

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

(Orders reserved on 03.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.342 of 2016

and

Crl.M.P.No.2307 of 2016

S.Lakshmanan

... Petitioner/Petitioner/
Accused NO.1

Vs.

The State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
Special Investigation Cell,
Chennai.

... Respondent/Respondent/
Complainant

Criminal Revision Case filed under Section 401 read with Section 397 Cr.P.C. to call for the records in C.C.No.11 of 2013 pending on the file of the Special Court for the cases under the Prevention of Corruption Act, Chennai and set aside the order passed in Crl.M.P.No.943 of 2013, dated 03.02.2016.

For petitioner : Mr.S.Ashok Kumar

For respondent : Mr.P.Govindarajan, Addl.P.P.

ORDER

Challenging the order of dismissal of the discharge petition filed under Section 239 passed by the trial Court in Crl.M.P.No.943 of 2013 in C.C.No.11 of 2013, by order dated 03.02.2016, the petitioner has filed this Criminal Revision Petition.

2. The case of the prosecution is briefly stated hereunder:

(a) The petitioner herein is A-1 in C.C.No.11 of 2013. A charge sheet has been filed against the petitioner/A-1 (V.Lakshmanan) and also against A-2 (R.Padmanaban) for the alleged offences under Sections 120-B, 465 and 467 read with 471 IPC and Section 13(2) read with Section 13(1)(d)(c) of the Prevention of Corruption Act. The petitioner/A-1 worked as

Special Officer of the Tamil Nadu Secretariat Staff Co-operative Housing Board Society (for short, 'the Society') during the period between 27.07.2005 and 26.02.2007. A-2 (since retired from service) worked as Section Officer/Accounts Officer in the Office of the Commissioner of Tourism, Chennai-2 and he was also the President of the said Society during the period between 23.09.1999 and 18.03.2004.

(b) The staff of the Tamil Nadu Secretariat Association represented to the Government to allot Government land for their residential purpose. Based on such representation, the Government allotted 25.00 hectares of land in Survey Nos.402/1A, 1B, 1C, 1D and 403/2, 404/2B, 2C in Okkiyam Thuraipakkam Village as per G.O.Ms.No.248, Revenue (Ni.Mu.1) Department, dated 28.02.1997. Subsequently, the Government re-allotted 23.02.00 hectares of land in Survey No.404/2B and 404/2C1 in the said Okkiyam Thuraipakkam Village as per G.O.Ms.No.121, Revenue (Ni.Mu.1) Department, dated 09.03.1999. The said land of 23.02.00 hectares was handed over by the Government to the staff of the Tamil Nadu Secretariat Association with certain conditions. The Chennai Metropolitan Development Authority (for short, 'CMDA'), by letter dated 06.06.2002, approved the allotment of 23.02 hectares of land, including 680 residential plots, 58 public purpose plots, 12 shop sites, 6 convenience shop sites and one school site.

(c) During the period from 27.07.2005 and 26.02.2007, the petitioner/A-1, and A-2, conspired with each other and abetted one another for commission of the offences of cheating, criminal breach of trust, forgery and criminal misconduct in connection with the allotment of one shop site and two convenience shop sites in respect of the said Society in favour of one Sridevi, Jaya Manohari and Meenakshi. The accused issued fraudulent allotment letters to the said persons, i.e. L.W.18 Sridevi, L.W.19 Jaya Manohari and L.W.20 Meenakshi. The petitioner/A-1 prepared three allotment letters in favour of L.W.18 to L.W.20, whereas, A-2 signed on the said allotment letters in the capacity as President, with ante-date, though A-2 ceased to be the President, and thereby, the accused obtained wrongful gain and caused wrongful loss to the Society and also to the eligible members, resulting in filing of the charge sheet for the offences punishable under the above said offences under the IPC and the Prevention of Corruption Act. They have abused their official position and violated the rules and procedures, conditions and the bye-laws of the Society and with criminal intention, fraudulently issued the above said three allotment letters. Therefore, charge sheet (final report) has been filed for the above said alleged offences under the IPC and the Prevention of Corruption Act.

