

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition No.29693 of 2015

1. Tmt. Indira Kumari

2. R. Venkatakrishnan @ Venkat

Appellant

Vs.

The State Represented by
The Deputy Superintendent of Police
Crime Branch CID, OCU-II
Chennai - 600 008
(Crime No.46/1996)

Respondent

Criminal Original Petition under Section 482, Cr.P.C., seeking the relief to call for the records and quash the proceedings in Spl.C.C. No.1 of 2014 pending on the file of X Additional Special Judge Court, Singaravelar Maligai, Chennai for offences under Sections 120-B r/w 409, 409 r/w 109 IPC, 13(2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act 1988 r/w 109, 409, 409 r/w 109 IPC r/w 13(1)(C) & (d) of the Prevention of Corruption Act 1988 and 13(2)r/w 13(1)(d) of the Prevention of Corruption Act 1988 r/w 109 IPC.

For petitioners :: Mr.S. Gopinath, SC
for Mr. M. Nirmal Kumar

For respondent :: Mr. P. Govindarajan, APP

ORDER

This Criminal Original Petition has been filed under Section 482, Cr.P.C., praying to call for records relating to Special Calendar Case No.1 of 2014 pending on the file of the X Additional Special Judge, Chennai and quash the same.

2. It is averred in the petition that the petitioners have been arrayed as accused Nos.3 and 4 in Spl.C.C.No.1 of 2014. The respondent has already conducted investigation and ultimately found that there are no materials to proceed against the petitioners and others. But, in the year 2014, without

getting sufficient new materials, the respondent has conducted investigation and filed a final report on the file of the Trial Court and the same has been taken on file under Sections 120-B r/w 409, 409 r/w 109 IPC, 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act 1988 r/w 109, 409, 409 r/w 109 IPC r/w 13(1)(C) & (d) of the Prevention of Corruption Act 1988 and 13(2)r/w 13(1)(d) of the Prevention of Corruption Act 1988 r/w 109 IPC. Further, it is averred in the petition that the petitioners have no connection whatsoever with the alleged offences and the accused Nos.1 and 2 have filed a similar CrI.O.P.Nos.7249 and 7263 of 2015 on the file of this Court for identical relief and the same have been allowed. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

3. The learned Senior Counsel appearing for the petitioners has simply reiterated the order, dated 29-10-2015 passed in CrI.O.P.Nos.7249 and 7263 of 2015, wherein from Paragraph Nos.8 to 14, it is observed as follows:

"8. It is an admitted fact that the Investigating Officer has submitted a report on 05-04-2004 wherein at Paragraph No.4, it is stated like thus:

"However, when the materials gathered so far in this case have been scrutinized thoroughly, it came to light some irretrievable shortcomings, which would prove fatal to prosecution in the event of launching of prosecution. A detailed report narrating the shortcomings is enclosed. The report and the C.D files were already perused by Senior Legal Advisor, CBCID and approved."

9. The Inspector General of Police has submitted a report on 28-04-2004, wherein it is stated thus:

"During investigation, no evidence has come forth whether the accused public servants had gained any pecuniary benefit following the commercial decision taken by the accused in the purchase of silk sarees, directly purchased from the two Societies (i) M/s. Mahalakshmi Silk Handloom Weavers Co-operative Society, Bangalore and (ii) M/s. Kamakshipala Silk Handloom weavers Production and Sales Co-operative Society Ltd., Bangalore, Karnataka State. Further witnesses have clearly spoken that the sarees procured from the two Societies were good in quality and there is no material available to establish that Co-optex actually incurred loss due to the transaction made with the two Societies.

It is further stated that due to efflux of time and change of circumstances it will not throw any new light in this case even if further investigation is conducted."

10. In a confidential report it is stated like thus:

"On the assumption that the various lacunae are found upon the records perused by me, I am of the considered opinion that in the context of the short comings in the investigation, the case may not be pursued further and further action against all the accused may be dropped."

11. In the concluding report, it is stated that,

"During investigation, no evidence has come forth whether the accused public servants had gained any pecuniary benefit following the commercial decision taken by the accused in the purchase of silk sarees directly purchased from the two societies (i) M/s. Mahalakshmi Silk Handloom Weavers Co-operative Society, Bangalore and (ii) M/s. Kamakshipalya Silk Handloom weavers Production and sales Co-operative Society Ltd, Bangalore, Karnataka State. Further witnesses have clearly spoken that the sarees procured from the two Societies were good in quality and there is no material available to establish that Co-optex actually incurred loss due to the transaction made with the two Societies."

12. Further, it is observed in the concluding report that "Dropping of further action as Mistake of fact."

13. In Official Memorandum of Superintendent of Police, Special Units, Chennai it is stated that,

"In the circumstances stated in your report cited, the case in CBCID, Hqrs Crime No.46/1996 u/s. 120(B)r/w 409, 409 r/w 109 IPC, Sec 13(2) r/w 13(1)(D) of Prevention of Corruption ACT 1988 is referred as "Mistake of Fact".

