IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.5571 of 2016

Gunasekaran .. Petitioner /Sole Accused

Vs.

1. The Inspector of Police,
Vigilance and Anti-Corruption,
Nagapattinam District.
(in Crime No.4/2012) ..Respondent/Complainant

2. A.Alameen .. Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure (Cr.P.C) to call for the records relating to the charge sheet in Spl.C.C.No.4 of 2014 on the file of the Chief Judicial Magistrate, Nagapattinam and to quash the same.

For petitioner : Mr.L.P.Balajiram
For respondents: Mr.P.Govindarajan, Addl.P.P. for R-1
No appearance for R-2

ORDER

This Crl.O.P. is filed to call for the records relating to the charge sheet in Spl.C.C.No.4 of 2014 on the file of the Chief Judicial Magistrate, Nagapattinam and to quash the same.

2. It is the case of the prosecution that the petitioner, who is the sole accused in the above said Spl.C.C.., was Village Administrative Officer from 01.07.2009 to 29.11.2012 and is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, at the relevant point of occurrence. On 26.11.2012 at about 15.30 hours, in his V.A.O. office located at Azhiyur, he demanded Rs.500/- from the second respondent/de-facto complainant as illegal gratification for deleting the name of the second respondent's uncle Mohammed Salimudeen in the Family Ration Card. Subsequently, on 28.11.2012 at about 13 hours, in his above said VAO Office, the

petitioner again demanded Rs.500/- for the said purpose.

3. Pursuant to the above demand, the petitioner/accused, again on 29.11.2012, between14.50 hours and 15.05 hours in Thenmangalam VAO's Office located at Azhiyur, demanded Rs.500/- and also obtained the same from the second respondent/complainant, in the presence of one T.Swaminathan, as illegal gratification for issuing VAO Certificate (for deleting the name of the second respondent's uncle Mohammed Salimudden in the Family Ration Card). Hence, the second respondent complained about the said act of the petitioner/accused to the Vigilance authorities, based on which, a trap was laid on 29.11.2012 itself before-ever just he received the said Rs.500/- and was caught red-handed by the Inspector of Police (Trap Laying Officer) of the Vigilance and Anti-Corruption, Nagapattinam, at the time of just-receiving the amount, which resulted in filing of the case. Hence, according to the prosecution, the petitioner/accused committed offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. During the course of investigation, the prosecution examined the witnesses and produced the relevant documents, including the sanction order and examining the sanctioning authority. and laying of final report, which was taken on file in Spl.C.C.No.4 of 2014 by the Special Judge for cases under the Prevention of Corruption ACt, Tiruchirapalli, subsequent to which, the case was transferred to the Chief Judicial Magistrate/Special Judge, Nagapattinam, which was re-numbered as Crime No.3 of 2014 (and not as Crime No.4 of 2014 as stated by the petitioner in the affidavit filed in support of Crl.O.P).

4. Earlier, during the course of investigation, it revealed that the petitioner/accused already came to adverse notice of the Vigilance and Anti-Corruption Department while he was working as Village Administrative Officer (VAO) in Naluvedapathy Village, based on which, FIR was registered in Crime No.1 of 2009, in which case also, trap was laid, during which time, as the demand of the accused exceeded the amount which the de-facto complainant was having at that time in his hand, the de-facto complainant returned without paying the illegal gratification in that case, and the petitioner/accused, on suspicion, fled from the scene without even opening the VAO Office therein for one week; after investigation in the said case, the proceedings were initiated before the Tribunal as per the orders of the Government.

5. This Crl.O.P. is filed by the petitioner contending that the said T.Swaminathan, Commercial Inspector, Office of AE (O & M), TANGEDCO, Nagapattinam has been shown as L.W.3, to speak about the facts of the official witnesses and the facts relating to entrustment mahazar, accompanying the complainant and witnessing the seizure mahazar, observation mahazar, house

search and other connected facts; he has stated in his statement that the Police Officer has recovered the money under the cloth of the table. Learned counsel for the petitioner/accused contended that no phenolphthalein test was conducted, and in the absence of such test which would show that the petitioner might have received the money, no case has been made out under the above said offences. Hence, the petitioner has filed this Crl.O.P. for the relief stated supra.

6. Though notice was received by the brother of the second respondent on his behalf, as the second respondent is in abroad, there is no appearance for the second respondent inspite of his name printed in the cause list.

