BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : .12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.O.P.(MD).No.19386 of 2015
and
M.P.(MD)No.1 of 2015

A.Thanga Nadan : Petitioner/Accused No.1

Vs.

1.State through the
Inspector of Police,
Vigilance and Anti-Corruption,
Nagercoil, Crime No.5 of 2014.

2.M.Suresh Kumar : Respondents/Complainants

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.

For Petitioner :Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu

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

For R2 :Mr.M.Saravanakumar

ORDER

The Petitioner/A1 has filed the instant 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/A1, the Petitioner served as Sub-Inspector of Police, Nithiravilai Police Station from 17.05.2013 to 26.04.2014 and that on 15.04.2014 at 13 hours, a case was registered at Nithiravilai Police Station in Crime No.131 of 2014 in respect of the alleged offences punishable under Sections 294(b), 323, 324 and 506(i) of IPC and A2 is the Investigating Officer in this case and the First Information Report was registered by him.

3.As a matter of fact, the Defacto Complainant is one of the accused in the aforesaid crime number. It is represented on behalf of the Petitioner/A1 that in the aforesaid case on 25.04.2014 at about 20.00 hours, the Petitioner was alleged to have demanded Rs.20,000/- as bribe to delete the name of the Defacto Complainant in the charge sheet in continuance of the said demand, directed the Defacto Complainant to bring the money on 26.04.2014 at about 10.30 hours at Virivilai Bridge, Nithiravilai. Further, the Defacto Complainant on 26.04.2014 at about 11.00 hours met the Petitioner and that the Petitioner had demanded money and he received the tainted currency notes by his right hand at about 11.15 hours on 26.04.2014 and handed over the same to A2 (Petitioner in Crl.O.P.(MD)No.17616 of 2015), who was sitting on the backside of the two wheeler of the Petitioner.

4.The Learned counsel for the Petitioner contends that the second respondent/Defacto Complainant was already involved in three other cases and that he is having motive on the Petitioner in the present case and even according to the prosecution, the demand took place at nearby Iswarya Hotel, Puthukottai and added further, there was no corroboration evidence available in the present case. Furthermore, acceptance alone is not sufficient to come to a conclusion that the Petitioner/A1 is guilty. The Learned counsel for the Petitioner/A1 takes a plea that the entire investigation in the present case had not disclosed the offence mentioned in the charge sheet and that the second respondent/Defacto Complainant out of mala fide intention had given a false case with the help of the First Respondent. As such, the ultimate result after completion of trial can only be a verdict of acquittal and in short, the present Criminal Original Petition has been filed by the Petitioner/A1 primarily with a view to prevent an abuse of process of Court.

5.In response, the Learned Government Advocate (Crl. side) for the First Respondent submits that the petition filed by the Petitioner/A1 is not maintainable before this Court, inasmuch as the case was charge sheeted and necessary charges were framed against the concerned accused and P.W.1 was examined as well as cross examined on the defence side. Expatiating his contention, the Learned Government Advocate (crl. side) for the First Respondent proceeds to take a plea that the epitome of allegation is that on 26.04.2014 at 06.00 hours, one 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, the Petitioner/A1 (A.Thanga Nadan), the Sub-Inspector of Police, Nithiravilai Police Station, Kanyakumari District had demanded Rs.20,000/- as bribe from him 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.

6.Apart from that, it is represented on behalf of the First Respondent 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 and that the Petitioner/A1 (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-A2-Petitioner in Crl.O.P.(MD)No.17616 of 2015 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 A2 (C.Deva Kumaradhas, SSI, 1355) who was sitting on the Petitioner/A1.

7.Apart from that, the Learned Government Advocate (crl. side) for the First Respondent submits that on seeing the Vigilance party, A2 (C.Deva Kumaradhas) escaped with the bribe money of Rs.20,000/- and thus, A2 (C.Deva Kumaradhas) knowingly received the bribe amount of Rs.20,000/- from the Petitioner/A1 and escaped from the place and thus caused disappearance of evidence of an offence, intentionally. Since A2 (C.Deva Kumaradhas-Petitioner in Crl.O.P.(MD)No.17616 of 2015) was absconding during the time of investigation, he was not examined and the bribe amount was not recovered. Also, the Phenolphthalein test conducted on the right hand of the Petitioner/A1 proved positive and hence he was arrested and remanded for judicial custody.

8.Continuing further, 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 the Petitioner/A1 (Thanga Nadan) received the bribe amount and handed over it to A2 (C.Deva Kumaradhas), who was sitting on the backside of Thanga Nadan. Moreover, the said witnesses had stated that on seeing the Vigilance police, A2 (C.Deva Kumaradhas) ran away from the scene of occurrence along with the bribe money which he received from the Petitioner/A1. Besides that at the time of preparation of seizure mahazar, the Petitioner/A1 had clearly mentioned that he received the bribe money from the second Respondent/Defacto Complainant (M.Suresh Kumar) and gave it to A2 (C.Deva Kumaradhas) 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/A1.

