IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-08-2017

Pronounced on : 31-08-2017

CORAM:

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

Crl.O.P.No.5766 of 2016

R. Sakthivel : Petitioner/Accused

Vs.

1. The State Rep. by
The Inspector of Police
Vigilance and Anti-Corruption,
Thiruvannamalai Detachment
Thiruvannamalai District. : Respondent/Complainant

2. Mr.S.Lakshmanan : Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in pursuance of the F.I.R. in Crime No.3 of 2015 on the file of the Inspector of Police, Vigilance and Anti Corruption, Thiruvannamalai and quash the same.

For Petitioner : Mr.V. Arunagiri

For Respondents : R-1 - Mr.R. Ravichandran
Government Advocate (Crl. Side)

R-2 - Notice served

ORDER

The petitioner has filed this Criminal Original Petition to call for the records in pursuance of the F.I.R. in Cr.No.3 of 2015 on the file of the Inspector of Police, Vigilance and Anti Corruption, Thiruvannamalai and quash the same.

2. The main allegations contained in the Petition is as follows:

2.(a) The petitioner was appointed as Consolidated Surveyor in the Survey Department, Villupuram District on 1.12.1984. After his confirmation he was transferred to Thiruvannamalai District and he was working as Surveyor at the office of the Assistant Director of Survey from 30.12.1990. On 5.11.2015 2nd respondent given a complaint to the 1st respondent stating that the petitioner has demanded money for sub-Division and issuance of separate Patta and the same was registered in Cr.No.3 of 2015 for the offences under Section 7 of the Prevention of Corruption Act, 1988. On 6.11.2015 at about 5.00 p.m. 1st respondent came to the petitioner's office and arrested the petitioner on the basis of the false complaint preferred by the 2nd respondent without conducting any preliminary enquiry and in deliberate violation to the procedures contemplated for organised a trap against a Grade-B Government Officer under Corruption charges.

2.(b) The 2nd respondent and his brother Mr.Soundararajan made an application for sub division of land and laying of boundary stones to the concerned Tahsildar during the month of January 2015 and the same was sent to the petitioner for further process. The petitioner measured the land and laid the boundary stones. At that time the Village Assistant one Mr. Palani informed this petitioner that a neighboring property owner had raised objection for laying the stone. Since there was no written objection, the petitioner finished his work and submitted his report to the Tahsildar in February 2015.

2.(c) The 2nd respondent made an application to the Tahsildar concerned on 7.7.2015 to issue a separate patta for the same property, wherein the neighbor had raised objection and the same was received by the petitioner on 3.8.2015. Hence, the petitioner informed the 2nd respondent to get NOC from his neighbor. In this regard, the petitioner has sent a report to his superior officer Mr.Venugopal, Land Revenue Draftsman, Surveyor Section, Taluk Office, Thiruvannamalai on 2.9.2015 stating that as the property was already measured and stones laid, there is no need for fresh measurement; as there is an objection by the neighbor, suggested to get NOC from him to issue patta and if the NOC is obtained, patta may be issued. The report was entered in RTR register vide RTR 3908/2015 and 3927/2015 on 2.9.2015. Thereafter, that file was processed by the Head Surveyor and Tahsildar, then closed and sent to the record room.

2.(d) On 4.11.2015 by 4.00 p.m., 2nd respondent had approached the petitioner and enquired about the patta transfer application. The petitioner said that he had already recommended to issue patta, but, as the 2nd respondent had not produced the NOC from the neighbor, it was not issued and sent to the record on 2.9.2015 itself. The petitioner suggested the 2nd respondent to bring the NOC. For this, 2nd respondent said that the documents (NOC) will be brought by his brother Soundararajan on 6.11.2015. On 6.11.2015 by 5 p.m., the 2nd respondent met the petitioner and gave some folded papers stating that they are the NOC as sought for. But those papers contained money. Immediately,the petitioner dropped the money. Shockingly, 1st respondent police came to the petitioner at that time, forced and beaten the petitioner to take the currency and to keep it in the trouser pocket. To avoid further beating the petitioner took the currency and kept it in his trouser pocket. Only after that the 1st respondent police arrested the petitioner on the allegation that he demanded and accepted the bribe from the 2nd respondent. Thereafter, the petitioner was remanded and sent to judicial custody on 6.11.2015. As the petitioner was in jail for more than 48 hours, his officer suspended the petitioner under Rule 17(e)(2) of TN CS (D& A) Rules vide letter dated 9.11.2015. There is no evidence against the petitioner to prove that he had misused his official position.

