IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17 .11.2016

(Reserved on : 18.10.2016 ; Pronounced on : 17 .11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.OP.No.20682 of 2016
and
M.P.No.9628/2016

P. Somakumaran ..Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai ..
Respondent

Prayer :Criminal Original Petition filed to call for the records relating to proceedings in C.C.No.55 of 2011 on the file of the Special Court for Directorate of Vigilance and Anti-Corruption, Chennai and quash the same.

For Petitioner : Mr.ARL.Sunderesan
Senior Counsel for
M/s.AL.Gandhimathi

For Respondent : Mr.P. Govindarajan
(Additional Public Prosecutor)

O R D E R

The Criminal Revision Case is filed under Section 482 of Criminal Procedure Code 1973 to call for the records relating to proceedings in C.C.No.55 of 2011 on the file of the Special Court for Directorate of Vigilance and Anti-Corruption, Chennai and quash the same.

2. The Criminal Original Petition has been filed u/s.482 of Cr.P.C., of 1973 praying to quash the proceedings in C.C.No.55 of 2011 pending on the file of Special Court for Vigilance and Anti-Corruption, Chennai. It is averred in the petition that the petitioner has been arrayed as A-4 and he has been falsely implicated in the case registered in Cr.2/AC/88/HQ dated 14.10.1988. Further, it is averred in the petition that this petitioner has been implicated merely on the basis of statement

alleged to have been given by an approver by name Elango on 29.07.1972. Elango, the said approver has been passed away. Further it is averred that in respect of the very same Crime Number, case and FIR and in respect of C.C.No.126/2011, some of the other accused viz., A1, A3 to A5, A8 to A12, A14 to 18, A20 to A22 had filed a petition to quash in Crl.O.P.Nos.7487/2013, 8097/2012, 16320/2014, 14681/2014 and 29814/2014 before this court and the same have been allowed and charges against the petitioners therein have been quashed by order dated 26.02.2015. Further it is averred that some of the other accused viz., A1, A7, A10 to A12 have also filed a petition to challenge the charges in the very same C.C.No.55 of 2011 in Crl.O.P.No.1306/2015 alleging that there is an inordinate delay in investigation, and further there is an inordinate delay in proceeding with the trial. This Court on the ground of delay in investigation by order dated 21.09.2015 allowed the Crl.O.P.NO.13062/2015 and quashed the entire proceedings in respect of A1 , A7, A10, A11 and A12.

3. On the side of the respondent, a detailed counter has been filed, wherein it has been stated that a case in V&AC Nilgiris Detachment Crime No.2/AC/1988/HQ was registered under Sections 120-B, 420, 471 of IPC and Sections 5(1) (d) r/w.5 (2) of the Prevention of Corruption Act, 1947 and after completing investigation, charge sheet dated 23.09.1994 was filed against the petitioner along with the other accused (totally28) under Sections 120-B IPC r/w.167, 409, 420, 465, 467, 471 r/w.467 and 465, 218, 161 IPC and Sections 5(2) r/w.5(1) (c) & (d) of the Prevention of Corruption Act, 1947 and Section 109 of IPC and one of the accused was treated as the approver and this petitioner was arrayed as the 4th accused in the above case.

4. Copies were furnished to the accused in the year 1995 itself and the case was posted for framing of charges on 05.07.1995 and during the pendency of the case, 4 accused died, A-17 and A-18 filed discharge petitions and after dismissal by the trial Court, A2 filed a writ petition before this Court. Again Accused Nos.6,7,8,10,11 and 12 filed discharge petitions and after dismissal, charges were framed on 03.01.2002 and thereafter, one after another petitions were filed by the accused and dragged the case and witnesses were started to be examined from the year 2003. In the mean time, A-21 Tr.K.Gunasekaran was absent for the hearing on 21.01.2003 and NBW was issued by the III Additional Sessions and Special Judge, Chennai. A report was filed by prosecution on 21.07.2003 for splitting up the case against A-21 Tr.K.Gunasekaran and by accepting the report also Court split up the case against A-21 Tr.K.Gunasekaran as C.C.No.61/2003. Since all the cases of Vigilance and Anti-Corruption were transferred to the Hon'ble

Special Court for the Cases under Prevention of Corruption Act, Chennai in the year 2011, C.C.NO,20/1994 was re-assigned as C.C.No.55/2011 and the split up C.C.No.61/2003 against A21 Tr.K.Gunasekaran was re-assigned as C.C.No.58/2011.