3. Learned counsel for the petitioner (A-1) submitted that A-1 was the Special Officer of the Society and he is no way connected with the issuance of allotment letters for the plots and the allotment was made only by the President (A-2) of the Society, who signed on those allotment letters. Moreover, the CMDA approved the allotment of plots only on 06.06.2002 and during the relevant point of time, the petitioner was not the Special Officer of the Society and he was appointed as Special Officer only on 27.07.2005, and hence, learned counsel, as noted earlier, submitted that the petitioner/A-1 is no way connected with the issuance of the said allotment letters for the plots. It is also his submission that the main allegation against the petitioner/A-1 is that he has filled up the blank columns in the allotment letters for the above said L.Ws.18 to 20, and the allotment letters were signed with ante-date by A-2 after his superannuation. Learned counsel further submitted that on a perusal of the allegations made in the charge sheet, it could be seen that there is absolutely no allegation against the petitioner that he illegally obtained gratification of money and abused his official position. In fact, the monies alleged to have been so received from L.Ws.18 to 20, were kept only in suspense account by the petitioner (A-1). With regard to the allegation made in the charge-sheet that the petitioner/A-1 filled up the blank columns in the allotment letters with ante-date and thereby issued allotment letters to L.Ws.18 to 20 under criminal conspiracy with A-2 who signed on the said allotment letters, it is submitted by the learned counsel for the petitioner/A-1 that the forged handwritings said to have been in the alleged allotment letters, were not sent for expert opinion in the manner known to law. In other words, as per Section 311-A Cr.P.C., the respondent-Police is duty bound to get permission from the concerned Magistrate for obtaining specimen signatures or the handwritings of the accused persons. No such procedure was followed by the respondent-Police as provided under Section 311-A IPC. In this regard, learned counsel for the petitioner relied on a judgment of this Court in CrI.O.P.Nos.12751 and 12754 to 12760 of 2014, dated 06.08.2014 (Dr.MCR.Vyas Vs. the Inspector of Police, CBI, Anti-Corruption Branch, Shastri Bhavan, Chennai) and submitted that in that case, the learned Judge of this Court quashed the proceedings impugned therein and allowed the CrI.O.Ps. on the ground that there is no legal evidence against the petitioners therein to prove the charges levelled by the prosecution against them; in that case, one of the reasons assigned for allowing the CrI.O.Ps. is that under Section 311-A IPC, the respondent-CBI therein is duty bound to get permission from the concerned Magistrate for obtaining the specimen signatures or handwritings of the accused persons, which was not done in the case on hand. Therefore, it is the bone of contention of the learned counsel for the petitioner that the factual aspects of the present case is similar to that case, and hence, the signature of A-2 found in the allotment

letters is inadmissible in evidence. Hence, learned counsel submitted that based on the inadmissible evidence, charge(s) cannot be framed against the petitioner/A-1.

4. That apart, learned counsel for the petitioner invited the attention of this Court to the State Vigilance Manual, Part-V dealing with "detailed enquiries", more particularly in Clause 31 therein, which stipulates that in all detailed enquiries and regular cases, before concluding the enquiries/investigations, the accused officer should be examined in considerable detail in an objective and dispassionate manner to find out what he has to say about the materials appearing against him. According to the learned counsel, no such enquiry was conducted as per the provisions of the said Vigilance Manual and no explanation was obtained from the petitioner/A-1. He further submitted that it should be borne in mind that examination of the accused officer is not a mere formality and it is an integral part of the investigation and analysis to arrive at the truth or otherwise of the allegation under enquiry. Learned counsel also submitted that since CBI Manual / State Vigilance Manual is based on the statutory provisions of the Cr.P.C., the Supreme Court, in various judgments, held that the provisions contained in those Manuals have to be scrupulously adhered to. But, in the instant case, though the Vigilance Manual in Clause 31 of Part-V says that the accused officer has to be examined, the petitioner/A-1, in fact, was not examined and had he been examined, he would have given his explanation. Therefore, it is clear that there is flagrant violation of the provisions of the Vigilance Manual in conducting the investigation of this case. This vitiates the case of the prosecution.

5. Learned counsel for the petitioner further contended that the trial Court failed to take into account the fact that Mr.P.Paramasamy, Inspector of Police, Special Investigating Cell, Vigilance and Anti-Corruption, Chennai, registered the FIR in this case and without the case being handed over to an independent investigating officer, the very officer who registered the FIR investigated the case and filed the final report (charge sheet), which is fatal to the case of the prosecution and thus, the final report filed by the said Officer suffers from fair and impartial investigation, as it is against the dictum laid down by the Supreme Court in the case of State Vs.Rajangam reported in 2010 (15) SCC 369. For all the above reasons, learned counsel for the petitioner prayed for discharge of the accused from the case by setting aside the impugned order.

