

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2016

PRONOUNCED ON : 08.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.OP.No.24502 of 2016

V.Arumugam

...Petitioner

Vs.

State rep by
The Inspector of Police,
Vigilance and Anti Corruption,
Puducherry.

...Respondent

PRAYER : Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records from the Inspector of Police, Puducherry, Vigilance and Anti Corruption in FIR No.2 of 2016 and to quash the same.

For Petitioner : Mr.A.V.Somasundaram.

For respondent : Mr.V.Balamurugane, GA (pondy).

ORDER

This Criminal Original Petition is directed to call for the entire records from the Inspector of Police, Puducherry, Vigilance and Anti Corruption in FIR No.2 of 2016 and to quash the same.

2. The case of the petitioner is that while he was functioning as the Sub Inspector of Police, Orleanpet Police Station, the Inspector/Kalaiselvan entrusted a petition to the petitioner for enquiry which was given by Kumar who worked as Supervisor under Civil Contractor Senthil for two months. The petitioner called the parties and enquired on 02.04.2016. During the enquiry, the petitioner came to know that the counter petitioner/Senthilkumar failed to pay the salary to Kumar for the work done for two months. Pending enquiry, the Senthilkumar voluntarily agreed to pay a sum of Rs.30,000/- to Kumar through the petitioner in full and inturn asked the Kumar to withdraw the complaints before the Police station and also the complaint given in PCR cell. The petitioner received the said amount and both the parties endorsed the same, and requested Kumar to withdraw the complaint pending in the police station and also in PCR, Cell against Senthilkumar. The petitioner being the enquiry officer recorded the endorsement of parties and closed the petition as per law following all parameters of law by making entry in the GD.

3. The petitioner submits that the Counter petitioner/Senthilkumar with the aid and illegal advise of some disgruntled element seems to have illegally recorded the parting of

Rs.30,000/-to the petitioner through the hidden electronic gadget with some enacted theatrical affluence as if the petitioner has been paid with more amount as alleged gratification as ill-conceived by him and also by his associates and seems to have telecasted the same in the social media/whatsapp on 02.04.2016 itself, as if the petitioner had demanded and accepted a sum of Rs.10,000/- from the Counter petitioner/Senthilkumar as illegal gratification to inquire the petition. Moreover, the petitioner has no knowledge about the alleged recording done by Senthilkumar.

4. In the meanwhile, the Inspector of police, sent an official note about the stage managed video that spread viral in the social media to the Superintendent (East) and upon his advise the Inspector of Police/Kalaisevian has given a complaint on 12.04.2016 to the Superintendent of Police, Vigilance and Anti-Corruption unit, Puducherry and upon the alleged accorded sanction to register the case against the petitioner, on 12.04.2016 complaint was registered in FIR No.2 of 2016 of VC PS, Puducherry for the offences under Sections 7, 13(i)(d)(ii) r/w.13(2) of Prevention of Corruption Act, 1988. The petitioner states that the FIR is registered upon the compulsion of higher officials in a hurried and lopsided manner and without any authority and sanction of law to the known cannons of

criminal jurisprudence with a view to cap the public gaze. As on date, except 161 Cr.PC statement of Senthilkumar, not acceptable, tangible worth piece of evidence which would stand the judicial scrutiny. The voice emanate from the video clipping is that of the petitioner, as the petitioner was completely been silent and mute in the 2.5minute video, the voice test report that might come from the Central Forensic Science Laboratory is not going to change the case either way.

5. The petitioner has been falsely implicated in the above case, only for statistical purpose with a video to boost the general morale of the police department as the video clipping went viral and lowered down the image of the police. The FIR was registered upon the complaint of the Inspector of Police/Kalaiselvan from whom no money is demanded and from whom no money was accepted and the FIR is also having been registered by the Inspector of police, VAC, Puducherry without any authority of law. The petitioner having no other efficacious alternative remedy, filed the petition to quash the FIR in Cr.No.2 of 2016 for the offence under Sections 7, 13(i)(d)(ii) r/w.13(2) of the Prevention of Corruption Act, 1988.

6. The case of the respondent is that the Inspector of Police, Orleanpet Police station had received a information on 02.04.2016,

that a video has been posted in social media whatsapp running for 2.50minutes that the petitioner is receiving a cash of Rs.30,000/- towards settlement and Rs.10,000/-as gratification from Senthilkumar and keeping the same in his table drawer to his right. On seeing the video on 03.04.2016, the Inspector submitted a report to the Superintendent (East) vide letter No.363/C1 PS/CR/2016 stating that on 01.04.2016 a complaint was given by one Kumar, stating that he was working as Supervisor for two months under S.Senthilkumar, who failed to pay him salary for his work and seeks to take action to get back his dues, further, he also mentioned that he has already given a complaint on this issue at PCR Cell, Puducherry with a copy marked to Orleanpet PS on 23.02.2016 itself, but no action was taken by the PCR Cell. On 02.04.2016 at 13.30hrs both the Kumar and Senthilkumar were called to Orleanpet police station by the petitioner for enquiry.

