BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : .12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.O.P.(MD).No.17616 of 2015
and
M.P.(MD)No.1 of 2015

C.Deva Kumaradhas : Petitioner/Accused No.2

Vs.

1.Inspector of Police,
Vigilance and Anti-Corruption Wing,
Kanyakumari District,
Crime No.5 of 2014.

2.M.Suresh Kumar : Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Special Case No.2 of 2015 on the file of Special Court cum Chief Judicial Magistrate, Nagercoil and quash the same in so far as this Petitioner is concerned.

For Petitioner : Mr.K.P.S.Palanivel Rajan

For R1 : Mr.P.Kandasamy
Government Advocate (crl.side)

For R2 :Mr.M.Saravanakumar

ORDER

The Petitioner/A2 has focussed the present Criminal Original Petition praying for passing of an order by this Court to call for the records in Special Case No.2 of 2015 on the file of the Learned Chief Judicial Magistrate, Nagercoil and to quash the same.

2.According to the Learned counsel for the Petitioner/A2, the second Respondent/Defacto Complainant had filed a complaint before the First Respondent alleging that one A.Thanga Nadan, the Sub-Inspector of Police, Nithiravilai Police Station had demanded a sum of Rs.20,000/- to delete his name in the final report of Crime No.131 of 2014, wherein the said Defacto Complainant was ranked as third accused.

3.The Learned counsel for the Petitioner submits that the Defacto Complainant was not willing to pay the amount demanded by the first accused and therefore, he filed the present complaint to the Respondent police on 26.04.2014 at about 6.00 a.m.

4.Added further, the Learned counsel for the Petitioner/A2 proceeds to state that it was further alleged that on 25.04.2014 the first accused had rang up the Defacto Complainant and had directed him to meet him at Iswarya Hotel at 8.00 p.m. Moreover, it was alleged that at that time, the first accused had demanded Rs.50,000/- to be paid to him on 26.04.2014 to drop the Defacto complainant from the final report, wherein he was ranked as third accused.

5.It is represented on behalf of the Petitioner/A2 that on receipt of the complaint from the Defacto Complainant, the First Respondent had registered the present case against the first accused in respect of an offence punishable under Section 7 of Prevention of Corruption Act, 1988 and thereafter, a trap was laid and the First Respondent and the Defacto Complainant came to the scene of occurrence.

6.The Learned counsel for the Petitioner submits that at about 11.00 a.m., A1 and the Petitioner/A2 had reportedly arrived in a motor cycle and that A1 was said to have demanded the amount from the Defacto Complainant and that he had paid the amount. It was also alleged that A1 on receiving the amount had handed over it to the Petitioner/A2. Further, on completing the payment, the First Respondent/Police had arrived and at that point of time, the Petitioner/A2 ran away from the scene of occurrence with currency notes.

7.The Learned counsel for the Petitioner/A2 brings it to the notice of this Court that A1 was arrested and 27 witnesses were examined and on completion of the investigation, a final report was filed against the first accused and the Petitioner/A2 under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 r/w section 201 of IPC. On receipt of Final Report, the trial Court took cognizance of the case in Special Case No.2 of 2015 and the same is pending trial.

8.The Learned counsel for the Petitioner/A2 contends that the Petitioner/A2 had nothing to do with the case as projected by the First Respondent and that the entire case projected against the Petitioner/A2 was only based on the confession of A1 and as such, the Petitioner/A2 was falsely implicated by the First Respondent. Furthermore, no recovery was made from the Petitioner.

9.The Learned counsel for the Petitioner/A2 submits that no witness had identified the Petitioner/A2, but implicated him only on the basis of confession of A1 and it is well settled that if the proceedings initiated does not make out a prima facie case, then the same could be quashed.

10.Advancing his arguments, the Learned counsel for the Petitioner/A2 takes a plea that the cognizance taken by the Learned Chief Judicial Magistrate, Nagercoil in the present case is without any application of mind and as a result of an arbitrariness. The Learned counsel for the Petitioner/A2 takes a forceful stand that the order of taking cognizance by a Court of Law should be a speaking order and not a cryptic order as in the present case.

