IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

(Reserved on: 18.11.2016 ; Pronounced on : 22.02.2017)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.OP.No.20681 of 2016
and
CRL.MP.No.9627 of 2016

R.Maheswaran ..Petitioner/Accused

Vs.

The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore District.
(Crime No.1/2012/AC/CB) ..Respondent

Prayer: Criminal Original Petition is filed to call for the records culminated in Spl.C.C.No.3 of 2014 on the file of the Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore and quash the same.

For Petitioner : Mr.R.Prabhakaran

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to call for the records culminated in Spl.C.C.No.3 of 2014 on the file of the Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore and quash the same.

2. The case of the prosecution is that the petitioner/accused was working as a Senior Regional Manager, TASMAC, Coimbatore at the relevant point of time. On 10.01.2012, he demanded and accepted the bribe in the form of mamool from the District Managers of his jurisdiction and he was in possession of the said ill-gotten amount in his left side table drawer. On receiving the credible information, the District Inspection Cell Officer and the Vigilance and Anti-Corruption, Coimbatore officials jointly conducted a surprise inspection and during that time, a sum of Rs.1,75,0000/- unaccounted money was seized by the District Inspection Cell officer. Based on his complaint, a case in Cr.No.1/2012/AC/CB u/s.7, 13(2) r/w. 13(1) (d) of the Prevention of Corruption Act,

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1988 was registered by the respondent police against the petitioner/accused.

3. After the thorough investigation, the respondent police filed final report on 07.01.2014 before the Special Court for cases under Prevention of Corruption Act. The Special Judge taken the case on file in Spl.C.C.No.3/2014 on 12.03.2014. The copies of the final report and the documents collected during the investigation were all furnished to the petitioner/accused. In the meanwhile, this petitioner/accused had filed a Crl.OP.No.1567/2012 before this Court to quash the FIR and the same was dismissed as withdrawn on 23.07.2013. Again this petitioner had filed another petition in Crl.O.P.No.10695/2014 to quash the criminal case and the same was also dismissed on merits by this court on 10.09.2015, holding that the petitioner was not having any merits. After the dismissal of the above quash petitions, this petitioner filed yet another petition in Crl.OP.No.18005/2016 before this court to direct the investigating agency to register the case against the witnesses Tr.C.Subramaniam, Tr.Radhakrishnan, Tr.Sugumaran and Tr.Selvan Amalraj and conduct the further investigation by invoking section 173(8) of Cr.P.C and the same was also dismissed by this court on 08.09.2016. When the above said Crl.OP.No.18005/2016 was reserved for orders, even before passing order, this petitioner has again filed the present petition on the same set of facts. The present petition is the replica of Crl.OP.No.18005/2016. Further, this petitioner has also filed a separate petition u/s.239 Cr.P.C., before the trial court in CMP.No.272/2015 and the same is pending before the trial court. Thus the present petition is liable to be dismissed in limine.

4. The case of the petitioner is that he is an innocent and did not commit any offence, warranting charges under the Prevention of Corruption Act. But, however, the subordinate officers of the department in a joint conspiracy had colluded together and had fixed the petitioner, who was their immediate superior. The petitioner had been discharging his duties without any fear or favour and who was very strict with his subordinate officers. This fact can be gauged from the fact that prior to the course of the event, all the witnesses/subordinate officers were not arrived as accused under the entire course of investigation, where the investigation had been conducted in a faulty manner without examining the true facts on record.

5. The subordinate officers who bribed the petitioner is also equally liable to be prosecuted and the case had to be registered against those subordinate officers as well atleast for the offence of bribe giving, which is an offence under the Prevention of Corruption Act. However, the investigating agency had wrongly applied their mind and did not apply the facts and

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circumstances of the case in its proper perspective and had wrongly filed case against the innocent petitioner, who was a strict officer. The real accused are the subordinate officers/witnesses, which in fact had been deliberately omitted by the prosecution for some extraneous reasons and such non-inclusion and omission is a serious procedural lapse and violation as per the dictum laid down by the 7 Judges Bench of the Apex Court reported in Maneka Gandhi Vs. Union of India case.