5. Thereafter, some of the accused were absconding and Non-Bailable Warrants were issued against them and pending for some time and after executing the warrants, again trial was started and thereafter, some of the accused filed writ petitions and case records were sent to this Court and the same were pending from 2008 to 2012. After receiving the records from this Court, trial was started and the available witnesses were traced and examined. The case was tried before the Special Court for the cases under Prevention and Corruption Act, Chennai. A-1, A-7, A-10, A-11 and A-12 filed Crl.O.P.No.13062/2015 before this Court for quashing the C.C.No.55/2011 and this Court allowed the Criminal Original Petition and the proceeding in C.C.No.55/2011 on the file of the Special Court, Vigilance and Anti-Corruption, Chennai, was quashed in respect of the above petitioners therein. Following this, A-3, A-8, A-13, A-15 and A-18 also filed quash petition in Crl.O.P.No.25179/2015 and the said petition was also allowed on 08.10.2015 and following this, A-4 Tr.Somakumaran has filed this present petition in Crl.O.P.No.20682/2016 and the same is now pending before this Court.

6. The other Accused Nos.7,10,11 and 12 had filed petitions for dishcarge on 21.03.1997 in Crl.M.P.No.4137/1997 along with some other accused and the same was dismissed in the year 2002 and charges were framed against them. Even though speedy trial is guaranteed under Article 21 of our Constitution, the petitioner/4th accused with the other accused have not at all cooperated with the trial court in conducting speedy and fair trial instead filed petition after petition and dragged the case and the cause of the delay in conducting trial is not on the part of prosecution, it is only on the part of the accused concerned in this case.

7. The other accused (Accused Nos.1,3,8,13,15 and 18) who were charged along with the petitioner/4th accused in this case filed petitions before this Court to call for the records and to quash the charges against them in Crl.O.P.Nos.20760,21655, 23083/2008 and this Court passed a common order dated 04.04.2012, observing that the main idea of the accused is to prolong the trial and if the delay is caused by the accused, it cannot be a reason for quashing the proceedings against the accused, directed the learned Special Judge to expedite the trial and proceed with the case on day-to-day basis. Even after

that the above petitioner/4th accused instead of cooperating with the trial court, filed the above petition. Further, in obedience to the above order, prosecution has taken effective steps to locate the witnesses to bring them and thirteen witnesses were examined. The evidence discloses that the petitioner/4th accused had conspired together with the other accused and caused loss to the exchequer by getting pecuniary advantage for himself and for others and the delay in disposal of this case is only due to the accused who have filed petitions after petitions and dragged the case.

8. The prosecution not only relying on the evidence of approver K.Elango but also relying on the other documentary and oral evidence which have to be taken during trial. The evidence so far taken in this case discloses a commission of offences by the petitioner/4th accused along with the other accused and instead of facing trial, the petitioner/4th accused filed this petition without any valid reason and to drag the case.

9. Learned counsel for the petitioner would submit that the case has been registered in Cr.No.2/AC/88/HQ on 14.10.1988. The prosecution mainly rely on the statement of the approver given on 29.07.1992 and they have filed a final report on 23.09.1994 and some of the accused have filed a similar petition and this court has quashed the case proceedings, in respect of the petitioners therein, merely on the ground of delay in conducting investigation and therefore, the same yardstick could also be applied to the petitioner herein and also he referred the order passed by this court dated 21.09.2015 in Crl.OP.13062/2015. He would further submit that in a similar situation, this court has passed an order dated 26.02.2015 in Crl.O.P.Nos.7587/2013, 8097/2012, 16320/2014, 14681/2014 and 29814/2014 in C.C.No.126/2011.