11.The Learned counsel for the Petitioner/A2 contends that the trial Courts should not be treated as 'Post Offices' by the Prosecuting Agency and that the Court of Law should take into consideration the materials put forth and it must be seen whether the materials relied on by the prosecution makes out offences alleged against a person/accused.

12.Finally, it is the submission of the Learned counsel for the

Petitioner/A2 that the order dated 21.04.2015 passed by the Learned Chief Judicial Magistrate, Nagercoil in Special Case No.2 of 2015 by taking cognizance of the case on file under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w Section 201 of IPC and ordering an issuance of of Non Bailable Warrant, the Petitioner/A2 cannot stand the legal test, scrutiny and therefore, the same is liable to be quashed, since it does not make out a prima facie case against the Petitioner.

13.In response, the Learned Government Advocate (crl. side) for the First Respondent submits that the present Criminal Original Petition filed by the Petitioner/A2 under Section 482 of Cr.P.C. before this Court is not maintainable because of the fact that the case was charge sheeted and charges were framed and that P.W.1 was examined and cross examined on behalf of the Petitioner/A2.

14.The Learned Government Advocate (crl. side) contends that the epitome of the allegation in the instant case was that on 26.04.2014 at 06.00 hours, M.Suresh Kumar (second Respondent) came to the office of Vigilance and Anti Corruption, Kanyakumari Detachment and submitted a written complaint to Tr.C.Salvan Thurai, Inspector of Police, that on 25.04.2014 at about 20.00 hours near Iswarya Hotel, Puthukadai, A.Thanga Nadan, the Sub-Inspector of Police, Nithiravilai Police Station, Kanyakumari District had demanded Rs.20,000/- as bribe from the second Respondent/Defacto Complainant for deleting the complainant's name in Nithiravilai Police Station Crime No.131 of 2014 under Sections 294(b), 323, 324 and 506(ii) IPC.

15.The Learned Government Advocate (crl. side) for the First Respondent brings it to the notice of this Court that in Nagercoil Vigilance and Anti Corruption Crime No.5 of 2014 under Section 7 of the Prevention of Corruption Act, 1988, a case was registered by C.Salvan Thurai, Inspector of Police, Vigilance and Anti Corruption, Nagercoil on 26.04.2014 at 07.00 hours and that a trap was arranged on 26.04.2014 and the complainant and the accompanying official witness Prem D.Kelvin, Senior Assistant Engineer, TNSTC, Nagercoil went to Virivilai Bridge at about 10.30 hrs. The accused A.Thanga Nadan arrived at 11.00 hrs at Virivilai Bridge along with C.Deva Kumaradhas, Special Sub-Inspector of Police 1355 of Nithiravilai Police Station in his Hero Honda Motor Cycle bearing registration No.TN 74 U 4627 and reiterated the bribe money of Rs.20,000/- to the complainant and received the bribe money with his right hand at 11.15 hrs and handed over the bribe money to the Petitioner/A2 (C.Deva Kumaradhas, SSI, 1355) who was sitting on the backside of A.Thanga Nadan.

16.Continuing further, it is represented on behalf of the First Respondent that on seeing the Vigilance party, the Petitioner/A2 escaped with the bribe money of Rs.20,000/- and thus, the Petitioner knowingly received the bribe amount of Rs.20,000/- from A1 and escaped from the place and thus caused disappearance of evidence of an offence, intentionally. Since the Petitioner/A2 was absconding during the time of investigation, he was not examined and the bribe amount was not recovered from his possession.