6. Free and impartial investigation is a fundamental requirement of the criminal law and even as per the prosecution case, bribe giver has to be prosecuted and punished. It is settled law that when there is a prima facie case and enough evidence, to unearth the truth, further investigation could be ordered under Section 173(8) of Cr.P.C., by this court, exercising powers u/s.482 of Cr.P.C., where this court can monitor the investigation and through continuing mandamus by directing the prosecution to investigate and submit the report as against the witnesses.

7. Mere recovery of currency notes from the drawer in the office without proof of demand would not establish an offence under Section 7 or Section 13(1) (d) of POCA, and the prosecution witnesses being decoy witnesses are not dependable. In the instant case, and for the purpose in any other case like the present one, indeed cannot afford to overlook the most material aspect, namely, as to what happened on the spot at the relevant time and place of the commission of offence and for this there is always available a contemporaneous record quite well-known as Panchnama, which is prepared in presence of the Panchas, Investigating Officer and the accused. In the given case, there was no Panchas and Panchnama. In such circumstances, the petitioner had filed Crl.OP.No.10695/2014 and the same was dismissed by an order dated 10.09.2015 with an observation that absence of seizure memo would not affect the case of the prosecution. Subsequently, the petitioner filed Crl.OP.No.18005/2016 before this court for further investigating the case in Cr.No.1/2012/AC/CB dated 10.01.2012 and consequently also register the FIR as against C.Subramani, M.Radhakrishna, A.Sugumaran, P.Selvan Amalraj, who were working as District Managers of Coimbatore Region, under the provisions of Prevention of Corruption Act, 1988. The law protects subordinate officials, when they act as per the orders of the superior within the ambit of law. In the present case, it is alleged by the General Managers that they are forced to undergo disciplinary proceedings, it is the bounden duty of the subordinates that when they are forced to commit an illegal act by the superior they ought to have refussed to do the same and should intimate the same to the higher authorities of the Department. Instead, they abetted the crime, concealed the

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commission of offence, thereby they committed an offence punishable u/s.107 r/w.114 of IPC apart from commission of offences under Prevention of Corruption Act, 1988.

8. Heard both sides.

9. Learned counsel for the petitioner would submit that the petitioner is innocent he has not committed any offence. The subordinate officers of the Department in a joint conspiracy had colluded together and had fixed the petitioner who was their immediate superior. The bribery is a joint offence under IPC and the bribe given is punishable u/s.166 of IPC and therefore, the bribe giver also has to be impleaded as accused. In this case, the complainant had constituted the crime or the illegal purpose of getting favourable confidential report or preventing any adverse confidential report have taken part in the act of crime of bribery. Therefore, they should be also arrayed as accused. In this case, prima facie no proof beyond reasonable doubt. The investigation agency do not have sky rocketing power. Since there is a serious flaw and violation of law, the investigation conducted by the prosecution is in clear violation of the Constitutional Bench Judgment rendered in Lalitha Kumari Vs. Government of Uttar Pradesh and Others reported in (2014) 2 SCC 1 Before filing FIR, the preliminary enquiry was not conducted and hence, FIR is liable to be quashed.

10. Learned Additional Public Prosecutor would submit that all the points have been raised in the earlier petitions filed by the petitioner and this court did not accept the contention raised by the petitioner and dismissed the petitions. There is no change of circumstances or even otherwise this petition is not maintainable either under law or on facts. The Lalitha Kumari case is not applicable to the present case on hand. There is a prima facie materials to show that this petitioner has committed the offence and the learned counsel for the State has placed reliance on the judgment of Madhukar Bhaskar Rao Joshi Vs. State of Maharashtra reported in AIR 2001 (SC) 147 wherein the Hon'ble Supreme Court has held as

> " once the amount is found in possession of the accused, the burden shifts on the accused to explain the circumstances to prove his innocence as contemplate under section 20 of the Prevention of Corruption Act, 1988"

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11. Further he would submit that this is not a trap case. But this is a case emanated on the surprise inspection conducted by the District Inspection Cell Officer who was authorised by the Government to conduct surprise check in the Government office. The subordinate officers met out the demand of the petitioner under the apprehension that they would have been dealt with by the petitioner departmentally as well as writing

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adverse remarks in their Annual confidential report so as to affect the employment. But for the said apprehension, these four subordinate officers had met the demand of the petitioner as such they cannot be derived as bribe giver and as such, will fall within the ambit of Section 24 of the Prevention of Corruption Act. Moreover, the act of the petitioner/accused would definitely fall within the ambit of Sections 7 ,13 (2) r/w.13(1) (d) of Prevention of Corruption Act. The District Inspection Cell Officer who was authorised by the Government to conduct the surprise check initiated the criminal proceedings of the present case by the way of conducting the surprise inspection and hence, the application of DVAC manual is not required.