2.(e) The petitioner already recommended for patta transfer on

02.09.2017 itself and those recommendation along with the connected records were already submitted to the senior officers. The application was not pending with the petitioner. So the question of demanding and accepting of bribe does not arise just because the job was already done by this petitioner. If the intention of the petitioner is to demand bribe from this 2nd respondent he would have waited from the bribe amount paid and then would have recommended the patta transfer.

2.(f) The 1st respondent had forced this petitioner to take the currency and then forced him to dip into the chemical water. Only because of this, phenolphthalein powder transmitted to the hands of the petitioner. The petitioner has not committed any offence as alleged and he has not demanded any money from the 2nd respondent. Only thing committed by the petitioner is that he has sent back the patta transfer petition along with his recommendations to his senior officers as there is no NOC. The complaint has given by the 2nd respondent with vested interest and ulterior motive. Since the registration of FIR and further arrest came to be laid down without any proper investigation as per the procedure established by law, without appreciating the available records. The First Information Report is registered based on the false complaint preferred by the 2nd respondent which has to be quashed.

3. In the counter filed by the learned Government Advocate (Criminal Side), it is stated as follows:

3.(a) The allegation contained in the petition are denied as baseless, devoid of merits and to be dismissed as not maintainable. Based on the written complaint preferred by the 2nd respondent, a preliminary enquiry in PE.413/15/SUR/TVM was registered and based on the outcome of the Preliminary Enquiry, case was registered in Cr.No.3 of 2015 u/s l7 of P.C. Act and trap was organised. During the trap proceedings, the petitioner demanded and accepted the bribe and thereafter only he was remanded. There was no violation to the procedure contemplated for organising a trap against a Group-B Government Officer under corruption charges. In this regard, the conversation between the petitioner/accused and 2nd respondent was recorded in Compact Disc, sent to the Court. Further, the petitioner is not a Group-B officer, he belongs to Group-C.

3.(b) After considering the written complaint, 1st respondent conducted a preliminary enquiry and the conversation between the 2nd Respondent and the petitioner/accused was recorded, in which the demand of bribe by the petitioner/accused was confirmed. Thereafter, a case in Cr.No.3 of 2015 was registered. After that, a trap was organised on 6.11.2015, during which time the petitioner/accused had reiterated his earlier demand and accepted the bribe amount of Rs.6,000/- from the 2nd respondent. Thereafter only, the petitioner/accused was arrested and remanded.

3.(c) With regard to the averment that the 2nd Respondent and his brother Mr. Soundarajan made an application for sub-division of land and laying of boundary stones to the concerned Tahsildar, the investigation reveals that no such application was made by them no measurement was made by the petitioner/accused and a report was submitted to the Tahsildar in Feb 2015 in that regard as claimed by the petitioner/accused. No such entry is seen in the office records for receiving any such application and for the submission of a report by the petitioner/accused in Feb.2015. The alleged undated statement of Mr. Palani, Village Assistant filed as Doc.No.1 in the typed set of documents filed by the petitioner/accused bears no signature of Mr.Palani, it is a typed paper, created by the petitioner/accused for the purpose of the case. During the investigation the said Mr.Palani has stated that he has not given any such letter to the Tahsildar.