10. On the other hand, the learned Additional Public Prosecutor would submit that against this petitioner and others in the case FIR has been registered in Cr.No.2/AC/88/HQ under Section 120-B of IPC r/w. Sections 167,409,420,465,467,471 of IPC and Sections 5(1) (d) r/w.5 (2) of prevention and Corruption Act. The respondent has conducted the detailed investigation and filed a final report on 23.09.1994. Thereafter, copies of the documents have been furnished to the accused even in the year 1995 itself under Section 207 of Cr.P.C., and the case was posted for framing of charges on 05.07.1995. Meanwhile during the pendency of the case one of the accused died two of the accused filed discharge petitions and after dismissal by trial court one of the accused filed a

writ petition and again some of the accused had filed the petitions on 03.01.2002 and thereafter one after another petitions were filed by the accused and dragged the case and the prosecution witnesses were started to be examined in the year 2003 itself. Even after also the accused one after others filed petitions one after another and meanwhile the case have been transferred from Special Court Coimbatoer to Special Court, Chennai. Further even now the accused are filing petitions one after another that is the reason why the delay is occured. The delay is only due to non-cooperation of the accused but not on the part of the prosecution. Hence, he prays for dismissal of this Criminal Original Petition.

11. On perusal of the records placed before this court and submissions made by both the learned counsel and the Criminal Original Petition filed by this petitioner and counter filed by the respondent and other orders referred by the learned counsel for the petitioner, it is an admitted fact that an FIR has been registered in respect of offences alleged to have been committed in the year 1986-1987 and the concerned case was registered on 14.10.1988 and charge sheet was filed on 23.09.1994 against this petitioner along with other accused in Cr.No.2/AC/88/HQu/s.120-B of IPC r/w. Sections 167,409,420,465,467,471 of IPC and Sections 5(1) (d) r/w.5 (2) of Prevention of Corruption Act and copies were furnished to the accused in the year 1995 itself and charges were also framed on 03.01.2002 and trial started in the year of 2003 itself now the prosecution side witnesses are being examined. One after the another petitions were filed by this accused and other accused in various stages simultaneously the trial proceedings also going on. In the similar matter, the court also quashed the proceedings against the some of the accused.

12. The main contention of the learned counsel for the petitioner is that in respect of some of other accused, this court have quashed the proceedings in Crl.OP.13062/02015 in the very same C.C.No.55/2011 and in the similar matter in Crl.OP.Nos.7587/2013, 8097/2012, 16320/2014, 14681/2014 and 29814/2014 in C.C.No.126/2011. Therefore, the very same yardstick has to be applied in this Criminal Original Petition also. For supporting his arguments he has referred the above said orders passed by this court in earlier occasion and copies of the same have been annexed with the typed set to this petition.

13. It is well known that in every criminal case there are two stages, one is investigation stage i.e., before filing charge sheet and other one is after filing charge sheet (final

report). No time limit is prescribed for completion of investigation and submit a final report particularly in heinous crime like offences under Prevention of Corruption Act and economic offences. No doubt Article 21 of Constitution of India ensure speedy trial and as per the law laid down by the Apex Court in various decision speedy trial including investigation also. But at the same time, the Apex Court also held in various cases that delay should not be on the part of accused and if the delay is only on the part of prosecution without any valid reason.

14. On careful reading of the order passed by this court dated 21.09.2015 in CRL.OP.13062/2015 in C.C.No.55 of 2011 this point has not

been considered by this court. Further in the similar matter in Crl.O.P.No.7587/2013 in C.C.120/2011 on 26.02.2015, this Court passed order wherein the learned Judge of this court referred various decisions rendered by the Apex Court and reproduced the ratios given by the Apex Court. There is no quarrel with reference to the said ratios laid down by the Apex Court in various decisions referred in order dated 26.02.2015 in CRL.OP.Nos.7587/2013, 8097/2012, 16320/2014, 14681/2014 and 29814/2014 in C.C.No.126/2011 passed by this court.

