

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.08.2016

DELIVERED ON: 16.08.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.15870 of 2016 & Crl.M.P. No.7764 of 2016

A. Vivekanandan

Petitioner

vs.

1 The Inspector of Police
CB-CID (Unit-II)
Chennai

2 Mohammed Azizullah
Executive Engineer & Administrative Officer
K.K. Nagar Division
Tamil Nadu Housing Board
Chennai 600 083

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C. No.4974 of 2013 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For petitioner Mr. J. Milton Arul Rajendran

For R1 Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in C.C. No.4974 of 2013 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2 On the complaint given by the Executive Engineer and Administrative Officer, K.K. Nagar Division, Tamil Nadu Housing Board on 26.11.2008, a case in Crime No.1 of 2008 was registered by the CB-CID and after completing the investigation, final report in C.C. No.4974 of 2013 has been filed before the XI Metropolitan Magistrate, Saidapet, Chennai, for offences under Section 120-B and 109 read with Section 467, 468, 471 and 420 IPC, against 8 accused, challenging which, A. Vivekanandan (A8), formerly Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, is before this Court.

3 It is the case of the prosecution that a prime land measuring 4.95 acres was acquired by the Tamil Nadu Housing Board and compensation was paid to Rajalakshmi (A1). After having received the compensation, Rajalakshmi (A1), in connivance with the other accused, including the officials of the Tamil Nadu Housing Board, fabricated documents and cheated Tamil Nadu Housing Board by selling the acquired property to three persons, viz., V. Thulasidoss, N.Saraswathy and C. Vijayalakshmi, as if they are the absolute owners. Thorough investigation was conducted by the CB-CID and Vivekanandan (A8) also was found part of the conspiracy. The allegations levelled against Vivekanandan, as stated in the final report, are as under:

"In furtherance of the said criminal conspiracy and in the course the same transaction, (A-8) Thiru. Vivekanandan, EE and AO, KK Nagar Division of TNHB and (A-7) Thiru. Ragavan, conspired each other and constitute the offence of abetment by way of intentionally aiding and actively assisting to do the said commission of offence by V.Rajalakshmi (A1) and C. Mohan (A2) and facilitate them to sell away the property belonging to Tamil Nadu Housing Board and to facilitate them by way of furnishing incorrect and false break-up details in respect of the land belongs to Tamil Nadu Housing Board measuring 0.90 cents as if it belongs to Tmt. Rajalakshmi (A1) and issued a NOC on 19.01.2001 which constitute the offence of abetment punishable u/s 109 and 120-B r/w 467, 468 and 420 IPC."

4 Mr. J. Milton Arul Rajendran, learned counsel for Vivekanandan submitted that in the departmental enquiry, Vivekanandan has been exonerated by the officials and therefore, the prosecution launched against Vivekanandan is an abuse of process of law.

5 It may be relevant to state here that the present case itself was registered pursuant to the direction issued by the High Court during a proceedings in which, this Court had observed a gargantuan fraud in respect of the Tamil Nadu Housing Board lands.

6 The investigation done by the CB-CID reveals that the Housing Board officials had connived in the offence and therefore, the exoneration of Vivekanandan in the departmental enquiry does not surprise this Court and as such, the stand of the learned counsel for Vivekanandan that inasmuch as Vivekanandan has been exonerated by the officials, the prosecution launched against him should be quashed, does not cut ice with this Court.

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7 The learned counsel for Vivekanandan placed strong

reliance upon a judgment of a Division Bench of this Court in Selvi J.Jayalalithaa and 2 others vs. Central Bureau of Investigation [2011 (3) MWN (CrI.) 175 and submitted that the offence in the instant case is of the year 1996 and the final report has been filed only in 2013 and thus, on the ground of delay in filing the final report, the prosecution as against Vivekanandan is liable to be quashed.

