

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 02.12.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.800 of 2016
and

Crl.M.P.Nos.5976 and 5977 of 2016

and

Crl.O.P.No.30786 of 2011 and M.P.No.1 of 2011

1.P.Murugan

2.N.A.Jafarullah

Petitioners/A13 & A14

in both revision and

petition

versus

State through

The Inspector of Police,

Vigilance and Anti Corruption,

Chennai City - II Detachment,

Chennai - 600 020

in both

... Respondent

revision and petition

Prayer in Crl.R.C.No.800 of 2016: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 09.05.2016 in crime No.12/AC/95/CC-II in Spl.C.C.No.1 of 2010 on the file of X Additional Special Judge, PC Act, Chennai.

Prayer in Crl.O.P.No.30786 of 2011: Criminal original petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in Spl.C.C.No.1 of 2010 on the file of the X Additional Sessions and Special Judge, Chennai and quash the same.

For Petitioners in

both revision and petition

: Mr.A.V.Arun

For Respondent in both
revision and petition

: Mr.P.Govindarajan, A.P.P.

COMMON ORDER

The criminal revision has been filed to set aside the order dated 09.05.2016 in crime No.12/AC/95/CC-II in Spl.C.C.No.1 of 2010 on the file of X Additional Special Judge, PC Act, Chennai.

2.The criminal original petition has been filed to call for the records relating to the proceedings in Spl.C.C.No.1 of 2010 on the file of the X Additional Sessions and Special Judge, Chennai and quash the same.

3.The case of the prosecution is that the petitioners along with other accused committed various offences in five different transactions viz., (i)during free supply of foot wear to school going children (ii)supply of outdoor equipments and furniture to Anganwadi Centres (iii)supply of furniture to Nutritious Meals Centres (iv)supply of cobbler bunks and (v) supply of Laboratory and vocational equipments to High and Higher Secondary schools. The first petitioner/A13 was the President of Chidambarapuram Carpentry and Blacksmithy Workers Industrial Co-operative Society Pettai, Tirunelveli and the second petitioner/A14 was a member in Virudhachalam Carpentry and Blacksmithy Multi purpose Industrial Co-operative Society, Virudhachalai. The allegation against the petitioners are that they have not followed certain government orders in the matter of purchase of lab equipments besides utilizing the service of High Level Committee. The accused were parties to criminal conspiracy having illegally agreed among themselves in connection with the scheme for centralized placing of orders towards the purchase of lab equipments and study materials for children with the societies, which did not have manufacturing capacity or proper infrastructure by dishonestly colluding with each other in the names of 7 societies mentioned in the charge sheet. Therefore, the prosecution has filed charge sheet against the petitioners and other accused for the offence punishable under Sections 120(B), 409, 167, 477-A of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the case has been taken on file in Spl.C.C.No.1 of 2010 on the file of the X Additional Sessions and Special Judge, Chennai.

4.Earlier, the same petitioners/A13 and A14 have filed a petition to quash the charge sheet in Cr.No.12/AC/95/CC-II,

which was taken on file in Spl.C.C.No.1 of 2010 by the learned I Additional Sessions and Special Judge, Chennai. However, during the pendency of the petition, the learned Special Judge has framed charges against the petitioners and hence, the petitioners have filed the present revision against the framing of charges against them. Since the issue involved in both the revision and petition, a common order is passed.

5.The learned counsel for the petitioners would submit that as per the charge sheet filed by the respondent, the allegations pertain to the occurrence happened in the year 1994 and the complaint was registered in the year 1995, but the final report was filed only in the year 2010 and the learned Special Judge has taken cognizance of the same and the delay in filing the final report after a period of 15 years was never explained by the respondent and there is no justification for the inordinate delay in filing the charge sheet before the Court. The petitioners after filing the charge sheet were appearing before the Special Court every hearing, the the trial could not be started yet since the public servant with whom the petitioners allegedly conspired to commit the offence also died.

6.He would further submit that there is no fault on the part of the petitioners and the right guaranteed for speedy trial is infringed and on this score alone, the petitioners are entitled to be discharged from this case. Under these circumstances, the petitioners have filed Crl.O.P.No.30786 of 2011 before this Court for quashing the charge sheet filed by the respondent and the same is pending. In the meanwhile, three accused died and one was discharged. The public servant with whom allegedly the petitioners have conspired to commit the offence died and the charges were not framed. The charges could not be framed against the petitioners in the absence of the public servant under the Prevention of Corruption Act.