12. The present case is entirely different in the dictum laid down in Lalitha Kumari Vs. Government of Uttar Pradesh and Others reported in (2014) 2 SCC 1. The said judgment does not applicable to the present case on hand. There is no irregularity or illegality occurred in the investigation as such the citation referred by the counsel for the petitioner would not be applicable to the present case on hand. Further he would submit that the Judge while considering the question of framing the charges u/s.227 of Cr.P.C., has the undoubted power to shift and waive the evidence for the limited purpose of finding whether the prima facie case against the accused has been made out. The test of determining prima facie case would depend upon the facts of each case. Hence, the petition is liable to be dismissed.

13.On perusal of the records, the allegation against the petitioner is that on a credible information, a surprise inspection was conducted at the office of the Senior Regional Manager TASMAC, Coimbatore on 10.01.2012 between 15.05. hrs and 19.15 hrs. The same was conducted by the District Inspection Cell Officer with the assigned Officials of Vigilance and Anti-Corruption, Coimbatore. During the surprise inspection, the bribe amount of Rs.1,75,000/- was found on the table of the petitioner and the same was seized by the District Inspection Cell Officer. Then he preferred complaint along with tainted money of Rs.1,75,000/- before the Inspector of Police, Vigilance and Anti-Corruption, Coimbatore on 10.01.2012 at about 20.00 hrs in respect of the amount was demanded and accepted by this petitioner from the District Manager of TASMAC to avoid the remarks on their Annual confidential report and to avoid the disciplinary action against the District Manager. On receiving the complaint, the investigating officer register the case in Cr.1/12 /AC/CB u/s.7,13,(2) r/w.13(1) (e) of PC Act.

14. According to the prosecution after registering the case, at the time of investigation, they collected material documents and recorded the statements of witnesses u/s.161(3)

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Cr.P.C. After the investigation, the respondent police filed charge sheet on 07.01.2014 before the special court and the special court taken the cases on file in Spl.C.C.No.3/14 on 12.03.2014 on the file of Special Judge, Special Court for cases under the Prevention of Corruption Act. The copies of the final report and the documents collected during the investigation were furnished to the petitioner with the final report. The petitioner filed a petition in Crl.O.P.No.1567/2012 before this court to quash the FIR and the same was dismissed as withdrawn on 23.07.2013. Again the petitioner had filed another petition in Crl.OP.No.10695/2014 to quash the proceedings before this court. On 10.09.2015 considering the facts and law and dismissed the petition on merits. After that, the petitioner filed one more petition, in Crl.OP.No.18005/2016 before this court with a prayer to direct the investigating agency to register the case against the witnesses Tr.C.Subramaniam, Tr.Radhakrishnan, Tr.Sugumaran and Tr.Selvan Amalraj.

15. After hearing, when the said Original Petition was reserved for order, he has filed this present petition u/s.482 of Cr.PC and also the petitioner filed a separate petition u/s.239 Cr.PC., before the trial court in CMP.No.272/2015 and the same is still pending. In the meanwhile, on 08.09.2016, the Crl.OP.18005/16 was dismissed by this court on merits.

16. On perusal of the FIR and charge sheet, there is a specific allegation against the petitioner that when the petitioner was working as Sr.Regional Manager, TASMAC, Coimbatore, at the relevant time on 10.01.2012, he demanded and accepted the bribe in the form of mamool from the District Manager of his jurisdiction and he was in possession of the said ill gotten amount in his left side table drawer. On receiving the credible information, the District Inspection cell Officer with the assistance of the officials of Vigilance and Anti Corruption, Coimbatore. The officials jointly conducted the surprise check and during the check, a sum of Rs.1,75,000/- unaccounted money was seized by the District Inspection Cell Officer. Further perusal of records would show that the petitioner has filed application in several stage. Even after registering FIR, he filed the petition to quash the FIR. Then he filed the petition to quash the charge sheet and after that he filed the application to implead the subordinate officers. All the applications have been dismissed one way or other and also now, the petitioner has filed a petition to discharge the petitioner in CMP.No.272/2015 before the special court and the same is also pending.