15. First of all, the stage and circumstances of the case in CRL.OP.Nos.7587/2013, 8097/2012, 16320/2014, 14681/2014 and 29814/2014 in C.C.No.126/2011 is entirely different from the present case on hand. In the above said order dated 26.02.2015 itself, it has been referred some of the judgment of the Supreme Court. One of the judgments referred in page 12 of the order is in " (Moti Lal Saraf v. State of Jammu and Kashmir and another) reported in 2006 Cri.L.J.4765, it was held that no single witness was examined in the last 26 years without there being any lapse on part of accused. Its continuation further would be a total abuse of process of law. It is appropriate here to extract paras-50 and 52, which read as follows:

> "50. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.
>
> 51.............
>
> 52. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on

behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. The appeal is accordingly allowed and disposed of."

16. Further it is relevant to refer para 3 in the counter affidavit filed on behalf of the respondent/complainant. Wherein it is mentioned as "copies were furnished to the accused in the year 1995 itself and the case was posted for charge framing on 05.07.1995 and during the pendency of the case, 4 accused died, A-17 and A-18 filed discharge petitions and after dismissal by the Hon'ble Court, A2 filed a writ petition before the Hon'ble High Court. Again Accused Nos.6,7,8,10,11 and 12 filed discharge petitions and after dismissal, charges were framed on 03.01.2002 and thereafter, one after another petitions were filed by the accused and dragged the case and witnesses were started to be examined from the year 2003. In the mean time, A-21 Tr.K.Gunasekaran was absent for the hearing on 21.01.2003 and NBW was issued by the III Additional Sessions and Special Judge, Chennai. A report was filed by prosecution on 21.07.2003 for splitting up the case against A-21 Tr.K.Gunasekaran and by accepting the report Court also split up the case against A-21 Tr.K.Gunasekaran as C.C.No.61/2003. Since all the cases of Vigilance and Anti-Corruption were transferred to the Hon'ble Special Court for the Cases under Prevention of Corruption Act, Chennai in the year 2011, C.C.NO,20/1994 was re-assigned as C.C.No.55/2011 and the split up C.C.No.61/2003 against A21 Tr.K.Gunasekaran was re-assigned as C.C.No.58/2011." This reflects purely based on the court records. From these one can presume how this petitioner and the other accused have extended their cooperation with the trial court for disposing the case pending before the trial court. When they are doing these type of tactics by filing petitions one after another during the trial proceedings. Then one can imagine to what extent they could have cooperated for investigation. Even then, so far on the side of prosecution, 15 witnesses (PW1 to PW15) have been examined.

17. Further in page 17 of the said order, referred one more case of the Hon'ble Supreme Court in "(Vakil Prasad Singh v. State of Bihar) reported in (2009) 3 SCC 355. Paragraphs 24 and 25 are extracted hereunder:

"24. It is, therefore,.......

25. Where the court comes to the conclusion that the right to speedy trial of an accused has

been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial”.