7. Learned Additional Public Prosecutor, by filing counter affidavit, submitted that at the time of obtaining money, the petitioner/accused, after making the demand, instructed the de-facto complainant to place the money upon the table beneath a file over the table cloth and the said fact is evident from the deposition of the de-facto complainant, which is also corroborated by the direct and substantial evidence of shadow witnesses and also the Village Assistant--R.Arumugam/L.W.9. It is further submitted by the learned Additional Public Prosecutor that since the accused had not touched the money, the cover of the file which came into contract with the tainted money and the table cloth, were alone subjected to phenolphthalein test, which proved positive. Hence, no necessity arose to subject the hands of the petitioner/accused to the said test.

8. It is further stated by the learned Additional Public Prosecutor that subsequent to filing of the charge sheet, the petitioner filed a petition under Section 239 Cr.P.C. praying for discharge in Crl.M.P.No.1182 of 2014; the trial Court, after hearing both sides, dismissed the said Crl.M.P. on 18.08.2015, which has become final, as no revision petition was filed before this Court and the trial commenced. It is further submitted that the petitioner, under the garb of the provisions of Section 482 Cr.P.C., has filed this Crl.O.P., instead of filing a revision petition before this Court under Sections 397 and 409 Cr.P.C. Hence, without exhausting the revisional remedy, the petitioner has filed this Crl.O.P., which is not maintainable. Learned Additional Public Prosecutor further contended that prima-facie case is made out to frame charge against the petitioner/accused as per the trial Court's decision.

9. It is the further submission of the learned Additional Public Prosecutor appearing for the first respondent-Police that since the modus-operandi adopted by the petitioner is to instruct the persons to keep the amount below the cloth of the table, and as there is enough evidence to prove the demand and acceptance of bribe amount and merely because phenolphthalein

test was not conducted, it does not mean that no case is made out to proceed against the petitioner for the above said offences under the Act. Hence, for these reasons, the learned Additional Public Prosecutor prayed for dismissal of this Crl.O.P.

10. Keeping in mind the above submissions of the learned counsel on either side, I have anxiously considered the same and perused the materials available on record.

11. At the outset, it has to be held that the submissions made by the learned counsel for the petitioner/accused, cannot be a ground to quash the criminal proceedings. Moreover, it is the case of the prosecution that the modus-operandi of the petitioner/accused to receive the illegal gratification, is by instructing the persons to keep the money under the cloth of the table. This is one of the reason for not conducting phenolphthalein test, as the money was not directly touched by the petitioner. Hence, according to the prosecution, merely because no phenolphthalein test was conducted on the hands of the petitioner/accused, it does not mean in this case that there is no case made out against the petitioner under the provisions of the above said P.C. Act. Furthermore, the statement of L.W.9 Arumugam, Village Assistant during the course of investigation, confirms about the alleged receipt of bribe amount by the petitioner/accused.

12. As there is no merit in this Crl.O.P. and further as the petitioner has not made out any prima-facie case within the ambit and scope of Section 482 Cr.P.C. so as to quash the criminal proceedings in Spl.C.C.No.4 of 2014 and further as there are bald and vague allegations in the petition, the Crl.O.P. is liable to be dismissed.

13. Moreover, the contention of the prosecution that the said modus-operandi of the petitioner in not receiving the money directly and instructing the persons to keep the money below the cloth of the table, and hence, the phenolphthalein test could not be conducted on the hands of the petitioner, could not be totally believed by this Court at this stage of quash-proceedings, as the same has to be tested only during the course of trial. Hence, it has to be concluded that this is a fit case for conduct of trial. Whether cognizable offence is made out or not, in the facts and circumstances of the case, is a matter for trial, where-only, it has to be proved with regard to the allegations of the respective parties, and the charge sheet cannot be quashed on that score.

14. On a bare reading of the complaint/charge-sheet in this case, it is seen that the allegations made in the complaint make out a prima-facie case for trial. Hence, this is not a fit case to quash the criminal proceedings, more so, when the trial has been on its way.

15. Hence, the direction sought for by the petitioner in this Crl.O.P. is not sustainable. Accordingly, this Crl.O.P. is dismissed. However, the petitioner is at liberty to raise all his defence before the trial Court during the course of trial. The trial Court is directed to expedite the trial and complete the same and pass appropriate orders as early as possible. The prosecution and the petitioner/accused, shall co-operate and coordinate with each other and before Court, for early completion of trial.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cs

Copy to
1. The Chief Judicial Magistrate/Special Court for cases under the Prevention of Corruption Act.
Nagapattinam.

2. The Public Prosecutor, High Court, Madras.

3. The Inspector of Police,
Vigilance and Anti-Corruption,
Nagapattinam District
(Crime No.4 of 2012, Spl.C.C.No.4 of 2014)

4. The Record Keeper, Criminal Section,
High Court, Madras.

+1 cc to Mr.L.P.Balajiram Advocate sr 46770
+1 cc to Public Prosecutor sr 47404

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aa15/09/2016