IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.13125 of 2011
and
M.P.No.1 of 2011

1.K.Paramasivam @ Medical Paramasivam
2.Kathirvel .. Petitioners

Vs

The Inspector of Police,
Pollachi Taluk Police Station,
Pollachi,
Coimbatore District. .. Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records in S.T.C.No.651 of 2011 on the file of the Judicial Magistrate No.II, Pollachi and quash the same.

For Petitioners : Mr.C.Prakasam

For Respondent : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition has been filed by the petitioners to call for records in S.T.C.No.651 of 2011 on the file of the learned Judicial Magistrate No.II, Pollachi and to quash the same.

2. The case of the prosecution is that on 11.04.2011 around 6.15 P.M., the complainant was on patrolling duty along with his staff. At that time, when they intercepted a Hero Honda motorcycle bearing registration No.TN-41 AA 4232 at the junction of R.Ponnapuram – T.Nalligoundenpalayam, way to Santhiya Poultry house. When they enquired, the pillion rider Medical

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Paramasivam (1st petitioner) stated that he belongs to R.Ponnagaram and he was holding pamphlets in his hand. When further enquired, the 1st petitioner stated that he was canvassing for K.Nithyanandam, who was contesting in the election for Pollachi Assembly Constitution on behalf of Kongu Nadu Munnetra Kazhagam. When the team members searched the bag of the 1st petitioner, they found seven rose colour covers and when the covers were opened, they found two 500 rupee notes in each cover. Apart from that they found unauthorised money of 14 Nos. 1000 rupees notes, 40 Nos. 500 rupees notes and 25 Nos. 100 rupee notes, totally Rs.43,500/- in possession of the 1st petitioner and on an enquiry, they came to know that the said amount was carried by the accused for the purpose of distributing money to the voters by breaking the Code of Conduct which was in force as on that date. On the basis of the complaint given by the complainant Manoharan, Junior Inspector, Co-operative Department, a case in Crime No.140 of 2011 under Section 171-E of IPC was registered by Pollachi Taluk Police Station and after examining witnesses, the Inspector of Police, Taluk Police Station, Pollachi filed the charge sheet against the petitioners under Section 171-E of IPC.

3. The petitioners have filed the present petition contending that the 1st petitioner was an elected Chairman of Parambikulam – Aliyar Irrigation Project Committee, which was a statutory body of the Government. The 2nd petitioner is an agriculturist and also brother-in-law of the 1st petitioner. On 10.04.2011, the petitioners went to their house by motorcycle from Pollachi and on its way, the officials and other police officials stopped the motorcycle and checked motorcycle box and found certain documents and letters pertaining to the Committee. They have also found bank pass book, driving licence and ATM card etc.

4. According to the petitioners, an amount of Rs.43,500/- seized by the team is the money collected by the 1st petitioner for the sale of coconuts from members of Lions Club of Green Earth and also donations given by some social interested persons for organising Republic day function and also arranging a biggest national flag. Inspite of the accused given explanation that the said amount was not used for giving bribe to the voters, with political motive, a false case has been foisted against the petitioners.

5. I heard Mr.C.Prakasam, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent-State and also perused the materials available on record.

6. The main ground urged by the learned counsel for the petitioners is that proceedings initiated under Section 171-E of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

I.P.C. is illegal. It was contended that Section 171-E of I.P.C. is non-cognizable offence and the police cannot investigate the subject matter without permission of the jurisdictional Magistrate under Section 155(2) of Cr.P.C. Therefore, the learned counsel prays for allowing the petition by quashing the entire proceedings.

7. Per contra, the learned Government Advocate (Criminal Side) for the respondent-State would contend that the respondent-State has appointed observers and at the time of interrogation, the petitioners were found to be in possession of Rs.43,500/- for the purpose of unauthorised distribution amongst the electorates during the assembly election. He would contend that after investigation, charge sheet has been filed. Now the petitioners cannot contend that the entire proceedings are illegal and as such the proceedings cannot be quashed and prayed for dismissal of the petition.

8. It is the contention of the learned counsel for the petitioners that the 1st petitioner is the Chairman of Parambikulam-Aliyar Irrigation Project Committee and the 2nd petitioner is an agriculturist and they were carrying Rs.43,500/-, the sale proceeds of coconuts and donation amount given by some social interested persons towards celebration of Republic Day function along with them. No record has been produced by the respondent-State to show that the petitioners were trying to distribute money to the voters during election.

9. The records also disclose that the offence alleged against the petitioners under Section 171-E of I.P.C. is a non-cognizable offence and no permission has been obtained under Section 155(2) of Cr.P.C.

10. As could be seen from Section 155(2) of Cr.P.C., it is an absolute bar, which says that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Moreover, Section 161 Cr.P.C. statements recorded by the police officer are format statements and there was no concrete evidence to show that the money possessed by the petitioners was for the purpose of distribution to voters. Without proper enquiry, the respondent police foisted the case against the petitioners and there was no basis for the complaint. In view of the above facts and circumstances, there is a clear violation of the procedure as established by law.

11. Keeping in view the above said facts and circumstances of the case, I feel that the cognizance taken by the Magistrate appears to be illegal and he ought not to have taken the cognizance for the offence punishable under Section 171-E of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

I.P.C. In the light of the above, the petition deserves to be allowed.

12. Accordingly, the petition is allowed and the proceedings in S.T.C.No.651 of 2011 pending on the file of the Judicial Magistrate No.II, Pollachi is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Pollachi.

2.The Inspector of Police,
Pollachi Taluk Police Station,
Pollachi,Coimbatore District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.25482

Crl.O.P.No.13125 of 2011
and
M.P.No.1 of 2011

nr 29/11/2018

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/