17.The Learned Government Advocate (crl. side) for the First Respondent contends that eye witnesses viz.,

(i) Suresh Kumar (Defacto complainant of the Trap case)
(ii) Prem D.Kelvin (Accompanying Official Witness)

(iii)K.Girish Kumar (Neighbour house of scene of crime) had clearly mentioned that Thanga Nadan received the bribe amount and handed over it to the Petitioner/A2, who was sitting on the backside of Thanga Nadan. Also, the said witnesses had stated on seeing the Vigilance police that the Petitioner/A2 ran away from the scene of occurrence along with the bribe money which he received from Thanga Nadan. Added further, this was supported by seizer mahazar (which was prepared by the trap laying officer in the presence of official witnesses). Also that during the preparation of seizure mahazar, A1 Thanga Nadan had clearly stated that he received the bribe money from the second Respondent/Defacto Complainant and gave it to the Petitioner/A2 and he fled away from the place with the bribe money on seeing the Vigilance police and therefore, there is clear strong prima facie case made out against the Petitioner.

18.The Learned Government Advocate (crl. side) contends that the trial Court had applied its judicial mind and took cognizance of the case against the accused. Further, a copy of the final report was given to the accused and later, charges were framed against the Petitioner/A2 under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w Section 201 of IPC.

19.At this stage, the Learned Government Advocate (Crl. side) for the First Respondent projects of legal argument that on 26.08.2015, P.W.1 (Superintendent of Police, Kanyakumari District) who accorded sanction to the prosecution against the Petitioner/A2, was examined as P.W.1 and also cross examined on behalf of the Petitioner/A2. Therefore, there is no question of quashing the proceedings pending on the file of trial Court. Also, there is no necessity to call for the records of the trial Court in Special Case No.2 of 2015.

20.The learned counsel for the Second Respondent/Defacto Complainant supports the stand taken on behalf of the first respondent.

21.At this stage, the Learned counsel for the Petitioner submits that the power to interdict a proceeding at the threshold or at an intermediate stage of the trial of a case is inherent in a High Court, based on the Principle that if the allegations averred in the FIR or the Criminal complaint, prima facie do not establish a triable offence and to lend support to this contention, he cites a decision of the Hon'ble Supreme Court in SATHISH MEHRA v. STATE OF N.C.T. of DELHI reported in 2013 CRI.L.J. 411.

22.He also relies on the decision of the Hon'ble Supreme Court in SANJAYSINGH RAMAO CHAVAN v. DATTATRAY GULABRAO PHALKE reported in (2015) 3 SCC 123 and 124, wherein it is observed and laid down as follows:-

> “The Learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because

another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

23.Added further, the Learned counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in DILAWAR BALU KURANE v. STATE OF MAHARASHTRA reported in 2002 SCC (Cri) 310 and 311, wherein it is observed and held as follows:-

> “This is a settled principle of interpretation that words in a statute should not be brushed aside as the courts always presume that legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The language of sub-section 73(4) is clear and the intention of the legislature was to bring the categories of persons, as indicated therein under the purview of sub-section 73(4). It is not possible to accept the contention of the appellant, as any other interpretation would go contrary to the intention of the legislature. Moreover, the marginal note cannot restrict the meaning of the section.”

24.Moreover, in the aforesaid decision at page 311, it is held as follows:-

> “In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

25.Besides the above, the Learned counsel for the Petitioner cites the following decisions:-

(i)In the decision of the Hon'ble Supreme Court in FAKHRUDDIN AHMAD v. STATE OF UTTARANCHAL AND ANOTHER reported in (2008) 17 SCC 157 at special page 158, it is held as follows:-

> "Though the powers possessed by the High Court under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The inherent powers possessed by the High Court are to be exercised very carefully and with great caution so that a legitimate prosecution is not stifled. Nevertheless, where the High Court is convinced that 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 or where the allegations made in the F.I.R. or the 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, the powers of the High Court under the said provision should be exercised."