7.He would further submit that there are no allegations made against these petitioners and during the pendency of the investigation A1 , who was the public servant died and hence, the charges framed against the petitioners are not maintainable in the absence of the public servant with whom the petitioners allegedly abetted to commit cheat. In support of his contention, he has relied on the following decisions:

- 1.(1980) 1 SCC Hussainara Khatoon Vs. Home Secretary, State of Bihar;
- 2.(1992) 1 SCC 225 A.R.Antulay Vs. R.S.Nayak;
- 3.(2002) 1 SCC 149 Mahendar lal Das Vs. State of Bihar and others;
- 4.(2002) 4 SCC 578 P.Ramachandra Rao Vs. State of Karnataka;
- 5.(2009) 3 SCC 355 Vakil Prasad Singh Vs. State

of Bihar;

6.(2011) 2 MWN (Cri) 576 Madras High Court;

7.(2012) 7 SCALE 382 Ranjan Dwivedi Vs CBI.; and

8.2014(11) SCC 724 State through CBI, New Delhi
Vs. Jitender Kumar Singh.

8.The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioners have been shown as A13 and A14 and A1 to A14 were participated in the criminal conspiracy having illegally agreed among themselves in connection with the scheme for centralized placing of orders towards the purchase of lab equipments and study materials for school children with societies which did not have manufacturing capacity of proper infrastructure to commit and abet one another in the commission of the offences of criminal breach of trust by public servants, cheating, framing of incorrect records by public servant with intent to cause injury, falsification of accounts and the offences of criminal misconduct by public servants and thereby A1 to A14 appear to have committed offence punishable under Sections 120-B read with 409, 420, 477A, 167 of I.P.C. And Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 read with 109 of I.P.C.

9.Further, he would submit that A1, being a public servant and in such capacity entrusted with dominion over the funds allotted by government towards the scheme for centralized purchase of laboratory equipment etc. for high school and higher secondary school in the State committed criminal breach of trust in respect of a total sum of Rs.58,82,250/- by dishonestly colluding with A3 to A5, A8 to A10 and A12 to A14. A12 to A14 being private individuals and having abetted A1 in the commission of offence appear to have committed an offence punishable under Section 109 of I.P.C. read with 409 of I.P.C. He would further submit that A2 to A14 abetted A1 in the commission of the said offence of criminal misconduct by public servant by intentionally aiding him and by engaging with him in the said criminal conspiracy and by securing pecuniary advantage without any public interest to the extent of Rs.58,82,250/- in the circumstances stated above and thereby A2 to A14 appear to have committed the offence punishable under Section 109 of I.P.C. read with Section 13(2) read with Section 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988.

10.He has further submitted that the materials available on record including the first information report and the statements recorded at Section 161 of Cr.P.C., makes it crystal clear that prima facie case made out against the petitioners/accused and hence, at the stage of framing a charge, the probative value of the materials on records cannot be gone into and the materials brought on record by the prosecution has

to be accepted as true at this stage. In support of his case, he has referred the decision of the Apex Court in State of Maharashtra Vs Somnath Thapa reported in AIR 1996 SC 1744.

11.He would further submit that at the time of framing of a charge, what the trial Court was required to and can consider are only the police reports referred to under Section 173 Cr.P.C. and the documents sent with it. The only right of the accused has at that stage is of being heard and nothing beyond that. In support of his case, he relied on the judgment of State, Anti Corruption Bureau Vs. P.Suryaprakash reported in 1999 SCC (Cr1.) 373. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence are brought on records at the trial. In support of his contention, he relied on the decision of the Apex Court in Hemchand Vs. State of Jharkhand reported in 2008 MLJ Cr1. 1641.

12.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record along with charges framed against the accused including the petitioners.

13.On a careful perusal of the charge sheet filed under Section 173 of Cr.P.C. along with other material documents and charges framed against the petitioners and other accused dated 09.04.2016 would show that there are incriminating materials to frame the charges against the petitioners and other accused. In the above facts and circumstances, at this stage, the trial Court is not expected to conduct a roving enquiry on the material records and at the stage of framing of charge, probative value of the materials on record cannot be gone into and the what the trial Court is required to consider only the police report under Section 173 of Cr.P.C and documents annexed with it. The only right of the accused is being heard and nothing beyond that. Of course, at that stage, the accused may be examined but that is a prerogative of the court only. The duty of the court is not to examine and assess in detail materials placed before it, it has to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons.

