

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.11.2016

JUDGMENT PRONOUNCED ON : 09.12.2016

CORAM:

THE HON'BLE MR. JUSTICE P. VELMURUGAN

Crl.O.P.No.28807 of 2011

A.Balasubramaniam ... Petitioner

-vs-

State represented by
The Inspector of Police
Vigilance & Anti Corruption
Coimbatore. ... Respondent

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records pertaining to the charge sheet in Special C.C.No.59 of 2011 pending on the file of the Special Judge, Special Court for Cases under Prevention of Corruption Act, Coimbatore and quash the same.

For Petitioner	:	Mr.V.Suthakar
For Respondent	:	Mr.P.Govindarajan Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to quash the charge sheet in Special C.C.No.59 of 2011 pending on the file of the Special Judge, Special Court for Cases under Prevention of Corruption Act, Coimbatore.

2. The case of the petitioner as averred in the petition is as follows:-

The petitioner was working as Panchayat Assistant at Chenniampalayam Panchayat Union, Sulur Block from the year 1993. The petitioner found it very difficult in discharging his functions as a Panchayat Assistant under the Presidentship of Mr.N.Devarajan, who wants to somehow get rid of the petitioner as the petitioner was a major hindrance for not allowing him to do certain illegal acts of personal financial gains. Hence, one Mr.Sakthivel with the active connivance of Mr.N.Devarajan, gave a false complaint to Vigilance Authorities stating that the

petitioner was demanding Rs.4,000/- as monthly mamool for every issue of cheque. The petitioner neither demanded nor accepted any illegal gratification from Mr.Sakthivel. However, based on the so called alleged trap conducted on 12.02.2008 by the Vigilance Authorities, the petitioner was initially suspended and subsequently, removed from service on 10.02.2008 by the District Collector, Coimbatore District.

The appointing authority for the petitioner is only the Panchayat President and the District Collector is not a competent authority to place the petitioner under suspension. The District Collector ought not to have removed the petitioner without conducting any inquiry and ought to have awaited for the verdict of the competent Criminal Court. In the absence of sanction order from the competent authority, the respondent cannot take cognizance of an offence punishable under Section 13 of the Prevention of Corruption Act. The charge sheet filed by the prosecution is ab-initio void as the same was framed to find out whether the petitioner has committed an offence of criminal misconduct punishable under Section 13(2) read with 13(1) D of Prevention of Corruption Act, as the petitioner is a public servant comes under Section 2-C of the Prevention of Corruption Act, 1988 and hence, the charge sheet is not maintainable in law. Therefore, the petitioner has approached this Court under Section 482 Cr.P.C. to quash the proceedings.

3. The main grounds raised by the petitioner for quashing the charge sheet are that under Section 19 of the Prevention of Corruption Act, 1988, no Court shall take cognizance of an offence punishable under Section 13 of the Prevention of Corruption Act alleged to have been committed by Public Servant except with the previous sanction of the authority competent to remove him from office; that the appointing authority for the petitioner is Panchayat President and not the District Collector; that no previous sanction was obtained from the competent authority / Panchayat President or any other authority to prosecute the case as per Section 19 of the Prevention of Corruption Act, 1988. It is settled law that any sanction order under Section 19 of the Prevention of Corruption Act, 1988 cannot operate retrospectively. Therefore, the charge sheet is liable to be quashed for want of previous sanction from the competent authority, which is a pre-condition under Section 19 of the Prevention of Corruption Act, 1988.

4. The case of the respondent as averred in the counter is as follows:-

The petitioner / accused filed petition to quash the final report in Cr.No.2/2008/AC/CB which was taken cognizance in Special C.C.No.59 of 2011 by the Special Judge, Special Court

for Cases under the Prevention of Corruption Act, 1988 at Coimbatore. Since the petitioner demanded and accepted gratification of Rs.500/- from one Sakthivel on 12.02.2008 and apprehended red-handed, the District Collector -cum- Inspector of Panchayat, being the competent authority and powers vested on him, passed suspension order temporarily in C.No.645/2008/A3 and later on, dismissed the petitioner from service on 10.12.2009 on the strength of Village Panchayat Council Resolution No.119/2008-2009 dated 30.10.2008, in his proceedings C.No.3563/09/K5 and duly served to him on 14.12.2009 and acknowledged. But the petitioner was not dismissed on 10.02.2008. Since the petitioner ceased to be a public servant and he was not a public servant on the date when Court took cognizance of offence, there is no necessity to obtain sanction order from the competent authority as contemplated under Section 19(1) of the Prevention of Corruption Act, 1988. Hence, the grounds raised by the petitioner is unsustainable and the Criminal Original Petition is liable to be dismissed.

5. The learned counsel for the petitioner would submit that the alleged offence against the petitioner is under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The appointing authority for the petitioner is only the Panchayat President and the District Collector is not a competent authority to place the petitioner under suspension and he cannot remove the petitioner without conducting any inquiry.