(ii)In the decision of the Hon'ble Supreme Court in SATISH MEHRA v. DELHI ADMINISTRATION AND ANOTHER reported in (1996) 9 SCC 766 and 767, it is observed and held as follows:-

> "Consideration which should weigh with the Sessions Court at this state have been well designed by the Parliament through Section 227 Cr.P.C. Section 228 contemplates the stage after the case survive2s the stage envisaged in the former section. When the Court is of opinion that there is ground to presume that the accused has committed and offence the procedure laid down therein has to be adopted. When those two section are put juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is "sufficient ground for proceeding".
>
> An incidental question which emerges in this context is whether the Session Judge can look into any material other than those produced by the prosecution. Section 226 of the Code obliges the prosecution to describe the charge brought against the accused and to state by what evidence the guilt of the accused would be proved. The Next provisions enjoins on the Session Judge to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider (1) the record of the case and (2) the documents produced therewith. He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed. What is the scope of hearing the submissions? Should it be confined to hearing oral arguments alone?

Similar situation arise under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two State the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next State. It is a matter of exercise of judicial mind. There is nothing in the code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the "ground" may be any valid ground including insufficiency of evidence to prove charge.

The object of providing such an opportunity as is envisaged in Section 227 of the code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even material which the accused may produce at the stage contemplated in Section 227of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself.

26.The Learned Government Advocate (crl. side) for the First Respondent cites the decision of the Hon'ble Supreme Court in STATE OF U.P. v. UDAI NARAYAN AND ANOTHER reported in 2000 SAR (criminal) 100 at special page 101, at paragraph No.4, it is observed as follows:-

"Mr. Altaf Ahmed, the Learned Additional Solicitor General, appearing for the prosecution, contended that at the stage of considering an application for discharge, it is not open for the Court to shift the evidence and come to a conclusion one way or the other about the guilt of the accused persons. The Court at that stage will not be in a position to decide the trust-worthiness of the witnesses and discard the same by shifting and scanning, as a Court does in trial. This Court has already indicated the parameters of the powers Of the

Court to discharge an accused, before framing of charge and the impugned Judgment runs contrary to the same. According to the Learned Addl. Solicitor General, an elaborate examination of the statements recorded during investigation and forming an opinion after scanning and shifting of the same is not warranted under law."

27.The Learned Government Advocate (crl. side) relies on the decision of the Hon'ble Supreme Court in STATE BY CENTRAL BUREAU OF INVESTIGATION v. SH.S.BANGARAPPA reported in 2001 SAR (Criminal) 32, whereby and where under it is observed that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. Further, the limited exercise during that stage is to find out whether the materials averred by the prosecution to be adduced as evidence are sufficient for the Court to proceed further.

28.The Learned Government Advocate (crl. side) for the First Respondent brings it to the notice of this Court that A1 (Thanga Nadan) earlier filed Crl.O.P.(MD)No.3960 of 2015 against R1, the State, rep. by Inspector of Police, Vigilance and Anti-Corruption, Nagercoil, Kanyakumari District and the Defacto Complainant viz., the second Respondent under Section 482 of Cr.P.C. to call for the records in Crime No.5 of 2014 on the file of the Respondent and to quash the same and the same was dismissed by this Court on 09.03.2015 wherein directions were issued to the Respondent/Police to expedite and complete the investigation after obtaining sanction, to file a final report before the Jurisdictional Court within a period of four weeks from the date of receipt of a copy of the order.

29.The Learned Government Advocate (crl. side) for the Respondent proceeds to take a legal plea that on 26.08.2015, P.W.1 (who accorded prosecution sanction against the Petitioner/A2) was examined and also was cross examined on the side of the Petitioner. It is also represented on behalf of the First Respondent that once the trial Court had framed necessary charges against the accused and when the trial of the case in Special Case No.2 of 2015 had commenced on the file of the trial Court and a case is in part-heard stage, then there is no question of quashing of criminal proceedings in the eye of Law. As such, the Crl.O.P.(MD) No.17616 of 2015 filed by the Petitioner is to be dismissed to prevent an aberration of justice.