6. Per contra, learned Additional Public Prosecutor appearing for the respondent-Police submitted that specific allegation against the petitioner/A-1 is that he conspired with A-2, that too after superannuation of A-2, who was the President of the Society during the relevant period of time; the

petitioner/A-1 prepared the allotment letters, which were signed by A-2 with ante-date and the allotment letters were signed on the basis of filling up of the blank columns by the petitioner/A-1 in those allotment letters. Learned Additional Public Prosecutor further submitted that though the expert opinion was not obtained as per Section 311-A Cr.P.C., there are several other materials to prove the guilt against the petitioner/A-1 and also A-2. In this regard, learned Additional Public Prosecutor relied on in detail the statements made by L.Ws.17, 18 and 19 during the course of investigation. Learned Additional Public Prosecutor further stated that one of the conditions for allotment of land is that those who do not own a house / plot either in their name or in the name of the family members of the Association, alone are eligible for allotment of the scheme. But, in this case, according to the prosecution, the allotment letters were issued in favour of L.Ws.18 to 20, who are not the members of the Association, from whom the petitioner/A-1 received amount.

7. With regard to the submission of the learned counsel for the petitioner that the petitioner/A-1 was not examined by the investigating officer as per the Vigilance Manual, learned Additional Public Prosecutor submitted that the provisions contained in the Vigilance Manual are only directory and not mandatory. Even if the accused officer was not examined, only disciplinary action could be taken against the official concerned who failed to obtain statement from the accused person. In support of the above contention, learned Additional Public Prosecutor relied on a decision of the Division Bench of this Court reported in 2013 (1) CWC 136 (Duraimurugan Vs. State).

8. With regard to the contention of the learned counsel for the petitioner that the final report filed by the respondent-Police suffers from fair and impartial investigation of the case, since the very same Officer who had registered the complaint/FIR, has conducted the investigation, it is the assertive submission of the learned Additional Public Prosecutor that the investigation by the same Officer who registered the FIR, will not vitiate the investigation. In support of such contention, he relied on the decision of the Supreme Court reported in 2004 (5) SCC 223 (State Vs. V.Jayapaul).

9. Therefore, the learned Additional Public Prosecutor submitted that absolutely, no case is made out warranting interference by this Court in the dismissal of the discharge petition of the petitioner/A-1 by the trial Court. He prayed that the CrI.R.C. may be dismissed.

10. Keeping the submissions of both sides in mind, I have gone through the entire materials available on record. It is to be noted that the submissions of the learned counsel for the

petitioner/A-1 is mainly on the following grounds:-

(i) the petitioner/A-1 was not examined by the investigating officer independently, which is in violation of Clause 31 of Part-V of the State Vigilance Manual.

(ii) The expert opinion was not obtained with regard to the handwritings found in the allotment letters by sending the specimen signature of the accused in the manner known to law, as enunciated under the provisions of Section 311-A Cr.P.C. Therefore the handwritings found in the allotment letters are inadmissible in evidence and based on such inadmissible evidence, the charge could not be framed against the accused.

(iii) The investigation was done by the very same Officer, namely Mr.P.Paramasamy, Inspector of Police, Special Investigating Cell, Vigilance and Anti-Corruption, Chennai, who registered the FIR and hence, the final report filed by him suffers from fair and impartial investigation, and as such, the entire proceedings are vitiated.

11. With regard to the submission made by the learned counsel for the petitioner/A-1 that the petitioner was not examined by the investigating officer independently, which is in violation of Clause 31 of Part-V of the State Vigilance Manual, I am of the opinion that the said submission will not be a ground for discharge of the petitioner from the criminal proceedings. In this regard, the judgment of the Division Bench of this Court reported in 2013 (1) CWC 136 (Duraimurugan Vs. State), relied on by the learned Additional Public Prosecutor, gives a fitting answer and the relevant portion of the said Division Bench judgment reads as follows:

"37. ... Reliance was also placed upon the decision of the Hon'ble Supreme Court of India in Vineet Narain Vs. Union of India, 1998 (1) SCC 226 : 1998 SCC (Cri) 307, wherein it has been held as follows:

"58.1.12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

38. A careful reading of the above cited decision would disclose that the Accused cannot make any Complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain Vs. Union of India, 1998 (1) SCC 226 cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

12. Therefore, on a reading of the above Division Bench judgment, it is clear that for non-compliance of the provisions contained in the State Vigilance Manual, only disciplinary action could be taken as against the official concerned. Hence, the non-compliance of the provisions contained in State Vigilance Manual will not serve as a ground to discharge the petitioner/A-1 from the case.