3.(d) The investigation reveals that the 2nd respondent made an application to Tahsildar on 7.7.2015 and the same was entered into the register in RTR No.3908/15 and Sl.No.19079 on 10.07.2015 which was forwarded to the Head Surveyor on 15.07.2015. As per the Survey department records the petition was forwarded by Mr.Venugopal, Land Revenue Draftsman, to the petitioner/accused on 3.8.2015 for measuring the land and to send a report. But the petitioner/accused had demanded Rs.6,000/- as gratification from them for measuring the land and submit a report. Only thereafter a complaint was preferred before V&AC, Thiruvannamalai Detachment on 5.11.2015 and a preliminary enquiry was conducted. During enquiry the conversation between the 2nd respondent and petitioner/accused was recorded through voice recorder, which confirmed the demand of bribe money of Rs.6,000/- by the petitioner/accused from the 2nd respondent. After getting permission from the Directorate of Vigilance and Anti Corruption, Chennai, a case in Cr.No.3 of 2015 was registered on 6.11.2015 by the Vigilance and Anti Corruption, Thiruvannamalai Detachment. Therefore, the averment that the property was already measured and stones laid, there was no need for fresh measurement as there was an objection by the neighbor, the petitioner/accused has suggested to get NOC from the neighbor to issue patta etc., are all not correct.

3.(e) A trap was duly organised on 6.11.2015 and during the course of such trap at about 4.35 p.m., the petitioner/accused demanded and received the bribe money from 2nd respondent after reiterating his earlier demand in the presence of accompanying official witnesses. Hence, there are sufficient evidence, to prove the criminal misconduct, demand and acceptance bribe by the petitioner/accused. The investigation reveals that the petitioner/accused did not send back the patta transfer petition along with his recommendation to his senior officers as alleged by him. There is no such record available in Taluk Office, Thiurvannamalai.

3.(f) The grounds made in the petition cannot be appreciated by this Court at this stage for the purpose of exercising inherent powers, these matters can be agitated by the petitioner/accused before the trial Court, by way of his defence. The case is at the stage of investigation, the mahazars, documents and material objects collected at the time of investigation are produced in Court, this would lead to the conclusion of existence of a *prima facie* case against the petitioner/accused and the case is not at the stage of weighing the evidence collected by the investigating officer to see whether a case is or is not made out against the petitioner/accused. Further, the accused have already involved in Villupuram Vigilance Anti-Corruption Cr.No.12/10 in Special Case No.34/14 for the offences u/s 7, 13(2), 13(1)(d) of P.C.Act, which is under trial before the Special Judge/Chief Judicial Magistrate, Villupuram. There is a *prima facie* case made out against the petitioner/accused in this case and therefore this petition has no merits and deserves to be dismissed.

4. Heard the learned counsel for the Petitioner as well as the learned Government Advocate (Criminal Side) for the 1st respondent.

5. The learned counsel for the petitioner would submit that the impugned F.I.R. has been registered without conducting preliminary enquiry and only with a *malafide* intention to harass the petitioner and the said FIR is not fit to be proceeded any further. He further would submit that the petitioner did not demand any bribe from the second respondent and at the time of trap he did not receive any money from the 2nd respondent. However, in order to fix up the petitioner into a corruption charge and to harass the petitioner, a case was created against the petitioner by the respondents by merely colluding with each other. The learned counsel for the petitioner also would submit that when the patta transfer application to which the 2nd respondent alleged to have approached the petitioner for mutating the patta in his name and his brother's name was already recommended subject to a condition that the 2nd respondent should produce NOC from the neighbor. There is no demand of bribe or a request by the 2nd respondent to the petitioner for the said purpose. The learned counsel for the petitioner would submit that on the date of occurrence, the petitioner had already measured the land and recommended for the patta transfer on 2.9.2015 itself. Hence, the question of demanding

and accepting of bribe does not arise because the job was already done by this petitioner. The learned counsel for the petitioner further would submit that when there is no written complaint against this petitioner and no alleged trap had taken place, false case has been filed against the petitioner.

