

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation : 20.07.2017

Date of Pronouncement : 27.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN**CRL.OP.No.5056 OF 2017****and****CRL.MP.Nos.3761 & 3762 of 2017**

P. Devaraj

.. Petitioner

..Vs..

1.A.K.Thirumurugan

2.The Station House Officer,
Vigilance and Anti-Corruption,
Police Unit,
Puducherry.

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records in C.C.No.10 of 2017 on the file of the learned Chief Judicial Magistrate, Puducherry for the charge of an offence under Section 420 of IPC against the petitioner and quash the same.

For Petitioner : Mr. R. Natarajan

For RR1 : Mr. T. Sundaravadanam

For RR2 : Mr. M. R. Thangavel
Additional Public Prosecutor
(Puducherry)

ORDER

This Criminal Original Petition has been filed to call for the entire records in C.C.No.10 of 2017 on the file of the learned Chief Judicial Magistrate, Puducherry for the charge of an offence under Section 420 of IPC against the petitioner and quash the same.

2. The case of the petitioner is that the petitioner has been arrayed as A1 in the private complaint preferred by the first respondent in C.C.No.10 of 2017 for the offence punishable under Section 420 on the file of the learned Chief Judicial Magistrate, Puducherry, who has taken cognizance of the said private complaint and issued process to the petitioner for the charges of an offence punishable u/s.420 of IPC.

3. The petitioner was functioning as the Managing Director of Puducherry Road Transport Corporation Limited., Puducherry. Initially, he was appointed as Deputy Conservator of Forest in the Directorate of Forest and Wildlife, in the Government of Puducherry, Puducherry in the year, 2003 and he functioned in the said capacity up to July, 2006 and thereafter, he was promoted as Conservator of Forest in the Directorate of Forest and Wildlife, in the Government of Puducherry at Puducherry

from July, 2006 and functioned in the said capacity up to September, 2009.

4. Further the petitioner was posted as Advisor in the Pondicherry University on deputation basis to serve in the campus development and ecology in 2009 by the Puducherry University in pursuant of the letter from the Ministry of Environment and Forest, the Government of India, New Delhi and thereafter, the petitioner have joined as an Advisor and functioned in the said capacity in Puducherry University upto November, 2011. The Government of Puducherry based on the office order issued by the Ministry of Environment and Forest, New Delhi, dated 21.02.2012, had issued an appointment order to the petitioner whereby appointed him as the Managing Director in Puducherry Road Transport Corporation Limited (PRTC), Puducherry, in G.O.Ms.No.19 dated 29.02.2012.

5. The first respondent was running a parallel Government like Administration in disguise and has been dictating terms to the Puducherry Road Transport Corporation Limited (PRTC), Puducherry, in the matter of appointment of personnel, transfer of personnel and in the disciplinary proceedings. The conduct of the first respondent is not found to be acceptable and tenable to the petitioner and in view of

that, the first respondent has dubiously adopted the otherwise course of method to force the petitioner to fall in line with terms of his wishes.

6. The petitioner had not made any separate application whereby prescribing the salary slab should contain various heads. The Section Office in the Puducherry Road Transport Corporation Limited (PRTC) Puducherry, which has been dealing with the assignment of preparing pay bills had issued salary slabs. In that process, house rent allowance was also added. The petitioner has not paid the amount of Rs.3,91,458/- which have been given to the petitioner towards House Rent Allowance (HRA) along with the other heads in the salary.

7. The first respondent has levelled incorrect and false allegations against the petitioner in the complaint preferred before the Chief Judicial Magistrate, Puducherry. The first respondent has given complaint against that petitioner with an ulterior motive to take vengeance against him for which action was taken against him. The petitioner had already repaid the money and there was no loss to the Puducherry Road Transport Corporation Limited (PRTC) Puducherry. The first respondent has given complaint with an ulterior motive and therefore, the petitioner has filed this petition to quash the proceedings in C.C.No.10 of 2017 on the file of the Chief Judicial Magistrate, Puducherry.

8. Learned counsel for the petitioner would submit that when the petitioner was working as the Managing Director in Puducherry Road Transport Corporation Limited (PRTC) Puducherry, he had streamlined and modernized the entire Puducherry Road Transport Corporation Limited (PRTC) Puducherry in all angles for better utility and travelling public. The first respondent was running a parallel government like administration in disguise and was dictating terms to the Puducherry Road Transport Corporation Limited (PRTC) Puducherry, in the matter of appointment of personnel, transfer of personnel and in the disciplinary proceedings. Since the conduct of the first respondent was not found to be acceptable and tenable to the petitioner, he questioned the same. Hence, the first respondent with an ulterior motive made the complaint. The petitioner has not made any separate application and claimed house rent allowance inspite of allotment of official quarters. The Sectionn Office of the concerned department which dealing with the assignment of preparing pay bills had issued salary slabs. However, the same was repaid by the petitioner and there was no loss to the Puducherry Road Transport Corporation Limited (PRTC) Puducherry. Therefore, the criminal case lodged against the petitioner in C.C.No.10 of 2017 is liable to be quashed.