In Confidential report of Additional Director General of Police to Principal Secretary to Government, it is stated that,

"It is therefore decided to drop further action in this case by treating the case as "Mistake of Fact". In order to file Final Report before the concerned court in this case, the referred charge sheet is sent herewith for your acknowledgement. Kindly acknowledge the receipt of the RCS notice and send the copy of this office for submission before the court."

14. From a cumulative reading of the report of the Investigating Officer and other communications, it is discernible that the complaint in question has been registered on 30-10-1996 under Sections mentioned supra. The Investigating Officer after making thorough investigation has found that there is no lapses on the part of the accused and ultimately, concluded to the effect that no materials are available so as to proceed further. On the basis of his report, the authorities have closed the case registered in Crime No.46 of 1996 as 'mistake of fact' during March 2011. After lapse of eighteen years, all of a sudden, on 12-08-2014, the respondent has filed a final report in the concerned Court and the same has been taken on file in C.C.No.1 of 2004. "

4. The learned Additional Public Prosecutor has also equally contended that against the petitioners some materials are available so as to proceed further and therefore, the order passed in Crl.O.P.Nos.7249 and 7263 of 2015 cannot be relied upon.

5. In fact, in Crl.O.P.Nos.7249 and 7263 of 2015, this Court analysed the entire documents filed on either side and ultimately found that the complaint against the petitioners and others has been investigated and ultimately filed a report wherein it is stated that no materials are available so as to proceed further against them. Under the said circumstances, Crl.O.P.Nos.7249 and 7263 of 2015 have been allowed by this Court. Since the rival contentions put forth on either side have already been discussed in detail in the orders passed in Crl.O.P.Nos.7249 and 7263 of 2015, it is needless to say that the same yardstick can also be applied in the present case. Further in the order passed in Crl.O.P.Nos.7249 and 7263 of 2015, this Court has clearly held that no materials are available so as to proceed further against the petitioners therein. Under such circumstances, the present petition can be allowed.

In fine, the petition is allowed. The proceedings against the petitioners in Spl.C.C.No.1 of 2014 is quashed.

s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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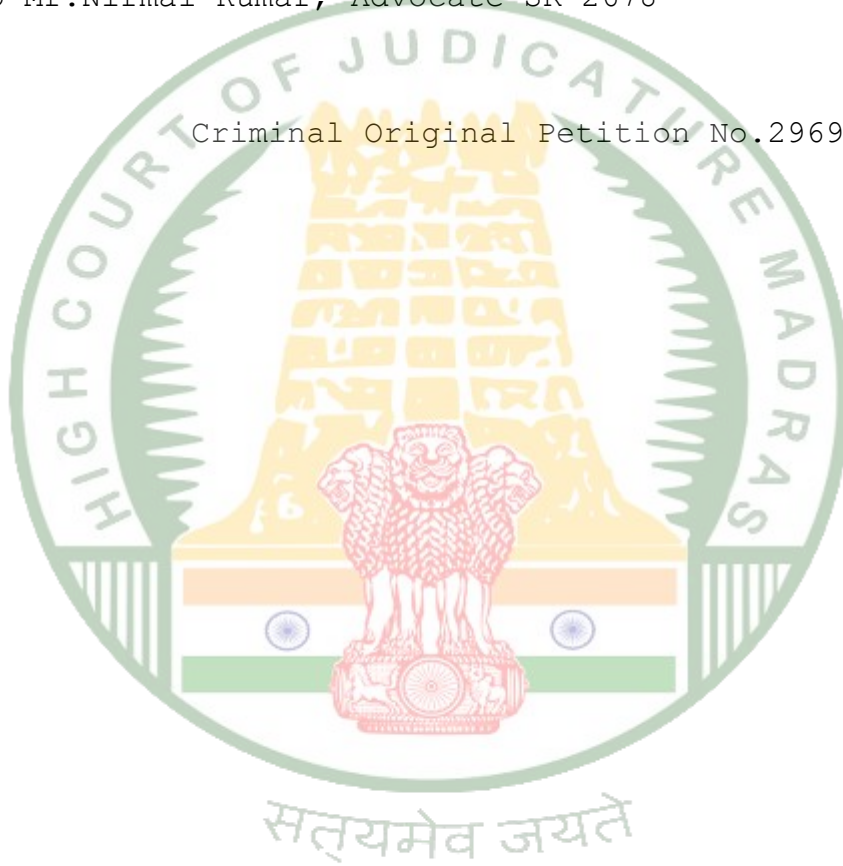
To

1. The Deputy Superintendent of Police
Crime Branch CID, OCU-II
Chennai - 600 008
2. X Additional Special Judge Court, Singaravelar Maligai,
Chennai
3. The Public Prosecutor, High Court, Madras.

+ 2 ccs to Mr.Nirmal Kumar, Advocate SR 2678

mg(co)
prk25/1

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