6. In support of his argument the learned counsel for the petitioner placed reliance on the Judgment reported in ***1995 Cri.L.J.107 [Suryabhan v. State of Maharashtra]***. He has also relied on an unreported Order of the Honourable Supreme Court in ***Crl.A.No.616 of 2017 dated 28.03.2017 [C. Rajavel v. State Rep.by the Secretary]***. Further he has also placed reliance on the judgment reported in ***(2001) 10 Supreme Court Cases 215 [State of U.P. v. Jagdish Singh Malhotra]***

7. The learned Government Advocate (Criminal Side) would submit that based on the written complaint preferred by the second respondent before the Deputy Superintendent of Police, Vigilance and Anti Corruption, Thiruvannamalai Detachment, a preliminary enquiry in PE.413/15/SUR/TVM was made and based on the outcome of the preliminary enquiry, a case in Cr.No.3 of 2015 u/s 7 of P.C. Act was registered and a trap was organised. During the trap proceeding, the petitioner demanded and accepted the bribe and thereafter he was

arrested and remanded to judicial custody. The learned Government Advocate (Criminal Side) further would submit that there was no violation to the procedure contemplated for organising a trap against a Group-B Government Officer under corruption charges. In this regard conversation between the petitioner/accused and second respondent was recorded in Compact Disc and sent to Court. The petitioner/accused is not a Group-B officer, he belongs to Group-C and the investigation reveals that the second respondent made application to the Tahsildar on 07.07.2015 and the same was entered into the Register in RTR No.3908/15 on 10.07.2015 which was forwarded to the Head Surveyor on 15.07.2015. As per the Survey Department records, the petition was forwarded by Mr.Venugopal, Land Revenue Draftsman, to the petitioner/accused on 3.8.2015 for measuring the land and to send a report. When the 2nd respondent and his brother Soundarajan approached the petitioner/accused for measuring the land and send a report, the petitioner/accused had demanded Rs.6,000/- as gratification from them for measuring the land and submit a report. Only thereafter, a complaint was preferred before V&AC, Thiruvannamalai Detachment on 5.11.2015 and preliminary enquiry was conducted. After getting permission from the Directorate of Vigilance and Anti corruption, Chennai, the case was registered on 6.11.2015. Therefore, the contention raised by the learned counsel for the petitioner/accused that the property was already measured, stones laid and there was no need for fresh measurement, as there was an objection by the neighbor, the petitioner/accused had suggested to get the NOC from the neighbor to issue patta are all not correct. The petitioner invented reasons for escaping from the clutches of law.

8. The learned Government Advocate (Criminal Side) would contend that the petitioner/accused has already involved in a criminal case in Villupuram Vigilance and Anti-Corruption Cr.No.12/2010 for the offences under Section 7, 13(2), 13(1)(d) of P.C.Act and the same was taken on file in Special Case 34/14 by the Special Judge/Chief Judicial Magistrate, Villupuram, which is pending. The learned Government Advocate (Criminal Side) would submit that it is necessary to consider whether the allegation in the complaint *prima facie* make out an office or not and it is not necessary to scrutinise the allegation for the purpose of deciding whether such allegations are likely to be upheld in trial.

9. In support of his contention, the learned Government Advocate (Crimal Side) has cited two decisions of the Honourable Supreme Court reported in ***(2000) 8 Supreme Court Cases 239 [State of Delhi v. Gyan Devi and Others]*** and ***(2016) 9 Supreme Court Cases 598 [L.Narayana Swamy v. State of Karnataka and others]***.