7. During enquiry, Senthilkumar admitted that the complainant worked under him and agreed to settle the issue amicably and ready to give the payment to the petitioner through enquiry officer/petitioner. Accordingly, Senthilkumar given a sum of Rs.30,000/- to the complainant Kumar through petitioner and necessary entries were made by the petitioner in GD vide Vol.No.17, pages 13 and 14,

Sl.No.28 dated 02.04.2016. The said settlement was video graphed by the Senthilkumar through mobile phone and posted in the social media/Whatsapp. Further, the video also disclosed that the petitioner is found to be receiving an amount of Rs.10,000/- from the counter petitioner unaccountably to settle the issue. On 03.04.2016, the petitioner was enquired and he had not given any satisfactory reply with regard to receipt of additional amount of Rs.10,000/-. On 04.04.2016, the respondent conducted a preliminary enquiry and examined the witnesses and found that the report given by the Inspector/Kalaiarasan is true which was corroborated by witness Senthilkumar and furnished a report to the Chief Vigilance Officer. Upon perusal of the video, it is clear from the audio that Rs.30,000/- is being received by the accused to hand over the same to Kumar/complainant and an additional amount of Rs.10,000/- to drop further action against Senthilkumar.

8. On perusal of the station GD entry dated 02.04.2016, the petitioner himself had disposed of the case narrating that Rs.30,000/- was received by Kumar/complainant and corresponding statement by him to drop further action against Senthilkumar. The investigation reveals that out of Rs.40,000/- received by the accused only Rs.30,000/- was handed over to Kumar as his salary dues and the

balance is taken by the petitioner towards illegal gratification. While so, on 12.04.2016, the table drawer of the petitioner was searched where he kept the amount, the same was not found. On 29.04.2016, the mobile phone used for recording the money transaction along with external memory card and soft copy of the video were seized, the conversation of the witness/Senthilkumar and the petitioner was videographed for comparison and the soft copy of the same was received on 11.05.2016. The investigation reveals that the petitioner had demanded and accepted Rs.10,000/- as bribe from the witness/Senthilkumar for not taking further action on the complaint given by the Kumar.

9. The learned counsel for the petitioner would submit that as per Section 17 of the Prevention of Corruption Act, 1988, in the Metropolitan areas like Delhi, Bombay, Calcutta, Madras and Ahamedabad, the cases under the Prevention of Corruption Act has to be investigated by an officer not below the rank of Assistant Commissioner of Police and in other areas, not below the rank of Deputy Superintendent of Police and not below the rank of Inspector of Police under the Delhi Special Police Establishment Act. The State Government may be Special or general order authorize an officer not below the rank of the inspector to investigate the offence under the

Act, except an offence under Section 13(1)(e) of Prevention of Corruption Act and that has to be investigated only by Superintendent of Police. The respondent is not a competent person to register the FIR as the State Government has not by general or special order authorized an inspector to investigate the offence under PC Act. The competent person to register and investigate the case under the Act is the Superintendent of Police, VAC, Puducherry. Even assuming that Superintendent of Police has got such authority to delegate his power to an officer under him, the Superintendent has not and would not have applied his mind to delegate his power to register a case to the respondent in view of the decision of the Hon'ble Apex Court of India reported in **1990 SCR (supl) (3) 259 - State of Haryana V. Bhajan Lal and others** held that the Chief Minister's Secretariat forwarding the complaint to the Director General of Police and in turn directing the Superintendent of Police and the Superintendent of Police mechanically authorizing the Inspector of Police to register and investigate a case under the PC Act, including 5(1)(e) of the Act, corresponding to Section 13(1)(e) of the Act and the Superintendent of Police showing unusual and over enthusiasm was held to be unwarranted.

10. The Superintendent of Police, VAC Unit, Puducherry has not applied his mind or shown and appears to have applied his mind as he

has not passed or ordered a separate order within the meaning of the *Bhajanlal* case as observed above. As a matter of routine, automaton, without knowing the importance of such delegation of authority the Superintendent of Police, VAC unit, Puducherry simply made an endorsement on 12.04.2016 itself to the effect that *Inspector/A.Kanna of VAC will register a regular case against V.Arumugam, SI of Police, Orleonpet, PS, Puducherry and investigate as per rules in force and comply.* The above said cryptic delegation of authority to the Inspector to register a regular case and investigate the case accordingly to the rules is bad in law as per rulings and guidelines of the decision of the Apex Court as held in *Bhajanlal* case.

11. The Senthilkumar has not noted down the serial number of the currency notes that he has allegedly given to the petitioner. More so, the investigating officer has not recovered any currency from the petitioner on or before 12.04.2016, no currency has been recovered resembling to that of the currency notes that Senthilkumar has allegedly given to the petitioner on 02.4.2016. In this case, demand was absent, acceptance could not be proved, no recovery, the identity of the notes were also not given. Hence, the complaint from the inspector of police who is a persona non grata and registration of a

case by the respondent under the provision of Prevention of Corruption Act including under Section 13(1)(d) is nothing but a gross abuse of process of law.

