by the Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Kanyakumari Detachment, Nagercoil do not implicate him in the case registered. Also, that the stand of the Petitioner/A7 is that in reality, he completed his work and raised the Bill only for the works turned out by him and the amount was sanctioned only relating to the work performed by him. As such, there is no misappropriation as alleged in the charge sheet filed by the Respondent.

6.In response, it is the contention of the Learned Government Advocate (crl. Side) that it is the case of the prosecution that as per G.O.(Ms.)No.269, Highways Department, dated 14.12.2005, the Government of Tamil Nadu had administratively sanctioned the work of strengthening the road between Marthandam to Panachamoodu in Kanaykumari District at kilometres 7/1 to 14/1 at the estimated cost of Rs.75 lakhs and the same work was executed during the period between 10.04.2006 to 01.08.2006 by the Contractor, M.J.D. Constructions and Engineering Pvt. Ltd., Kannumamoodu owned by the Petitioner/A7's wife D.Janaka Jebanjelin.

7.The Learned Government Advocate (crl. Side) for the Respondent brings it to the notice of this Court that prior to the commencement of the strengthening work, the Contractor Tmt.D.Janaka Jebanjelin, wife of the Petitioner/A7 (K.Manikandan) had agreed with the Superintending Engineer, NABARD and Rural roads, Tirunelveli circle in an agreement that the Contractor was responsible to make good and remedy at their own cost any defect which may develop before the expiry of a period of 36 months from the date of completion of the work.

8.Continuing further, the Learned Government Advocate for the Respondent, proceeds to take a stand that in terms of G.O.(Ms) No.186, Highways (NHI) Department, dated 24.07.2007, the Government of Tamil Nadu had administratively sanctioned the work on widening the single lane to double lane road of Marthandam to Panachamoodu in Kanyakumari District at kms. 7/1 to 14/1 (including cross drainage and protective works) at an estimated cost of Rs.2,22,00,000/-. Further, it is represented on behalf of the Respondent that the said works were executed during the period between 11.02.2008 and 29.09.2008 by the Petitioner/A7 (Contractor) and prior to the execution of the widening work, the Petitioner/A7 had agreed with the Superintending Engineer, Highways, Tirunelveli that under the caption 'Commercial Conditions' that he was responsible to make good and remedy at his own cost, any defect which may develop before the expiry of a period of 36 months from the date of completion of the entire work.

9.The Learned Government Advocate (crl. Side) strenuously contends that when the execution of the widening works were in progress, A1 (G.Karthikeyan Nair, Junior Engineer) conspired on 26.05.2008 with the Petitioner/A7, without scrutinising and considering the road chart of the road, prepared seven estimates each to an amount of Rs.2 lakhs under 'Special Repair Scheme' at the same Marthandam to Panachamoodu road for dip raising work at kms. 8/4 to 12/4 before the completion of the



widening work in the said road, which, as per procedure and norms, would not arise.

10.The Learned Government Advocate (crl. Side) appearing for the Respondent submits that A6 (S.Sreedharan, Assistant Divisional Engineer) who had also conspired together with the Petitioner/A7 and A1 (G.Karthikeyan Nair), failed to scrutinise and consider the road chart of Marthandam to Panachamoodu road and had sanctioned the aforesaid seven estimates on 26.05.2008 itself.

11.The Learned Government Advocate (crl. Side) contends that A4 (K.Muralidharan Nair, Senior Draughting Officer), who has scrutinised the seven estimates on 17.07.2008, has also failed to scrutinise and consider the road chart of Marthandam to Panachamoodu road and had submitted estimates to A3 (T.Chandra Sekaran, D.E. for technical sanctioned) and he also conspired together with the Petitioner/A7, A1, A6 and A4, technically sanctioned the said seven estimates each for Rs.2 lakhs on 17.07.2008.

12.At this stage, the Learned Government Advocate (crl. Side) appearing for the Respondent submits that for the road maintenance work under the Highways Department, as per G.O.Ms.No.178, (Highways HPI) Department, dated 18.09.2006, the concurrence was to be obtained from the concerned District Collectors prior to the commencement of work and in the instant case, the concurrence was obtained from the District Collector only on 10.11.2008 viz., after the completion of the work on 07.10.2008.

13.The Learned Government Advocate (crl. Side) for the Respondent takes a plea that A3 (T.Chandra Sekaran) and the Petitioner/A7 signed the agreement for the said seven dip raising work at Marthandam to Panachamoodu road on 05.09.2008. That apart, A3 (T.Chandrasekaran, Divisional Engineer), A4 (K.Muralidharan Nair, Senior Draughting Officer), who colluded with the Petitioner/a7 drew a tender comparative statement for the dip raising work at Marthandam to Panachamoodu road from the tenders received from the Petitioner/A7 and his wife's firm M/s.MJD Constructions Private Limited and work orders dated 02.09.2008 have been issued to the Petitioner/A7 by A3 on 17.09.2008.