18. In this regard, it is worthwhile to refer the counter affidavit filed on behalf of the respondent/complainant wherein para 2 it is mentioned that “a case in V&AC Nilgiris Detachment Crime No.2/AC/1988/HQ was registered under Sections 120-B, 420, 471 of IPC and Sections 5(1) (d) r/w.5 (2) of the Prevention of Corruption Act, 1947 and after completing investigation, charge sheet dated 23.09.1994 was filed against the petitioner along with the other accused (totally28) under Sections 120-B IPC r/w.167, 409, 420, 465, 467, 471 r/w.467 and 465, 218, 161 IPC and Sections 5(2) r/w.5(1) (c) & (d) of the Prevention of Corruption Act, 1947 and Section 109 of IPC and one more accused was treated as the approver and this petitioner was arrayed as the 4th accused in the above case.” the said facts/allegations reflects from charge sheet and FIR. In this case on facts 231 agreements as involved that to the said agreements with seven firms which are not in existences. It is not the case of murder committed by a single accused in the day light in the public place the prosecution will able to complete the investigation within a month. No doubt as per the FIR date of registration of case is 14.10.1988 and date of filing of charge sheet is 23.09.1994 when there is no time limit is specifically prescribed under any law depends upon the circumstances the investigating agency may submit the final report at any time soon after completing the investigation and if necessary after getting sanctioned order from authority concerned. The records reveals that after much effort taken by the investigation agency filed charge sheet. There are 28 accused involved in this case. They have been alleged to be entered into 231 agreements with seven logus firms knowing that they were not in existence and made a payment of 100.22 lakhs, through 27 demand drafts to the 7 non-existing firms. Now-a-days, it is difficult to get co-operation from the public, co-worker subordinate staff and their own colleges in the department.

19. On careful perusal of the entire records, reveals that the delay is not on the part of the prosecution alone. Considering the nature of the offences involved and the other relevant circumstances of this case quashing of the proceedings

may not be in the interest of justice. Each case has got its own facts and merits and the very same yardstick cannot be applied in all cases. Therefore, I do not agree with the view taken in the above said order dated 26.02.2015 by the learned Senior Judge of this court. Then we have to apply independently as to whether the delay has been caused on the part of the prosecution or the petitioner / accused himself.

20. Further it is pertinent to mention here that charge sheet filed on 23.09.1994 but whereas this petition is filed by this petitioner/A4 only on 29.08.2016. This is nothing but abuse of process of law. All these days, he has been continuously participating in the trial proceeding. But after 22 years now he has come forwarded this present petition on the ground of delay in investigation. It is unpalatable one. Further it is seen that the petitioner/accused deliberately filed the petitions one after another to distrate the situation. If this type of petitions are entertained, then, it will devastate the entire society.

21. From the report submitted by the trial court, it is revealed that the copies were furnished to all the accused u/s.207 Cr.P.C., and charges were framed against all the accused on 19.02.2002. PW1 to PW15 were examined and NBW was issued against A22 on 21.08.2015. The case against A1, A3, A7, A8, A10 to A13, A15 and A18 were quashed by this Court. A2, A5, A6, A9, A17, A19, A27 reported dead and charge abated against them. NBW is pending against A22 and the case posted on 26.10.2016 and the same is verified from the trial court records.

22. Though this Court has inherent power and the scope is very wide, it is a rule of practice that only be exercised in exceptional cases. Such power can be exercised to secure the ends of justice and to prevent abuse of process of court and to make such orders as may be necessary to give effect to any order in this court depending upon the facts of the given cases. However such inherent powers are to be exercised sparingly, carefully and with caution. The High court should not exercise their inherent power to repress legitimate prosecution. The power to quash the criminal complaint should be used sparingly and with abundant caution. Therefore, the ratios therein is of no assistance to the facts in this case.

23. Considering the above said relevant facts and circumstances of the present case on hand, it is clearly shown that the delay is not on the part of the prosecution but

whereas the delay is only on the part of this petitioner/accused and co-accused by filing petitions one after another and stalling the proceedings. Under such circumstances, I do not agree with the view taken by the learned Senior Brother and Sister Judges in the earlier proceedings.

24. In fine, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed. Trial Court is directed to proceed the case on day-to-day basis and dispose of the case in accordance with law within the period of six months from the date of receipt of copy of this order. Both the parties are directed to cooperate for the early disposal of the case.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

gv

To

1. The Special Court for Directorate of
Vigilance and Anti-Corruption,
Chennai.

2. The Inspector of Police
Vigilance and Anti corruption
Chennai

3. The Public Prosecutor
High Court, Madras

1 cc to Mr.A.L. Gandhimathi, Advocate, Sr. 66705

CRL.OP.No. 20682 of 2016
and
M.P.No.9628/2016

SSI (COO)
kk 15/12