13. With regard to the submission of the learned counsel for the petitioner that the very same investigating officer who conducted enquiry, has ultimately filed charge-sheet/final report before Court and the same vitiates the impugned criminal proceedings, the said submission cannot be accepted, in view of the decision of the Supreme Court, relied on by the learned Additional Public Prosecutor, which is reported in 2004 (5) SCC 223 (State Vs. V.Jayapaul), in which, in paragraphs 5 and 6, it has been held by the Apex Court as follows:

"5. In fact, neither the High Court found nor was any argument addressed to the effect that there is a statutory bar against the police officer who registered the FIR on the basis of the information received taking up the investigation.

6. Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who "lodged" the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay

down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack."

14. From the above dictum laid down by the Supreme Court, it is clear that the investigation done by the same officer who registered the FIR/complaint, will not vitiate the criminal proceedings, and therefore, the question of discharging the petitioner/A-1 from the case, does not arise on the said ground. Therefore, in this regard, the decision of the Supreme Court, relied on by the learned counsel for the petitioner reported in 2010 (15) SCC 369 (State Vs. Rajangam), is distinguishable on facts and it cannot be applied to the facts and circumstances of the case on hand.

15. It is also worthwhile to notice the judgment of the Supreme Court reported in 2013 (11) SCC 476 (Sheoraj Singh Ahlawat Vs. State of U.P.), which was relied on by the learned Additional Public Prosecutor, 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.

16. Moreover, it is to be noted that in the present case, according to the petitioner (A-1), he has received the amount in the period from 2005 to 2007 with regard to the allotment of land(s) to third parties, and the amounts have been shown in the suspense account, which proves that L.Ws.18 to 20 have paid the amount(s) to the petitioner/A-1. Further, it is an admitted fact that A-2, who had signed the allotment letters, attained superannuation prior to the year 2007 itself. This prima-facie is enough to rope in the petitioner/A-1 for framing charge(s) against him and other accused person(s). It is always open for the accused persons, including the petitioner/A-1 to prove their innocence at the time of trial. Therefore, the submission made by the learned counsel for the petitioner/A-1 that expert opinion was not obtained with regard to the handwritings found in the allotment letters by sending the specimen signatures of the accused in accordance with law, after obtaining the permission from the concerned Magistrate, as enunciated under Section 311-A of Cr.P.C., will not serve as a ground for discharge of the petitioner/A-1 from the impugned criminal proceedings. Therefore, the decision of this Court, dated 06.08.2014 in CrI.O.P.Nos.12751 and 12754 to 12760 of 2014 (Dr.MCR.Vyas Vs. The Inspector of Police, CBI, Anti-Corruption Branch, Shastri Bhavan, Chennai), relied on by the learned counsel for the petitioner, is not applicable to the facts and circumstances of the case on hand.

17. Hence, in my considered opinion, all the submissions of the learned counsel for the petitioner/A-1 will not be a ground for discharge of the petitioner/A-1 from the case. Thus, on the above facts and circumstances of the case and for all the above reasonings and applying the principles laid down by the Apex Court in the above referred to decisions relied on by the learned Additional Public Prosecutor and also on perusing the relevant provisions of the State Vigilance Manual, prima-facie, I do not find any valid ground to interfere in the impugned order passed by the trial Court. This Court therefore comes to the conclusion that the petitioner /A-1 is not liable to be discharged from the case. The impugned order therefore is

confirmed and this CrI.R.C. is accordingly dismissed.
Consequently, CrI.M.P.No.2307 of 2016 is closed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

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Copy to

1. The Special Judge,
The Special Court for the cases under the
Prevention of Corruption Act, Chennai.
2. Inspector of Police, Vigilance and Anti-Corruption,
Special Investigation Cell, Chennai.
3. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.S.Ashok Kumar, Advocate sr.30678
+1 cc to Public Prosecutor, High Court Madras
sr 30253

CrI.R.C.No.342 of 2016

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