9.In effect, the Learned Government Advocate (crl. side) for the First Respondent projects an argument 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/A1 under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 on 20.08.2015.

10.Apart from the above, it is the stand of the First Respondent that on 26.08.2015 P.W.1 (who accorded prosecution sanction against A2) was examined before the trial Court and further, he was also cross examined. As such, there is no question of quashing the proceedings pending on the file of trial Court.

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

12.At this stage, the Learned counsel for the Petitioner/A1 submits that the examination of P.W.1 before the trial Court is not a bar for the Petitioner/A1 to invoke the inherent jurisdiction of this Court under Section 482 of Cr.P.C. Further, the Learned counsel for the Petitioner/A1 relies on the Judgment of this Court dated 11.06.2015 in

Crl.A.(MD)No.560 of 2008 between R.SASIDARAN @ SASI v. THE STATE REP. BY THE INSPECTOR OF POLICE, VIGILANCE AND ANTI CORRUPTION, NAGERCOIL, whereby and where under at paragraph No.9, it is observed and held as under:-

> “The learned Additional Public Prosecutor would submit that the phenolphthalein test was conducted, which turned positive. The prosecution cannot make any reliance on the phenolphthalein test conducted in respect of the second accused, because he has been acquitted by the Trial Court and there is no appeal filed by the State against the acquittal. Therefore, the learned Additional Public Prosecutor could make reliance on the result of the phenolphthalein test conducted on the fingers of the appellant. It is true that the phenolphthalein test conducted in respect of the appellant turned positive. But, this evidence cannot be treated as substantive evidence so as to come to the irresistible conclusion that the appellant demanded illegal gratification and accepted the same. In the absence of the evidence that the appellant had demanded bribe, received the same and handed over the currency notes to the second accused and in the absence of the recovery of currency notes either from the appellant or from the second accused and in the light of the fact that the second accused has been acquitted by the Trial Court, I am of the considered view that it is very difficult to believe the case of the prosecution in respect of the occurrence on 03.01.2003. Though the evidence of PW-3 has made some foundation for a strong suspicion against the appellant that he would have received the amount, such suspicion shall not take the place of proof. Since the punishment is so stringent, it is required that the prosecution should prove its case beyond all reasonable doubts. In this case, as I have already pointed out, since there are lot of flaws in the case of the prosecution and since absolutely, there is no proof that the appellant had demanded and accepted the illegal gratification and since there was no recovery of the tainted currency notes at all either from the appellant or from the second accused, it is highly unsafe to place reliance on the sole testimony of PW-3 to confirm the conviction and sentence. Thus, I hold that the appellant is entitled for the benefit of doubt and consequently entitled for acquittal.”

13.However, the Learned Government Advocate (crl. side) for the First Respondent relies on 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."

14.Also, he cites the decision of the Hon'ble Supreme Court in STATE BY CENTRAL BUREAU OF INVESTIGATION v. SH.S.BANGARAPPA, 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.

15.In this connection, the Learned Government Advocate (crl. side) for the First Respondent brings it to the notice of this Court that the Petitioner/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.

16.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/A1) 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.19386 of 2015 filed by the Petitioner/A1 is to be dismissed to prevent an aberration of justice.

17.It is well settled that the exercise of power under Section 482 of Cr.P.C. is an exception and not the Rule. As a matter of 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.

18.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).

19.In reality, the inherent power in terms of Section 482 of Cr.P.C. should not to be exercised by the person concerned 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.

20.Suffice it for this Court to made a relevant mention that 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.

21.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. The power under Section 482 of Cr.P.C. is meant to meet the three situations prescribed therein and they are distinct from a revisional or appeal jurisdiction, as opined by this Court. Also, the wider 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.

22.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."

23.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."

24.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/ofences, 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.

25.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.

26.In the upshot of detailed qualitative and quantitative discussions and also this Court taking note of the facts and circumstances of the instant case in a wholesome manner, comes to a resultant conclusion that there exists prima facie allegations against the Petitioner/A1 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 started and in fact, P.W.1 was examined and cross examined. Under such circumstances, the relief claimed by the Petitioner/A1 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 and that the order of the trial Court, dated 24.01.2015 taking cognizance of the main case and ordered issuance of summons to him etc., cannot be acceded to by this Court because of the reason 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. Viewed in that perspective, the Criminal Original Petition fails.

27.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/A1 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.

28.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 Magistrate, 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.Prabhu, Advocate SR.No.75723/15
+1cc to M/s.M.Saravanakumar, Advocate SR.No.75607/15

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Pre-Delivery Order made in
Crl.O.P.(MD).No.19386 of 2015
21.12.2015