14.At the stage of framing of charge, what the Court has to see is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into. Only prima facie case is to be

seen, the question whether the charges have been proved or not can be determined only after the evidence is recorded in this case. For framing of charge, the Judge has to consider judicially whether on consideration of the materials on record it can be said that the accused can be reasonably connected with the offence and that there is a reasonable probability or chance of the accused being found guilty. If the answer is affirmative, the Judge will be at liberty to frame a charge against the accused. No weight to be attached to the probable defence of the accused. In a case instituted upon a police report, the Court is required at the time of framing of the charges, to confine its attention to documents referred to under Section 173 of Cr.P.C., only. The Court is not justified in referring to documents relied on by the accused when their authenticity and veracity are yet to be gone into. The documents filed by the defence cannot be considered in framing charge.

15. Further, it is well settled principles of law that at the time of framing of charges, the Court ought to have seen whether there is any prima-facie case made out for framing of charge and the Court need not to conduct any roving enquiry regarding the oral and documentary evidence collected by the prosecution. The learned Special Judge, considering all the materials collected during the investigation found that there is prima facie case as against the petitioner and other accused to frame the charges. The validity and admissibility of the oral and documentary evidence can be done only after the trial and not at the stage of framing of charges and at the time of framing of charges, the probative value of the material on record cannot be gone into.

16. The main contention of the petitioner is that since the public servant died, the case cannot be proceeded against these petitioners. At this state, it is worthwhile to refer the decision of the Apex Court in HCL Infosystem Limited Vs. Central Bureau of Investigation reported in (2016) 3 Supreme Court Cases (cri) 438, wherein, it was held that effect of death of sole accused public servant thereon is not affected and is retained even if the sole public servant dies before commencement of trial and the Special Judge can of course try non PC Act cases alone against non public servants, when his appointment is to try all connected cases.

17. The next contention raised by the learned counsel for the petitioners is delay in filing the charge sheet. It is true that the occurrence has taken place in the year 1994 and the complainant has been registered in the year 1995. However, the final report has been filed in the year 2010, after a delay of 15 years. There is an inordinate delay. In this regard, the

learned Additional Public Prosecution placed reliance on the judgment of the Apex Court in Niranjan Hemchandra Sashittal and another Vs. State of Maharashtra reported in (2013) 4 Supreme Court Cases 642, wherein, the Apex Court has held that when delay is caused due to dilatory tactics adopted by accused, he cannot advance a plea that delay in trial has caused colossal hardship and agony warranting quashment of entire criminal proceedings. He relied on another decision of Sirajul V. State of U.P. reported in (2015) 9 Supreme Court Cases 201, wherein, the Apex Court has held that mere delay in completion of proceedings, may not be, by itself, a ground to quash proceedings, where offences are serious. Therefore, the contention raised by the learned counsel for the petitioners is unsustainable.

18. At this stage, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in 2017 CRI.L.J.1433 - State of Rajasthan V. Fatehkaran Mehdu, wherein, the Apex Court has dealt with the same issue and has held in paras 26 to 29 as follows:

"26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in *Amit Kapoor and Ramesh Chander and Another*, (2012) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a

much advanced stage in the proceedings under the CrPC."

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent

person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

19. Considering the facts and circumstances along with the above said decision, I am of the view that the trial Court has correctly come to the conclusion that there is prima facie case made out as against the petitioner and others to frame charges and accordingly framed charges and at this stage, there is no need to interfere the order passed by the learned Special Judge by exercising the revisional jurisdiction under Section 397 read with 401 of I.P.C. and this criminal revision and the criminal original petition fail and the same are liable to be dismissed.

20.For the purposes of quashing the proceedings under Section 482 of Cr.P.C., delay or the truth or otherwise of the allegations made in the complaint, broadly speaking, cannot be gone into. What is stated in the complaint or the first information report is to be assumed to be true unless the allegations are absurd or inherently improbable to such an extent that no person can even believe such a thing to have happened. Considering the seriousness of the offence and complaint was not solely responsible for the delay in the proceedings, the criminal proceedings cannot be quashed.

21.In the result, both the criminal original petition and the criminal revision case are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul
To

- 1.The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City - II Detachment,
Chennai - 600 020
- 2.The X Additional Sessions and Special Judge
Chennai -1.
- 3.The Additional Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.A.V.Arun, Advocate, S.R.No.39418

Criminal Revision Case No.800 of 2016
and

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Cr1.O.P.No.30786 of 2011 and M.P.No.1 of 2011

KS(CO)
RS(08/06/2017)