10. Heard both sides. Records perused. According to the petitioner he has not demanded any bribe and accepted any amount. The learned counsel for the petitioner would submit that already measurement was taken and the work was completed; therefore, after completion of work there is no need to demand bribe or accept the bribe. Even if he demanded bribe also, it does not fall under Section 7 of P.C. Act and he would submit that the authorities submitted by the learned Government Advocate (Criminal Side) in ***Gyan Devi's case*** *(cited supra)*, it is held that the power to quash the charge should not be exercised except for strong reasons, and in order to avoid the abuse of process of law and the demand, acceptance and recovery to be proved beyond all reasonable doubt. But the facts and circumstances of the said case is not applicable to present case on hand. Therefore, the learned counsel for the petitioner would argue that the above decision cited by the learned Government Advocate (Criminal Side) is not applicable to the present case at this stage.

11. In ***C. Rajavel's case*** (cited supra), the unreported order of the Honourable Supreme Court cited by the learned counsel for the petitioner, investigation completed, charge sheet filed and the proceedings was pending before the trial court. At that stage, the accused filed a discharge petition, which was allowed by the trial court. In that case, the application for issuance of patta in favour of the

defacto complainant was not filed. In the absence of such application the defacto complainant approached for mutation of patta, which have already been mutated in the name of the complainant and her children before the date of complaint. Therefore, there was no need to demand bribe. Therefore, the statement of the defacto complaint that the complainant had approached the accused for transfer of patta appears to be not true and hence the trial court discharged the accused. Aggrieved over the order of the trial Court, the prosecution had preferred revision before the High Court, and the High court set aside the order passed by the trial court holding that when there was no application filed by the complainant for issuance of patta in her favour, making a request to the appellant to transfer the patta in her name is unbelievable and there was no occasion to make an application as patta had already been mutated in the name of the complainant and her children way back in the year 2011 itself. Whereas in this case, application has already filed. Even the petitioner/accused himself admitted in the petition itself that the 2nd respondent has given application for measurement and mutation. Therefore, the above said order is not applicable to the facts of the present case. Further, the other two cases ***Suryabhan*** (supra) and ***Jagdish Singh Malhotra*** (supra) are also not applicable to the present case on hand because in those case decisions of the Hon'ble Supreme Court are after trial and after considering evidence on records.

12. This case is at the stage of investigation. The documents and material objects collected at the time of investigation would lead to the conclusion of existence of a *prima facie*. At the stage of investigation, even before the material and evidence are collected, the court cannot go into the genuine of the complaint. After investigation if there is no material the prosecution not chosen to file closer report at that stage petitioner can approach the competent court in accordance with law.

13. In this case, there is a complaint by the defacto complainant before the Vigilance and Anti Corruption, Thiruvannamalai Detachment and they also conducted a preliminary enquiry and recorded the conversation between the 2nd respondent and the petitioner/accused and the same has also form part of the case and thereafter a trap was organised and the same was successfully completed. Under these circumstances, this petition is not sustainable. The authorities cited by the learned counsel for the petitioner are not applicable to the facts of the present case and further it is well settled that 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 submissions, which have been made at length particularly with regard to the ingredients for the offence and that there is no entrustment of the

property and no *prima facie* case is made out, cannot be readily accepted in as much as it is still a matter which can be considered on the basis of the further material and evidence during investigation. 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 the High Court would be slow in exercise its discretion under Section 482 of the Code of Criminal Procedure, 1973. 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 allegations in the FIR should be brushed aside at threshold. It is required to be mentioned that if at all after investigation there is no further material, the applicant/accused may file discharge application 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.

14. In the light of the above discussion, I am of the view that this is not the fit case to exercise the inherent power of this court

under Section 482 Cr.P.C. and therefore, the Criminal Original Petition is liable to be dismissed. Accordingly, the Criminal Original Petition is dismissed.

31.08.2017

Index : Yes/No

Internet : Yes/No

ggs

To

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

2. The Public Prosecutor
   High Court, Madras.

P. VELMURUGAN, J.

ggs

Pre-delivery order in:
Crl.O.P.No.5766 of 2016

31.08.2017