17. The main contention of the petitioner herein is that the investigation agency has not followed the dictum laid down by the Apex Court in Lalitha Kumari Vs.Government of Uttar

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Pradesh and Others reported in (2014) 2 SCC 1 and further he would submit that no preliminary enquiry was conducted as per law laid down by the Hon'ble Supreme Court. Before registering the FIR, the respondent should have conducted the departmental enquiry and therefore, it is violation of law laid down by the Supreme Court.

18. On perusal of the entire records, the background and facts and circumstances of the Lalitha Kumari case is entirely different from the facts and circumstances of the present case on hand. This is not a trap case and this is a case emanated on the surprise check conducted by the District Inspection Cell Officer who was authorised by the government to conduct surprise check in the government offices and during the check, they recovered the bribe amount from the petitioner and the possession of the ill-gotten amount was also not satisfactorily accounted by the petitioner. The District Inspection Cell Officer recorded the reason adduced by the petitioner and preferred a complaint before the Investigation Officer and thereby the District investigating officer set the law in motion. Mere defect in investigation will not vitiate the proceedings.

19. Further the learned Additional Public Prosecutor would submit that the subordinate officers cannot be impleaded in this case as abettors because u/s.24 of Prevention of Corruption Act is barred to take action. The contention raised by the learned counsel for the petitioner regarding all the four witnesses/subordinate officers have to be impleaded in this case as accused is concerned, this court already dismissed the petition filed by the petitioner in Crl.OP.No.18005/2016. Now the case is pending before the trial court and the petitioner has filed a petition in CMP.No.272/2015 to discharge the petitioner from the charges and the same is also pending before the trial court and it is pertinent to refer the case of Sajjan Kumar vs. CBI, the Honble Apex Court has categorised that following principles are emerged in the scope of Sections 227 & 228 of Criminal Procedure Code.

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

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(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

20. The petitioner can raise all the points in CMP.No.272 of 2015 in discharge petition filed under Section 239 Cr.PC before the trial court. Since there is a prima facie materials available against the petitioner to proceed further when exercising jurisdiction under Section 482 of Cr.P.C., the High court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of its acquisition would not be sustained. That is the function of the trial judge. The scope of exercise of power under Section 482 of Cr.P.C., and the

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categories of the cases were the High Court may exercise its power under it relating to cognizable offences to prevent the abuse of process of any court or otherwise to secure the ends of justice. The powers possessed by the High Court u/s.482 of Cr.P.C are very wide and at the same time, the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stiffle the legitimate prosecution. Further in this case, already the petitioner has filed an application u/s.239 of Cr.P.C., to discharge her from the charges and the same is pending with the trial court.

21. The petitioner has also filed discharge petition before the trial court. At this stage, the court need not exercise extrarodinary discretionary power vested u/s.482 of Cr.,P.C. Since there is a specific allegation and prima facie materials also available in this case he could face the trial and he could prove his innocence.

22. Under the above said circumstances, since it is found that in this case, prima facie materials are available to proceed further against the petitioner and there is no valid ground to quash the criminal case in C.C.No.3/2014 on the file of **(*)Special Judge, Special Court of cases under the prevantion of corruption Act, coimbatore,** this petition is liable to be dismissed. Accordingly, this petition is dismissed.

23. In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-II)
dt.22.02.2017

Corrected as per order
of this Court dated 02.03.2017
and made herein.

s/d-
Assistant Registrar(CS-IV)
dt.13.03.2017

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Sub-Assistant Registrar

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To

1. The Inspector of Police,
   Vigilance and Anti-Corruption,
   Coimbatore District.

2. The Public Prosecutor,
   High Court,
   Madras.

To be substituted to the order already despatched on 22.02.2017 and made herein.

+2 Ccs to Mr. R. Prabhakaran, sr 11332

Pre-delivery order in
CRL.OP.No.20681 of 2016
and
CRL.MP.No.9627 of 2016

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RS(14.03.2017)

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