9. Learned counsel for the first respondent would submit that the petitioner was appointed as Managing Director in Puducherry Road Transport Corporation Limited (PRTC), Puducherry. While the petitioner was working in the Department of Forest, Puducherry, he was allotted a Housing Quarters, vide allotment order of Chief Secretary (Housing) No.2-16/2003hg, dated 26.06.2003 and the same allotment was continuing even after his deputation of his service to PRTC as its Managing Director. The petitioner while working as a Managing Director of PRTC was drawing the house rent allowance starting from Rs.12,564/- and Rs.12,942/- from the said corporation.

10. The petitioner has drawn his housing allowance knowing fully well that he is not suppose to draw the housing allowance in his present position which is highly illegal. But the said act of the petitioner is highly illegal, unlawful and dishonest. Therefore, the first respondent sent the complaint to the second respondent and he has not taken any steps on the complaint. Therefore, he filed a private complaint before the Chief Judicial Magistrate, Puducherry. The Chief Judicial Magistrate, Puducherry, after taking the same on his file, has called for the report from the second respondent and the second respondent filed the report before the Chief Judicial Magistrate, Puducherry. Now, case is pending

before the Chief Judicial Magistrate, Puducherry and hence, this petitioner is before this court by filing this petition. The petitioner himself admitted that he claimed and drew the house rent allowance from the Puducherry Road Transport Corporation Limited (PRTC). Mere repayment will not take away the offence committed by the petitioner.

11. Heard both the learned counsel appearing for the petitioner and the respondents 1 and 2 and perused the available records.

12. On perusal of the records, the first respondent, had filed a private complaint as against the petitioner and three others on the file of the learned Chief Judicial Magistrate, Puducherry. The said complaint was forwarded to the second respondent the Station House Officer, Vigilance and Anti-Corruption, Police Unit, Puducherry to enquire and submit a report on the same. Based on the report submitted by the second respondent, the learned Chief Judicial Magistrate, Puducherry, has taken cognizance for the offence under Section 420 r/w. Section 34 of IPC against the petitioner and others.

13. Perusal of records reveal that the allegation made against the petitioner is that while he was working as Managing Director of PRTC, he

was not supposed to draw housing allowance. But he had drawn the housing allowance inspite of allotment of official quarters and on that score, he had illegally gained Rs.1,54,170/- by unlawful and dishonest means. Further the perusal of the report submitted by the second respondent reveal that the petitioner has repaid the entire amount which he had received in excess and despite these facts, it was recommended to initiate departmental proceedings against the petitioner.

14. On perusal of the records and also as admitted by the petitioner himself that the petitioner claimed a sum of Rs.1,54,170/- as housing allowance and since he has repaid the amount after the complaint, it seems to be admitted that he has claimed the amount for which he was not actually entitled to. Further, the records reveals that the first respondent complained before the second respondent. Since the second respondent did not take any steps, the first respondent filed a private complaint before the Chief Judicial Magistrate, Puducherry, who has called for the report from the second respondent and after enquiry, the second respondent had filed the report before the Chief Judicial Magistrate, Puducherry. Further, the report of the second respondent reveals that the petitioner claimed a sum of Rs.3,91,458/- towards house rent allowance. On the question raised by the public through RTI,

the petitioner came forward to repay the amount of Rs.3,91,458/- and instructed the Accounts Section to receive and deposit the same in Government house rent allowance account and subsequently he has repaid the same. This act of the petitioner proves that if complaint is not made he would not have repaid it. However, the repayment will not take away the offence committed by the petitioner. Further it is the settled law that initiating Departmental proceedings will not prohibit to take action for criminal offence committed by the petitioner.

15. As far as the stand taken by the petitioner that since he has repaid the entire amount, there was no loss to the Government, he has not committed any offence, is not acceptable. Further, once he admitted the drawal of house rent allowance, it is up to the petitioner to establish as to whether he received the amount without any mala fide intention. Further, it is to be seen as to whether the house rent allowance was drawn knowing fully well that he is not entitled to and cheated the Government has to be decided only after the trial. However, he has been arrayed as an accused in C.C.No.10/2017 and whatever the defence available to him, he can put forth the same before the trial court during the trial since there is a specific allegation against the petitioner and the petitioner also admitted the drawal of the amount and also repaid the

same. Therefore, the criminality of the claim can be decided only after the trial and not at this stage, there is no ground to quash the C.C.No.10 of 2017. In the light of the above, this court finds no valid grounds to quash the case in C.C.No.10 of 2017 and this Criminal Original Petition is liable to be dismissed.

In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

27.07.2017

gv

Index : Yes/No
Speaking Order/Non Speaking Order

To

1. The Chief Judicial Magistrate, Puducherry.

2. .The Station House Officer,
Vigilance and Anti-Corruption,
Police Unit,
Puducherry.

3. The Public Prosecutor,
High Court, Madras,
Chennai.

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P.VELMURUGAN.,J.
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**Pre-delivery Order made in
CRL.OP.No.5056 OF 2017
and
CRL.MP.Nos.3761 & 3762 of 2017**

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