30.At this stage, it is to be pointed out that the exercise of power under Section 482 of Cr.P.C. is an exception and not the Rule. In fact, Section 482 of Cr.P.C. speaks of circumstances in and by which the inherent jurisdiction may be exercised by the Hon'ble High Court (i) To give effect to an order under the Code of Criminal Procedure; (ii)To prevent an abuse of process of Court; and (iii)To otherwise secure the ends of justice.

31.It is to be remembered that while exercising the powers under Section 482 of Cr.P.C., the Court does not function as a Court of 'Appeal' or 'Revision'. As a matter of fact, the Hon'ble High Court exercise its extraordinary jurisdiction under Section 482 of Cr.P.C., where it finds that non-interference shall result in abuse of process of the Court or failure of justice or whether grave injustice is shown to have been caused and request to be undone. Apart from that, an individual who seeks the aid of this Court under Section 482 of Cr.P.C. who come with clean hands and with equitable background. Also, it cannot be forgotten that once trial has commenced, the petition filed under Section 482 of Cr.P.C. seeking to quash the proceedings does not lie, as per the decision in ZOOM VISION v. P.MANICKAM & CO. reported in 2001(4) Crimes 1996 (Mad).

32.In this connection, it is not out of place for this Court to make a significant mention that the inherent power under Section 482 of Cr.P.C. ought not to be exercised by the concerned party to stifle a legitimate prosecution. Ordinarily, the High Court must restrain itself from rendering a prima facie decision in a case where the entire gamut of facts are quite incomplete and hazy, as opined by this Court. Indeed, Section 482 of Cr.P.C. comes into operative play, when the impugned order was passed by a competent Court and furthermore, the inherent powers of High Court under Section 482 of Cr.P.C. should vested in it by 'Law', within the meaning of Article 21 of the Constitution of India.

33.In short, the power under Section 482 of Cr.P.C. is to be exercised with great care and caution and that too, sparingly to deliver substantial and real justice to the parties. Also that the proceedings under Section 482 of Cr.P.C. are not to be permitted to be converted into a 'full dressed' trial, in the considered opinion of this Court. To put it precisely, the High Court is to be guided by the allegations projected in the complaint or charge sheet and it has to be seen that if these allegations make out any offence or not and whether resort to criminal proceedings, under such circumstances amounts to an abuse of process of the Court or not. However, if a Court of Law is satisfied that there is great miscarriage of justice or abuse of process of the Court or the required statutory provision was not complied with or there is failure of justice, in that event, it is but the duty of the Court to get it corrected at the early stage itself.

34.At this stage, this Court aptly points out that the inherent power under Section 482 of Cr.P.C. is constituently recognised and jealously safeguarded. In reality, the ingredients of Section 482 of Cr.P.C. are primordially meant to meet the three situations specified therein and they are distinct from a revisional or appeal jurisdiction, in the considered opinion of this Court. At the same time, Section 482 of Cr.P.C. is not meant to by-pass the procedure prescribed as per decision in L.V.JADHAV v. SHANKARRAO reported in AIR 1983 SC 1219. Further, wider the inherent power, a greater restraint is required on the part of the High Court in invoking the ingredients of Section 482 of Cr.P.C. If a party had suppressed material facts and come to Court with unclean hands, then he is not entitled to seek any relief in terms of Section 482 of Cr.P.C.

35.At this stage, this Court worth recollects and recall the decision of the Hon'ble Supreme Court in STATE OF BIHAR v. RAJENDRA AGRAWALLA reported in 1996 (8) SCC 164, whereby and where under, it is observed and laid down as follows:-

> “The inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the

process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.

In the present case the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to a conclusion that no offence is made out. The High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the FIR and material referred to in the charge-sheet do make out an offence under Section 414 of the Indian Penal Code, so far as the Respondent is concerned.”