6. The learned counsel for the petitioner would further submit that under Section 19 of the Prevention of Corruption Act, 1988, no Court shall take cognizance of an offence punishable under Section 13 of the Prevention of Corruption Act alleged to have been committed by a Public Servant except with the previous sanction of the authority competent to remove him from office. In this case, the appointing authority is Panchayat President and he has not accorded any previous sanction nor any authority like the District Collector has accorded previous sanction under Section 19 of the Prevention of Corruption Act, 1988. No previous sanction was obtained from the Panchayat President, who is the competent authority and in the charge sheet also there is no whisper about the sanction given by the appointing authority. Since in this case the appointing authority has not accorded sanction to prosecute the petitioner, as per Section 19 of the Prevention of Corruption Act the inherent lacuna cannot be cured retrospectively and the same vitiates the entire proceedings.

7. The learned counsel for the petitioner would also submit that it is well settled law that any sanction order under Section 19 of the Prevention of Corruption Act, 1988 cannot

operate retrospectively and therefore, for want of previous sanction from the competent authority, which is a pre-condition under Section 19 of the Prevention of Corruption Act, the charge sheet is liable to be quashed as per the dictum laid down by the Hon'ble Supreme Court of India and this Court in various judgments. In order to strengthen his contention, the learned counsel for the petitioner would refer the following citation:-

(i) Judgment of Madurai Bench of Madras High Court in W.P.(MD) No.3387 of 2006 (A.Mariappan .vs. The District Collector, Virudhunagar) - "22. Mandatory provision of Section 230(1) is that the sanction is necessary to take cognizance and the sanction has to be issued by the Government. There is no dispute that the District Collector is a part and parcel of the governance of the State." It is well settled proposition of law that no court shall take cognizance of such offence, except with the previous sanction of the Government.

8. The learned Additional Public Prosecutor would submit that the legal principles underlying in Section 19 of the Prevention of Corruption Act are not denied. In this case, though the accused being a public servant at the time of commission of offence on 12.02.2008, and he was booked under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, after completion of investigation, it came to learn that the accused was dismissed from service. At the time of filing the final report on 09.07.2010, the accused ceased to be a public servant. Hence, there is no necessity to obtain sanction order from competent authority as contemplated under Section 19(1) of the Prevention of Corruption Act. Since the accused was dismissed from service on 10.12.2009 and ceased to be a public servant and the same was acknowledged by the accused on 14.12.2009, the Special Court has taken cognizance of offence on 28.12.2010.

9. The learned Additional Public Prosecutor would further submit that when the accused was a public servant at the time of commission of offence and if he continues to be a public servant when the court takes cognizance of the offence, he can be prosecuted with the sanction as contemplated in Section 19 of the Prevention of Corruption Act, but if he ceases to be a public servant by that time, the Court can take cognizance of the offence without any sanction. In support of his contention, the learned Additional Public Prosecutor has referred the following decisions:-

- (i) Sat Paul .vs. Inspector of Police reported in 1995 CrI.J P 2898 (cal);
- (ii) K.Balakrishna Pillai .vs. State reported in 1993 CrI.J 963 (Kerala);

(iii) Kalicharan Mahapatra .vs. State of Orissa reported in 1998 CrI.J P 4003;

10. The learned Additional Public Prosecutor would further submit that in "State of Kerala .vs. V.Padmanabhan Nair" reported in 1999 CrI.J 3696 (SC), the Hon'ble Supreme Court affirmed that "the accused facing prosecution for offences under the Prevention of Corruption Act cannot claim any immunity on the ground of want of sanction, if he had ceased to be a public servant on the date when the Court took cognizance of the offences under the Act". He would further submit that as stated earlier, on the date of taking cognizance of the offence, the petitioner was ceased to be a public servant and therefore, non-obtaining of the sanction for prosecution will not vitiate the case.

11. Heard both sides. Perused the records placed before this Court carefully.

12. On perusal of the records, it is evident that the date of commission of offence was on 12.02.2008, the petitioner was dismissed from service on 10.12.2009 and the same was duly served on him and acknowledged by him on 14.12.2009. The Special Court has taken cognizance of offence on 28.12.2010. The petitioner ceased to be a public servant on the date of taking cognizance of the offence. Therefore, as stated by the learned Additional Public Prosecutor and the authorities referred to by him, there is no need to get sanction order, since the petitioner ceased to be a public servant on the date of taking cognizance of the offence. Under these circumstances, the Criminal Proceedings would not vitiate. Therefore, this Court is not inclined to invoke Section 482 of Cr.P.C. This section envisages three circumstances, in which the inherent jurisdiction may be exercised namely:-

- (i) to give effect to any order under Cr.P.C;
- (ii) to prevent abuse of the process of any Court;
- (iii) to secure the ends of justice.

None of the above ingredients attract in this case to quash the proceedings. No doubt, if there is a legal bar against the institution or continuance of the said proceedings, e.g., want of sanction, the High Court can exercise its powers under this Section. But in this case, as already stated that on the date of taking cognizance of the offence by the Court, the petitioner ceased to be a public servant. Under the said circumstances, it is not necessary to get an order of sanction for prosecuting the petitioner from competent authority. Therefore, this petition is liable to be dismissed.

13. In the result, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Special Judge, Spl Court for
Cases under preventer of Compton the
Coimbatore

2 The Inspector of Police
Vigilance & Anti Corruption
Coimbatore

3 The Public Prosecutor, High Court, Madras

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