8 In this regard, it is pertinent to point out that the offence in the case at hand itself came to light in a collateral proceedings before this Court and only thereafter, on the complaint given by the Executive Engineer and Administrative Officer of the Tamil Nadu Housing Board on 26.11.2008, F.I.R. was registered by CB-CID. CB-CID had to collect huge documents, collate them and file a final report.

9 At this juncture, it is worth pointing out that, in Ranjan Dwivedi vs. Central Bureau of Investigation [(2012) 8 SCC 495], the Supreme Court refused to quash a prosecution of the year 1977. In a case of this nature, where, it is alleged that the Housing Board's lands have been encumbered by private persons in league with officials, quashment of the prosecution will send wrong signals to the land grabbers.

10 In view of the foregoing discussion, this Court is of the considered view that there are sufficient materials on record for the trial to proceed against the petitioner. In State of Haryana vs. Bhajan Lal, [1992 Supp. (1) SCC 335], the Supreme Court has laid down the paramaters for quashing a prosecution and the case at hand does not pass muster the law laid down therein.

Resultantly, this Criminal Original Petition stands dismissed, as being devoid of merits. Connected CrI.M.P. is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cad

To

<https://hcservices.ecourts.gov.in/hcservices>
1 The Inspector of Police
CB-CID (Unit-II)
Chennai

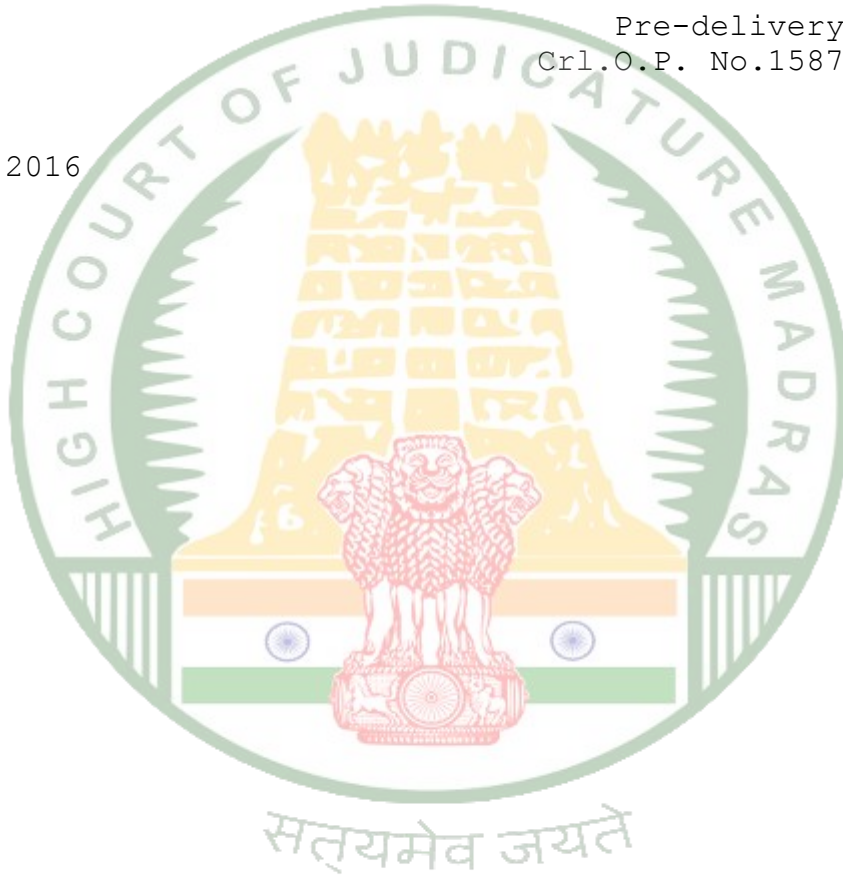
2 The XI Metropolitan Magistrate Court
Saidapet
Chennai

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

2 cc to Mr.J.Milton Arul Rajendran, Advocate, sr.46072, 46555

Pre-delivery order in
Crl.O.P. No.15870 of 2016

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kra 30.08.2016



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