14.At this juncture, the Learned Government Advocate (crl. Side) vehemently projects an argument that A1 and A2 had knowingly prepared the payment Bills for he said dip raising works and A3 passed the Bills knowing that the works for which the Bill was passed had not been really executed. Also, that it is the plea of the Respondent that the Bills were fraudulently scrutinised by A3 and A5 (D.Johnson, Divisional Accountant) and a total sum of Rs.12,95,777/- was paid to the Petitioner/A7 after deductions on 10.10.2008 by cheque bearing No.789850/7899 by A3.

15.Added further, the Learned Government Advocate (crl. Side) for the Respondent contends that the dip raising work at Marthandam to Panachamoodu road was super checked by W-3 (T.Ravikarthikeyan, Deputy Superintending Engineer (Highways) NABARD and Rural Roads, Tirunelveli on 08.11.2010, 09.11.2010, 10.11.2010 and 11.11.2010 and arrived at a conclusion that the loss caused to the Government by A1 to A7 at Rs.11,09,089/-.



16.The Learned Government Advocate (crl. Side) for the Respondent submits that the wife of the Petitioner/A7 had done the previous period of work in the same Marthandam to Panachamoodu road from kms.7/1 to 14/1 at an estimated cost of Rs.75 Lakhs and later widening of the same road was performed by the Petitioner/A7 (during the period between 11.02.2008 and 29.09.2008) at an estimated cost of R.2,22,00,000/-. In effect, the contentions of the Learned Government Advocate (crl. side) for the Respondent is that in the instant case, there are enough sufficient materials to establish the major part played by the Petitioner/A7 together with support of A1 to A6. As such, the 'quash petition' filed by the Petitioner/A7 is liable to be dismissed.

17.It is not in dispute that the Respondent had filed a final report on 10.09.2014 and after investigation of the case, the same was taken on file in Special Case No.9 of 2014 on the file of the Chief Judicial Magistrate Court, Kanyakumari at Nagercoil. In this connection, it is to be pointed out that the Petitioner/A7 has filed the present Criminal Original Petition under Section 482 of Cr.P.C. seeking the inherent powers of the Court to call for the entire records relating to charge sheet in Special Case No.9 of 2014 on the file of the Chief Judicial Magistrate Court, Kanyakumari at Nagercoil. Mainly contending that the offences mentioned in the charge sheet are not at all attracted against him and also that the statements recorded by the Respondent under Section 161(3) of Cr.P.C. from the list of witnesses had not implicated him in the alleged crimes.

18.It is to be borne in mind that the power possessed by the Hon'ble High Court under Section 482 of Cr.P.C. indeed are of very wide amplitude and in this regard, the High Court is to exercise its plenary power with great care, caution and circumspection, in the considered opinion of this Court. It is to be remembered that at the time of exercise of its inherent powers, the High Court does not act as a 'Court of Appeal' or 'Revision' as the case may be.

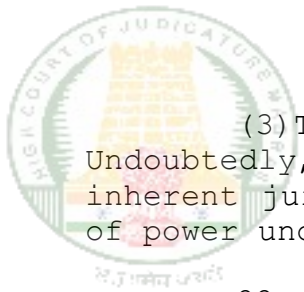
19.To put is precisely, whether the allegations made in the First Information Report and the charge sheet are acceptable, reliable or otherwise, the Hon'ble High Court in terms of ingredients of Section 482 of Cr.P.C. is not required to give definite finding pertaining to the truthfulness, veracity or credibility of the allegations and it is well settled legal proposition that these matters are to be examined by the trial Court soon after the entire gamut of materials produced before it on a thorough investigation and evidence adduced.

20.Further, that the inherent powers under Section 482 of Cr.P.C. should not be exercised by the Hon'ble High Court to stifle a reasonable, genuine and a legitimate prosecution. As a matter of fact, only to prevent an abuse of process of Court or otherwise to advance the cause of justice, the inherent powers under Section 482 of Cr.P.C. can be pressed into service by the Hon'ble High Court.

21.The inherent power may be exercised by a Court of Law,

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- (1) To give effect to an order under Criminal Procedure Code;
- (2) To prevent an abuse of process of Court;



(3) To otherwise serve the ends of justice.

Undoubtedly, no inflexible Rule can be specified for the exercise of an inherent jurisdiction. There can be no simmering doubt that the exercise of power under Section 482 of Cr.P.C. is an exception and not the Rule.

22. Also, it cannot be ignored that in a given case, when once the trial had started, the petition under Section 482 of Cr.P.C. seeking for quash the proceedings is *per se* not maintainable in the eye of Law.

23. To put it succinctly, the exercise of inherent jurisdiction under Section 482 of Cr.P.C. by the High Court is an extraordinary one and the judicial discretion must be exercised by the Hon'ble High Court, ofcourse, based on restraint with great care and circumspection.