12. The Superintendent of Police have not considered any material before ever they have registered the impugned FIR against the respondent. The respondent has engaged in gross abuse of process of law viz., Sections 154, 157 of Cr.PC and also Section 17 of Prevention of Corruption Act, 1988, insofar as registering the FIR against the petitioner. The petitioner for bonafide reasons invoked the jurisdiction of this Court under Section 482 Cr.PC, as the very facing of long drawn investigation and long drawn pretrial itself is an avoidable punishment.

13. The learned counsel for the respondent would submit that the petitioner had involved in the corrupt practice and on perusal of the records would reveal that there are prima facie sufficient materials are available to proceed further against the petitioner. The investigation itself is in initial stage and on 29.04.2016, mobile phone used for recording the transaction along with external memory card and soft copy of the video recording was seized. The investigation reveals that the accused/petitioner has demanded and accepted Rs.10,000/- as bribe from the witness Senthilkumar for not taking further action on the complaint of Kumar.

14. The learned counsel for the petitioner in support of his contention relied on the judgments of the Hon'ble Apex Court which are as follows :-

- 1. 2016 (1) SCC 731 - M.Sunkanna v. State of Andhra Pradesh**
- 2. Unreported judgment of the Hon'ble Apex Court dated 16.09.2014 - M.R.Purushotham V. State of Karnataka**
- 3. 2011 (11) SCC 450 - State of Kerala V. C.P.Rao**
- 4. 2009 (6) SCC 587 - A.Subair V. State of Kerala**
- 5. AIR 1992 SC 604 - State of Haryana V. Bhajanlal and others.**

The demand, acceptance and recovery can be proved only after investigation and trial and not at this stage. Since, there is specific allegation regarding demand, acceptance and recovery. At this stage, the authorities in Sl.Nos.1 to 4 are not applicable to the present case in hand. Considering the serious nature of the allegations raised herein, this Court cannot go into deep about the other aspects. The same can be look into after submitting charge sheet and whether it has been proved or not can be decided only after trial and not at this stage. The last citation relied on is also not applicable to the present case, at this stage, as the investigation is in initial stage.

15. The contention raised by the learned counsel for the petitioner regarding the competent person to register and investigate the offence under Prevention of Corruption Act is concerned, as per the rules prevailing in Puducherry, the Superintendent of Police has authorised Inspector of Police to register and investigate the case. As far as application of mind regarding authorisation or delegation of power is concerned the same can be decided only during the trial, but not at this stage.

16. The inherent power should not be exercised so as to stifle the prosecution at the inception even before the material and evidence is collected. The averment in the complaint are required to be considered whether it prima facie constitute the offence and looking to all surrounding circumstances, if the allegations in the FIR do not appear to be thoroughly baseless, the matter should be allowed to proceed and this Court would be slow in exercise its discretion under Section 482 of the Code of Criminal Procedure. The exercise of discretion under section 482 of the Code of Criminal Procedure, 1973 would not justify that no investigation is permitted to be carried out merely because there are some arguable points, which would have a relevance for the purpose of defense at an appropriate stage but it

could not be said that the allegation in the FIR should be brushed aside at threshold. It is required to be mentioned that if at all after investigation there is further material, the accused/petitioner may file discharge petition. But, if the FIR is quashed at this stage, it would cause prejudice to the rights of the complainants as the Court is required to come to a conclusion without proper examination of the material and evidence, which is not completely placed or collected.

17. Under such circumstances, considering the nature of the allegations raised herein and the stage of the investigation, this petition is not maintainable at this stage.

18. Admittedly, there is an allegation that the petitioner demanded bribe for settlement of the complaint while he was working as Sub Inspector of Police, receiving bribe money by the petitioner was circulated in the social media/whatsapp, the same was forwarded to obtain an expert opinion report, regarding the genuineness of the video clipping. For the allegation of demand and acceptance, there are enough materials are available against the petitioner, the investigation is only in the initial stage, the investigation has not been completed and the final report has not been filed. Considering the serious nature of the allegations raised against the petitioner, this petition is liable to

be dismissed and the same is hereby dismissed.

19. In fine, the criminal original petition is dismissed.

08.02.2017.

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Index : Yes/No

Internet : Yes/No

To

1. State rep by
The Inspector of Police,
Vigilance and Anti Corruption,
Puducherry.

2. The Public Prosecutor, High Court, Madras.

P. VELMURUGAN, J.

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Pre - Delivery Order in
Crl.OP.No.24502 of 2016

08.02.2017.

**PRE DELIVERY ORDER IN
CRI.OP.No.24502 of 2016**

To

The Hon'ble Mr.Justice P. VELMURUGAN

Respectfully submitted
T.SATHISH,
P.A.