

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

(Orders reserved on 28.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.290 and 412 of 2011
and
M.P.No.1 of 2011 in each case

G.Ramesh ..Petitioner/A1 in Crl.R.C.No.290 of 2011

L.Ramachandran ..Petitioner/A2 in Crl.R.C.No.412 of 2011

Vs.

State by
Additional Superintendent of Police,
CBCID Metro Wing,
Chennai.

.. Respondent/Complainant in both the
Crl.R.Cs.

Criminal Revision Case No.290 of 2011 filed under Section 397 read with Section 401 Cr.P.C. against the order dated 04.02.2011 in Crl.M.P.No.8668 of 2009 in C.C.No.5 of 2008 on the file of VI Additional Sessions Court, Chennai.

Criminal Revision Case No.412 of 2011 filed under Section 397 read with Section 401 Cr.P.C. against the order dated 04.02.2011 in Crl.M.P.No.9300 of 2009 in C.C.No.5 of 2008 on the file of VI Additional Sessions Court, Chennai.

For petitioner : Mr.B.Kumar, Senior Counsel for
Mr.A.Jenasenan
in Crl.R.C.No.290 of 2011
Mr.V.Gopinath, Senior Counsel
for Mr.C.P.R.Kamaraj
in Crl.R.C.No.412 of 2011

For respondent : Mr.P.Govindarajan, Addl.P.P.
in both Petitions.

COMMON ORDER

Challenging the common order of dismissal of the discharge petitions filed under Section 227 Cr.P.C. passed by the trial Court in Crl.M.P.Nos.8668 and 9300 of 2009, dated 04.02.2011, the petitioners have filed these revision petitions. Since these revision petitions have been filed against the common order, it is appropriate to dispose of the same by this common order.

2. The revision petitioner in Crl.R.C.No.290 of 2011 was the Executive Engineer, Town Planning Section, Works Department, Corporation of Chennai and he is arrayed as A-1 in the case. The revision petitioner in Crl.R.C.No.412 of 2011 is the owner of Plot No.678/1A, T.S.No.33, Block No.7, Dr.Ambedkar Street, Shenoy Nagar, Chennai and he is arrayed as A-2 in the case.

3. The case of the prosecution is as follows:

The revision petitioner/A2 has applied for planning permission with the Corporation of Chennai for construction of flats, vide his application dated 04.04.2003 with regard to his property. When the said application came to the revision petitioner/A1 for recommendation, he referred the entire file to R.D.O (Land and Estate) Department, since there was a dispute with regard to the ownership of the property. The dispute was that the property belongs to Chennai Corporation and by mistake, the same was taken over by TNHB and the same was allotted and sold to one R.Deenadayalan. When the revision petitioner/A2 again applied for planning permission on 31.10.2003, i.e. after a period of six months, with regard to the same property, the revision petitioner/A1, knowing fully well about the fact that the earlier application was referred to RDO (Land and Estate), without revealing the same to the City Engineer, recommended the second application for plan sanction. The City Engineer sanctioned the plan, thereby A1 made the Chennai Corporation to part with the above said land and caused monetary loss to the Corporation of Chennai to the tune of Rs.9,41,472/- and committed forgery and created false document with different address of the revision petitioner/A2. Hence, on the complaint lodged by the City Engineer, Chennai Corporation, a case was registered in CB-CID Metro Crime No.4 of 2006. On investigation, charge sheet was filed against A-1 for the offences punishable under Sections 420, 465 and 468 IPC read with 34 IPC and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act and against A-2 for the offences punishable under Sections 420, 465 and 468 IPC read with 109 and 34 IPC and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act read with 109 and 34 IPC.

4. Both the learned Senior Counsels appearing for the petitioners in each case, by inviting the attention of this Court to the sale deed, dated 28.03.2002, submitted that A2 has purchased the property from one R.Deenadayalan for a valuable sale consideration of Rs.9,41,472/- and the said Deenadayalan has purchased the property from the Tamil Nadu Housing Board, by sale deed, dated 15.02.1990. The land(s) was acquired for the purpose of improvement scheme known as "Arignar Anna Nagar Scheme" and the land was purchased from the said Deenadayalan. He filed a petition for re-conveyance of a portion of the property at the cost price as per the statutory provisions as an ex-owner and thereafter, the Tamil Nadu Housing Board executed the sale deed in favour of the said Deenadayalan. Learned Senior Counsels further submitted that the de-facto complainant/Corporation of Chennai contended that a portion of the land was by mistake conveyed to the TNHB and the same was purchased by Deenadayalan, from whom, A2 purchased the property. It is further submitted that on 04.04.2003, A-2 applied for planning permission to the Commissioner of Corporation of Chennai to construct residential building in the property and along with the application, all the required documents were filed. The said application was registered by the Junior Assistant (L.W.8) and sent to Junior Engineer (L.W.7) and it was noted by L.W.7 and L.W.2 that the land was under dispute. Hence, on 30.04.2003, a note signed by L.W.7, L.W.8 and A1 was sent to the Land and Estate Department for query. The entire file was referred to R.D.O. Department raising certain query with regard to the ownership dispute. Though the file was sent to R.D.O., since no action was taken and since no communication was received by A2 with regard to the first application, A-2 has filed second application for planning permission on 31.10.2003. L.W.8 registered the application in P.P.A. register and handed over it to L.W.5 (Assistant Executive Engineer) for inspection of land etc. On 05.11.2003, L.W.5 made an inspection and recommended for sanction to A1. On 06.11.2003, A1 recommended sanction to City Engineer. On 14.11.2003, L.W.1 City Engineer sanctioned the plan for building construction. On 19.01.2004, the Land and Estate Department noted that the land is under dispute. This is after the sanction was granted on 14.11.2003. Hence, on 09.08.2006, a complaint was preferred by City Engineer (L.W.1) against A1 and A2. On completion of investigation, charge sheet was filed against the petitioners/A1 and A2.