24. It is true that the inherent powers of the High Court specified under Section 482 of Cr.P.C. are vested in it by 'Law', in terms of Article 21 of the Constitution of India. It cannot be forgotten that the proceedings cannot be allowed to be converted into a full dressed trial, as per decision *GANGABAI v. SHRIRAM @ SHRIKISHAN* reported in 1991 Cr1.L.J. 2018, 2020 (MP).

25. Furthermore, a person, who invokes the inherent jurisdiction of this Court under Section 482 of Cr.P.C. should come with clean hands and with equitable background as per decision in *ARAVINDAKSHAN v. STATE OF KERALA* reported in 1985 Cr1.L.J. 1389 (Ker).

26. That apart, in the decision in *S.C. JHUNJHUNWALA v. STATE OF TAMIL NADU* reported in 2009 (1) M.L.J. (Cri) 300 (Mad), it is observed and held that 'a party suppressing material facts and not approaching with clean hands, is not entitled to any relief under Section 482 of Cr.P.C.'

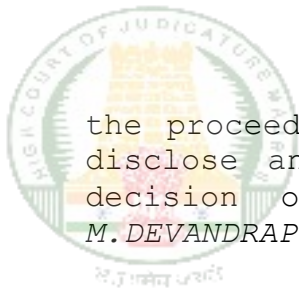
27. Apart from the above, it is to be noted that when the allegations made in the complaint taken as they are *prima facie* disclose commission of offence, then, the question of quash the criminal proceedings would not arise, in the considered opinion of this Court.

28. Moreover, when once the complaint disclose an offence, the inherent jurisdiction cannot be invoked as per decision in *MASILAMANI v. G. RANGANATHAN* reported in 1988 (1) Crimes 602 (MAD). In reality, if some offence is made out on a cursory perusal of the complaint or First Information Report, then, such complaint or FIR is not liable to be quashed by seeking the arms of High Court under Section 482 of Cr.P.C. In short, the sufficiency of evidence or material cannot also be gone into, at this stage.

29. At this juncture, this Court aptly points out that in the decision in *T.J. STEPHEN v. PARLE BOTTLING CO. (P) Ltd.*, reported in AIR 1985 SC 994, it is observed and held that 'a complaint should not be quashed by referring to the investigation records, particularly, when the petition of the complainant did the allege facts, which *prima facie* shoes commission of offence.

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30. In this connection, this Court relevantly points out that in proceedings instituted on complaint, exercise of inherent powers to quash



the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive, as per decision of the Hon'ble Supreme Court in *STATE OF KARNATAKA v. M.DEVANDRAPPA* reported in AIR 2002 SC 671.

31.Also, in exercise of the powers under inherent jurisdiction, the Hon'ble High Court should not embark upon the enquiry as to whether the evidence in question is reliable or not as that would be the function of the trial Court, as per decision of the Hon'ble Supreme Court in *M.M.T.C. LTD. v. MEDCH CHEMICALS AND PHARMA (P) LTD.*, reported in AIR 2002 SC 182.

32.Even the meticulous analysis of taking cognizable of an offence by the Magistrate is not called for in regard to the filing of petition for quash the proceedings, as opined by this Court. Thus, the appreciation of evidence, is not permissible in exercise of the inherent powers as per the decision in *AJIT KHAN v. STATE OF M.P.* reported in 2003 (1) MPLJ 507 (509).

33.Suffice it for this Court to point out that it is the material gathered during the investigation and evidence let in before a Court of Law, that alone determines the fate of an accused. Besides above, even the allegations on *mala fides* against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings as per decision of the Hon'ble Supreme Court in *DHANALAKSHMI v. R.PRASANNA KUMAR* reported in AIR 1990 SC 494.

34.One cannot brush aside a prime candid fact that there can be no stay of trials under the Prevention of Corruption Act, 1988. Indeed, the Prohibition is prescribed in Clause (c) of Sub-Section (3) of Section 19 of the Act.

35.In a decision in *CHAND DHAWAN v. JAWAHARLAL* reported in AIR 1992 SC 1379, it is observed and held that 'when the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show the continuance of the proceedings would be an abuse of the proceedings of Court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint'.

36.As far as the present case is concerned, this Court on a careful consideration of respective contentions and also by taking note of the entire facts and circumstances of the present case in an integral manner, comes to an irresistible and inevitable conclusion that on facts there exists *prima facie* materials against the Petitioner/A7. Whether the said materials are adequate for finding the accused guilty is a matter to be determined by the concerned trial Court. Viewed in that perspective, the relief sought for by the Petitioner in the present Criminal Original Petition to quash the proceedings in Special Case No.9 of 2014 on the file of the Chief Judicial Magistrate Court, Kanyakumari at Nagercoil is not acceded to by this Court. Since the Criminal Original Petition filed by the Petitioner/A7 sans merits, the same fails.



37. In fine, for the foregoing reasons, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Kanyakumari Division at Nagercoil.
2. The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Kanyakumari Detachment,
Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Crl.O.P. (MD) .No.16863 of 2015

16.12.2015

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