36.Also this Court aptly points out the decision of the Hon'ble Supreme Court in STATE OF ORISSA v. BANSIDHAR SINGH reported in AIR 1996 SC 938, wherein it is observed as follows:-

“Where on perusal of the materials available namely the dying declaration and corroborating statement of another witness, cognizance was taken by the Court against accused for the offence under Section 300, Penal Code, the order of the High Court quashing the criminal proceedings by brushing aside the dying declaration on certain grounds and taking the view that deceased person was of unsound mind, on the basis of statements of some persons at the investigation stage itself when their evidence was yet to be recorded at trial, was liable to be set aside. The veracity, reliability and truthfulness of alleged dying declaration would be tested only after the evidence is recorded in the Court.”

37.It is to be noted that the term 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is a condition precedent to the initiation of proceedings by the learned Magistrate or the Judge. After all, 'cognizance' is taken of cases and not of persons. At the time of taking cognizance of an offence/offences, the Court is to take into consideration the averments made in the complaint or in the charge sheet filed under Section 173 of Cr.P.C. Really speaking, it is not open for the Court to either appreciate or shift the evidence at that stage with reference to the material and come to a conclusion that 'no prima facie' case is made out for proceeding further in the subject matter in issue. Indeed, at the time of taking cognizance of the offence/offences, a Court of Law is not required to pass a lengthy/elaborate/reasoned order.

38.In fact, in Law, there is a distinction between a case where there is no legal evidence which is clearly inconsistent with the accusations made and a case where there is a legal evidence which on appreciation may or may not support the accusations. Further, the Hon'ble High Court ought not to assume the role of trial Court and to embark upon the enquiry in regard to the reliability of evidence and the sustainability of the accusation on reasonable appreciation of such evidence.

39.Be that as it may, on a careful consideration of respective contentions and also this Court bearing in mind the facts and circumstances of the present case comes to a consequent conclusion that there exists prima facie allegations against the Petitioner/A2 and as such, it cannot be said that the continuance of proceedings before the trial court would be an abuse of process of Court or would defeat the ends of justice. Furthermore, the trial of the Special Case No.2 of 2015 on the file of the Learned Chief Judicial Magistrate, Nagercoil had already commenced and in fact, P.W.1 was examined on the side of the prosecution and cross examined on the side of the Petitioner/A2. As such, the contention of the Petitioner/A2 in the present Criminal Original Petition to the effect that the trial Court had not applied its mind while taking cognizance of the main case etc., cannot be acceded to by this Court because of the simple reason that even though the said order is cryptic, yet, taking cognizance by the trial Court in the instant case can be very well inferred from the facts and materials on record, in the considered opinion of this Court. Viewed in that perspective, the Criminal Original Petition fails.

40.In the result, the Criminal Original Petition is dismissed. Consequently. connected Miscellaneous Petition is also dismissed. It is made clear that the dismissal of the Criminal Original Petition will not preclude the Petitioner/A2 to raise all factual and legal pleas before the Learned Chief Judicial Magistrate, Nagercoil in Special Case No.2 of 2015 (which is in part-Heard stage), in the manner known to Law and in accordance with Law.

41.Before parting with the case, this Court significantly points out that it is in primordial interest of concerned that the guilt or innocence of an accused is to be decided as early as possible by a Court of Law. The Constitutional Guarantee of speedy trial emanating from Article 21 of the Constitution of India is reflected in Section 309 of Cr.P.C. In short, Section 309 of Cr.P.C. ought to be read with Section 482 of Cr.P.C., which saves the inherent powers of the High Court. Bearing these in mind, the Chief Judicial Magistratem, Nagercoil is directed to dispose of the Special Case No.2 of 2015 on his file within a period of two months from the date of receipt of a copy of this order and report compliance to this Court without fail.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub AssistantRegistrar

To
1.The Special Court cum
Chief Judicial Magistrate,
Nagercoil.

2.The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Kanyakumari District.

3.The additional Public Prosecutor
Madurai Bench of Madras High court, Madurai.

+1cc to M/s.K.P.S.Palanivelrajan, Advocate SR.No.76101/15
+1cc to Mr.M.Saravanakumar, Advocate SR.No.75606/15

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Pre-Delivery Order made in
Crl.O.P.(MD).No.17616 of 2015
21.12.2015