5. The learned Senior Counsels further submitted that A1 has recommended to the City Engineer only based on the recommendation made by the Assistant Executive Engineer. In fact, when the Corporation of Chennai interfered with the construction of building, A2 filed a Writ Petition in W.P.No.6591 of 2004 before this Court against the Corporation of

Chennai and the Assistant Executive Engineer praying to forbear them from in any manner interfering with the right, possession and enjoyment, including putting up of construction in the land in question. In the said Writ Petition, by order dated 25.08.2004, this Court has categorically observed that the Corporation of Chennai is not the owner of the land and only the TNHB is the owner, which has conveyed the same to the vendor of A2. Therefore, the contention of the Corporation that they are the owner of the land, was negated by this Court in the said Writ Petition. Learned Senior Counsels further contended that neither the complaint nor the charge sheet mentions about the said order of this Court in W.P.No.6591 of 2004. Hence, absolutely, there is no case for framing charges against the petitioners/A1 and A2. Even if there is no land dispute, the matter is purely of civil nature and therefore, there is no material to frame charges against the petitioners/A1 and A2.

6. Opposing the above submissions, learned Additional Public Prosecutor appearing for the respondent submitted that when the earlier application of A2 for planning permission, was referred to R.D.O. (Land and Estate), by suppressing the same, recommendation was made by A1 and therefore, there is clear criminal misconduct on the part of the revision petitioners. The statement of L.W.7 and L.W.8 shows that the earlier application submitted by A2 was referred to R.D.O. since there was dispute with regard to the ownership, though A1 was aware of the fact that the earlier application being referred to R.D.O., suppressing the same, A1 recommended the second application of A2 and therefore, there is clear case for framing charges against the petitioners/A1 and A2.

7. Though very many contentions have been raised by the learned Senior Counsels appearing for the revision petitioners referring to the sale deeds executed by the Tamil Nadu Housing Board, dated 15.02.1990 in favour of the vendor of A2 as well as the sale deed executed in favour of A2 by his vendor Deenadayalan and also to the order of this Court in W.P.No.6591 of 2004, the crux of the allegation is that A1 has earlier referred the first application of A2 to the R.D.O. since there was dispute with regard to the ownership of the property and by suppressing the said reference, A1 made recommendation to the City Engineer in respect of the second application of A2 and the City Engineer approved the same. In other words, though A1 had the knowledge about the reference earlier made to R.D.O (Land and Estate) in respect of the first application of A2, by suppressing the same, A1 made recommendation in respect of the second application of A2. Therefore, there is a clear misconduct on the part of the accused. Further, from Ex.A-10, it is seen that the Housing Board and the Collector of Chennai have

handed over a part of the land situated in S.No.10/2 in favour of the Corporation of Chennai and the document further revealed that it was taken over by the Corporation of Chennai. Therefore, in my considered view, there is a case for framing charges against the revision petitioners/A1 and A2 and hence, it is incorrect to state that absolutely there is no case made out to frame charges against the petitioners/A1 and A2.

8. In this regard, it is worthwhile to notice a judgment of the Supreme Court reported in 2013 (11) SCC 476 (Sheoraj Singh Ahlawat Vs. State of U.P), wherein the Apex Court held that while framing charges, Court is required to evaluate the materials and documents on record to decide as to whether the facts emerging therefrom taken at their face value, would disclose existence of ingredients constituting the alleged offence; at this stage, the Court is not required to go deep into the probative value of materials on record; it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused; even if there is a grave suspicion against the accused and it is not properly explained or Court feels that the accused might have committed the offence, then framing of charges against the accused is justified and it is only for conviction of accused that the materials must indicate that the accused had committed the offence, but for framing of charges, if the materials indicate that the accused might have committed the offence, then framing of charge is proper.

9. Therefore, in my considered opinion, all the submissions of the learned Senior Counsels appearing for the revision petitioners/A1 and A2 will not be a ground to discharge the revision petitioners from the case. Hence, I do not find any infirmity in the impugned order passed by the trial Court. Accordingly, the CrI.R.Cs. are dismissed. The Miscellaneous Petitions are closed. However, the revision petitioners are at liberty to raise all the grounds before the trial Court during the course of trial.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. VI Additional Sessions Judge, Chennai.

2. Additional Superintendent of Police, CBCID Metro Wing, Chennai-2.

3. The Public Prosecutor, High Court, Madras.

1 cc to Mr.R.Rajarithnam, Advocate, sr.38064

Crl.R.C.Nos.290 and 412 of 2011

pur co
kra 27.07.2016



WEB COPY