



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2017
Pronounced on : 22.09.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Original Petition (MD) No.12201 of 2014

1.Anitha Radhakrishnan
2.Jeyagandhi
3.Shanmuganathan
4.Sivananthan
5.Anandha Padmanabhan
6.Anandha Ramakrishnan
7.Anandha Maheswaran

... Petitioners/A1 to A7

Vs.

1. The State rep by the
Inspector of Police,
Thoothukudi Police Station,
Vigilance & Anti Corruption,
Thoothukudi Detachment,
Thoothukudi
(Crime No.04 of 2006)

... 1st Respondent/Complainant

2. Perumalsamy,
Additional Superintendent of Police,
Vigilance and Anti Corruption,
Thoothukudi Detachment,
Thoothukudi.

... 2nd Respondent/Defacto
Complainant

Petition filed under Section 482 Cr.P.C, to call for the records relating to the order dated 17.08.2011 passed in Cr.M.P.No.41 of 2011 on the file of the Chief Judicial Magistrate and Special Judge, Thoothukudi in Spl.Case No.8 of 2008 on the file of the Chief Judicial Magistrate and Special Judge, Thoothukudi and set aside the same as illegal.

For Petitioners : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mr.Rajarathinam
State Public Prosecutor
assisted by Mr.C.Ramesh,
Additional Public Prosecutor.

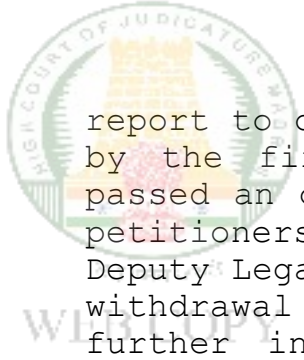
**ORDER**

This petition has been filed to set aside the order passed by the learned Chief Judicial Magistrate and Special Judge, Tuticorin permitting the Public Prosecutor to withdraw the petition filed under Section 321 Cr.P.C in Special Case No.8 of 2008.

2.The facts leading to filing of this petition in brief are as follows:-

The petitioners are accused in Special Case No.8 of 2008 on the file of the Chief Judicial Magistrate and Special Judge, Tuticorin. All the petitioners stood charged for an offence under Section 13(2) read with 13 (1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and under Section 109 IPC read with 13 (2) read with Section 13(1)(e) of the Act. The above criminal case has been instituted against the petitioners on the ground that the first petitioner/A-1 herein was a Member of Tamil Nadu Legislative Assembly during the period from 14.05.2001 to 12.05.2006 he was elected from Tiruchendur Assembly constituency and he was also functioning as the Minister for Animal and Husbandry Department and also for Housing and Urban Development Department. The second petitioner is the wife of the first petitioner. The third and fourth petitioners are the brothers of the first petitioner. The petitioners 5 to 7 are the sons of the first petitioner. On the basis of the information that the first petitioner was in possession of pecuniary assets including properties disproportionate to the known sources of his income, a case has been registered in Crime No.4 of 2006 by the first respondent against the first petitioner under Section 13(2) read with Section 13 (1)(e) of the Act and under Section 109 IPC read with 13 (2) read with Section 13(1)(e) of the Act. During investigation, it was found that the pecuniary sources of properties acquired and possessed by him in his name and in the name of other petitioners during the check period (i.e) 14.05.2001 to 31.03.2006 is proportionate to his known sources of income, a final report has been filed stating that all the petitioners were found in possession of pecuniary sources and properties disproportionate to their known sources of income to the extent of Rs.4,90,29,040.91 as on 31.03.2006. Hence, all the petitioners were charged for the offence mentioned above.

3.Thereafter, the petitioners herein filed a petition before this Court seeking direction for further investigation on the ground that no opportunity was given to them to account for the alleged disproportionate assets in Criminal Original Petition No.6146 of 2009 and this Court, by an order dated 28.10.2009 ordered further investigation and directed the respondent therein to give opportunity to the petitioners. Pursuant to the same, a further investigation was conducted and the first respondent police has filed second final report on 13.12.2010 stating that the investigation did not disclose the offence under Section 13 (2) read with 13 (1)(e) of the Prevention of Corruption Act and filed a



report to drop further action. Thereafter, based on the report filed by the first respondent, dated 30.09.2010, the State Government passed an order dated 12.11.2010 to drop further action against the petitioners. Based on the same, the Special Public Prosecutor cum Deputy Legal Adviser filed a petition under Section 321 Cr.P.C for withdrawal of the prosecution on 14.12.2010 stating that in the further investigation conducted by the Deputy Superintendent of Police, the disproportionate assets of the petitioners comes to Rs.1,08,80,867.11 and the percentage of disproportionate assets is only 16.09 % and the Investigating Officer has come to the conclusion that no offence is substantiated against the petitioners and recommended for dropping action against all the accused and the Government is also accepted the same and passed an order to drop further action against all the accused and the Special Public Prosecutor cum Deputy Legal Adviser satisfied that it is a fit case for withdrawal from prosecution. When the above petition was pending before the trial Court, there was a change of Government and on 17.08.2011, the Special Public Prosecutor, filed a memo for withdrawing the petition filed under Section 321 Cr.P.C earlier the trial Court recorded the memo and closed the petition as withdrawn. Now, challenging the above order permitting the Special Public Prosecutor to withdraw the above petition, the petitioners filed the present petition to quash the order passed by the trial Court.

4.I have heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners and Mr.Rajarathinam, State Public Prosecutor for the respondents.

5.Learned Senior Counsel appearing for the petitioners would contend that originally, the Special Public Prosecutor filed an application under Section 321 Cr.P.C after fully satisfied that it is a fit case for withdrawing from prosecution. When the said petition was pending, there was a change of Government and at the instigation of the new Government, the Special Public Prosecutor filed the present memo to withdraw the petition and the Court below without affording any opportunity to the petitioners and without application of mind, mechanically passed an order permitting Special Public Prosecutor to withdraw the application. Earlier, the Special Public Prosecutor filed a memo based on the further investigation conducted by the Department of Vigilance and Anti-Corruption and in the further investigation, the disproportionate assets of the petitioner are very minimal and it was recommended for dropping of further action, the Government had also accepted the report and passed an order to drop the proceedings. Subsequently, the Speaker of the Assembly also withdrawn the sanction already granted to prosecute the first petitioner. Based on that the Special Public Prosecutor, after applying his mind has come to the conclusion that it is a fit case for withdrawal from prosecution. In the above circumstances, the petitioners have accrued a vested right and it cannot be taken away without giving an opportunity to the petitioners. Because there was a change of Government, the Special Public Prosecutor cannot file a memo seeking for withdrawal of the



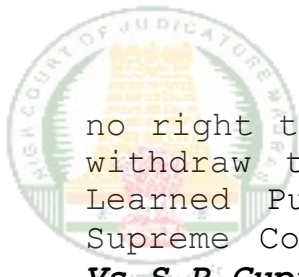
petition and the Court below also in total non application of mind permitted the Special Public Prosecutor to withdraw the same. Learned Senior Counsel appearing for the petitioners further submitted that the matter may be remanded back to the trial Court for the purpose of giving opportunity to the petitioners to contest the case as the petitioners are aggrieved by the order of the Court below. Learned Senior Counsel appearing for the petitioners has also relied upon the following judgments:-

(i) In **Balwant Singh and others Vs. State of Bihar** reported in **(1977) 4 SCC 448**

(ii) In **Rajendran Kumar Jain Vs. State of Haryana and others** reported in **(1980) 3 SCC 435** and

(iii) In **State by the Deputy Superintendent of Police, CBCID, Coimbatore Vs. L. Ganesan** reported in **1995 (II) CTC 185**.

6. Per contra, learned Public Prosecutor appearing for the respondents would contend that the petitioners have been charged for an offence under Section 13(2) read with 13 (1)(e) of the Prevention of Corruption Act, 1988 and under Section 109 IPC read with 13 (2) read with Section 13(1)(e) of the Act. Earlier investigation reveals that the disproportionate assets of the petitioners at 133%. Thereafter, there was change of Government, the party in which the first petitioner belongs came to power. Subsequently, a further investigation was ordered by this Court, pursuant to the same a further investigation has been conducted, even the further investigation reveals that the petitioners are in possession of disproportionate wealth to the tune of Rs.1,08,80,867.11 which works out to 16.09%. Even though there was disproportionate asset to the tune of more than 16%, the Deputy Superintendent of Police filed a report for dropping of action and based on that, the Government also passed an order to drop the proceedings and at the instigation of the then Government, the Special Public Prosecutor filed a petition filed under Section 321 Cr.P.C to withdraw the prosecution. When the said application was pending, once again there was change of Government and after coming to know about all these illegal acts, once again, a further enquiry was ordered which reveals that the disproportionate assets of the petitioners to the tune of Rs.2,07,96,384.04 which works out to 34.98%. In the above circumstances, since the earlier application has been filed without application of mind by the Special Public Prosecutor, the present Public Prosecutor after considering the entire materials come to the conclusion that it is not a fit case for withdrawing the prosecution, hence, filed a memo to withdraw the earlier petition filed by the Public Prosecutor. The Court below also permitted him to withdraw the same and there is no illegality in the order passed by the Court below. Apart from that the petitioners who are the accused have no role to play in it and they cannot be considered as a person aggrieved by the order passed by the Court below. The Court below only permitted the Public Prosecutor to withdraw the application for which the Court below need not pass any orders, as a Public Prosecutor has every right to withdraw the earlier application. At any rate, the petitioners have



no right to challenge the order permitting the Public Prosecutor to withdraw the application as they are not the persons aggrieved. Learned Public Prosecutor also relied upon the decision of the Supreme Court reported in **(2016) 3 SCC 736 (V.L.S.Finance Limited Vs.S.P.Gupta and another)**.

WEB COPY

7.I have considered the rival submissions made on either side and perused the entire materials available on record.

8.The first and foremost contention of the learned Senior Counsel appearing for the petitioners is that before the order permitting the Special Public Prosecutor to withdraw the application no opportunity was given to the petitioners. Since the order affecting the personal liberty of the petitioners, an opportunity ought to have been given to them. The next submission of the learned Senior Counsel was that the Court below without considering the merits of the case has mechanically permitted the Public Prosecutor to withdraw the application in total non application of mind. Learned Senior Counsel appearing for the petitioners would further contend that once the earlier sanction granted for prosecution against the first petitioner is withdrawn, further investigation cannot be conducted by the first respondent without fresh sanction and hence, the third investigation conducted by the first respondent is not valid and it cannot be a basis for withdrawing the application filed under Section 321 Cr.P.C.

9.In similar circumstances, the Hon'ble Supreme Court in a case reported in **(2016) 3 SCC 736 (V.L.S.Finance Limited Vs.S.P.Gupta and another)**, has considered the similar issue and has held as follows:-

"54.In the present case, as the facts would graphically show, the Public Prosecutor had not moved the application under Section 321 Cr.P.C but only filed. He could have orally prayed before the Court that he did not intend to press the application. We are inclined to think that the Court could not have compelled him to assist it for obtaining consent. The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the Court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up or being moved by the Public Prosecutor, the court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so. The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application. We fail to fathom, how the accused persons can contest the



application and also file documents and take recourse to Section 91 Cr.P.C. The kind of liberty granted to the accused persons is absolutely not in consonance with the Code of Criminal Procedure. If any one is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn. The accused persons have no role and, therefore, the High Court could not have quashed the orders permitting the prosecution to withdraw the application and granting such liberty to the accused persons. The principle stating that the Public Prosecutor should apply his mind and take an independent decision about filing an application under Section 321 Cr.P.C cannot be faulted but stretching the said principle to say that he has to convince the court that he has filed an application for not pressing the earlier application would not be appropriate. We are disposed to think so as the learned Magistrate had not dealt with the earlier application. Therefore, the impugned order dated 30.07.2015 passed by the High Court is set aside. As the impugned order is set aside, consequentially the order passed by the learned Magistrate on 22.09.2015 has to pave the path of extinction and we so direct. The learned Magistrate is directed to proceed with the cases in accordance with law."

10. In view of the same, all the contentions raised by the petitioners do not have any merit. Firstly, the petitioners being the accused have no right to challenge the order permitting the Special Public Prosecutor to withdraw the petition filed by them under Section 321 Cr.P.C and hence question of giving opportunity does not arise. Secondly, permitting to withdraw the case from prosecution, no detailed order is required. As the Public Prosecutor only intends to withdraw the application, he has every right to do so, as the earlier application was not considered by the learned Chief Judicial Magistrate and it is only pending before the Court, the Public Prosecutor has every right to withdraw the same and he need not convince the Court for not pressing the earlier application. In the above circumstances, I find no merit in the contentions of the petitioners. Hence, the petition is liable to be dismissed. Accordingly, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



To

1. The Inspector of Police,
Thoothukudi Police Station,
Vigilance & Anti Corruption,
Thoothukudi Detachment,
Thoothukudi.
 2. Perumalsamy,
Additional Superintendent of Police,
Vigilance and Anti Corruption,
Thoothukudi Detachment,
Thoothukudi.
 3. The Chief Judicial Magistrate and
Special Judge, Thoothukudi.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO M/S.AJMAL ASSOCIATES, ADVOCATE IN SR No. 81004

SMS

TE/KP/SAR-I : 06/11/2017 : 7P/6C

Order made in
Criminal Original Petition (MD) No.12201 of 2014
22.09.2017