



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.OP(MD)No.22905 of 2015,
Cr1.OP(MD)No.23799 of 2016
and
CRL MP(MD)No.1 of 2015

Cr1.OP(MD)No.22905 of 2015:

Porchezhian : Petitioner

Vs.

1. The State Represented by
The Inspector of Police,
Vigilance and Anticorruption Wing,
Tirunelveli, Cr.No.1/2015,
Tirunelveli District. : Respondent/Complainant
2. Amalraj Pandian : Respondent/Defacto
Complainant

PRAYER IN Cr1.OP(MD)No.22905 of 2015: Petition is filed under Section 482 of Cr.P.C., praying to admit the Quash Petition on file, to call for the records in Cr.No.1 of 2015 on the file of the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli, Tirunelveli District and to quash the same.

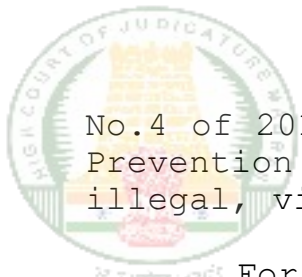
Cr1.OP(MD)No.23799 of 2016:

S.S.Porchezhian : Petitioner/Accused

Vs.

State Rep by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli,
(Crime NO.1/2015). : Respondent/Complainant

PRAYER IN Cr1.OP(MD)No.23799 of 2016: Petition is filed under Section 482 of Cr.P.C., praying to call for the records in Spl.Case



No.4 of 2016, on the file of the Special Court for Trial Case Under Prevention of Corruption Act, Tirunelveli and quash the same as illegal, violation of law.

For Petitioner
(In Both the Crl.O.Ps)

: Mr.T.S.R.Venkatramana

For Respondent-1
(In Both the Crl.O.Ps)

: Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor.

COMMON ORDER

The Criminal Original Petition in Crl.O.P(MD)No.22905 of 2015 has been filed under Section 482 of Cr.P.C., praying to quash the proceedings in Crime No.1 of 2015, on the file of the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli, Tirunelveli District and the Crl.O.P(MD)No.23799 of 2016 has been to quash the proceedings in Spl.Case No.4 of 2016, on the file of the Special Court for Trial Case Under Prevention of Corruption Act, Tirunelveli, as illegal and violation of law.

2. The petitioner herein is the sole accused in Crime No.1 of 2015, registered on 11.05.2015 at 13.00 Hrs., by the first respondent herein / the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli, on the basis of the written complaint, dated 09.05.2015, given by the 2nd respondent herein, after conducting the preliminary enquiry regarding the genuineness of the said complaint by recording the conversion demanding bribe from the 2nd respondent in a voice recorder with the assistance of the Head Constable No.1247, for the offence under Section 7 of Prevention of Corruption Act, 1988. The petitioner, at the first instance, has filed a Petition in Crl.O.P(MD)No.22905 of 2015, to quash the proceedings in Crime No.1 of 2015, on the file of the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli, Tirunelveli District.

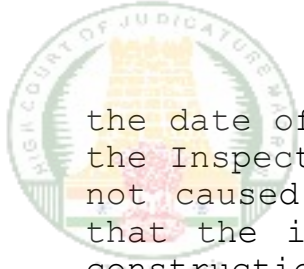
3. The case of the prosecution is that the 2nd respondent met the petitioner on 08.05.2015, at the office of the Assistant Executive Engineer, P.W.D, Chittar Basin Sub Division, Tenkasi, Tirunelveli District, while the petitioner was working as Junior Engineer in the Public Works Department, Water Resources Organization, Chittar Basin Division, Kadayanallur, Tirunelveli District in connection with to forward his recommendation / report so as to issuance of 'No Objection Certificate' to construct a culvert across the P.W.D Irrigation Water canal leading to 'Kulasekhara Mangalam Kulam' between Senthamaram Village and Veerasigamani Village on Mangammal Salai, which was called by the Village people customary and traditionally. The accused had demanded a sum of Rs.1,50,000/-, as bribe, for inspecting the spot and issuing recommendation / report and issuance of 'NOC' for the above said work. On negotiation, the accused had reduced the bribe



amount to Rs.1,40,000/- and also agreed to receive Rs.50,000/-, as first instalment and the balance in second instalment. On 11.05.2015 at 17.15 Hrs, the defacto complainant / 2nd respondent herein met the accused / petitioner at the office of the Assistance Executive Engineer, PWD, Chittar Basin Sub Division, Tenkasi, Tirunelveli and asked about the recommendation / report and issuance of NOC for the said work and for which the accused / petitioner again has reiterated his earlier demand of bribe amount of Rs.50,000/- and accepted the same as first instalments from defacto complainant as illegal gratification other than the legal remuneration in doing the official act, punishable under Section 7 of Prevention of Corruption Act, 1988 and kept the tainted bribe amount of Rs.50,000/- in his pant pocket and was recovered in the presence of official witnesses and thereby, the petitioner / accused by corrupt and illegal means and by abusing his official position as public servant committed an offence of criminal misconduct punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

4. The counsel appearing for the petitioner would contend that the alleged demand was made on 08.05.2015 at 3.15 p.m., and the complaint was given by the defacto complainant before the first respondent on 09.05.2015 at 12.30 Hrs, but the case has been registered by the the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli on 11.05.2015 at 13.00 Hrs and the date of demand and also the time has been inserted in the FIR for the purpose of this case and the 2nd respondent has no *locus standi* to approach the accused in this regard, since the Senthamaram Panchayat has passed a Resolution to construct a culvert to the estimate of Rs.3,70,000/-, which is for common work but it is alleged that the 2nd respondent has approached the accused to get NOC and he has deposited the money; that the Panchayat alone has got no right at all to take independent decision and also approached the Public Works Department; that the Block Development Officer has not granted any sanction to construct the culvert and without sanction from the Block Development Office and also P.W.D Office, the work has been started by the Panchayat and it has been started by the accused and aggrieved over this, the 2nd respondent has given a false case against the petitioner / accused and the ingredients for the offence mentioned supra has not been attracted in the FIR.

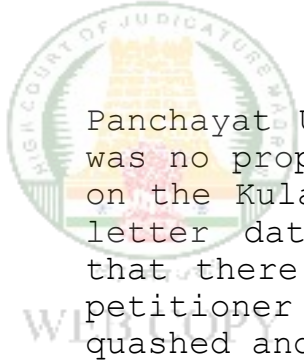
5. The learned Additional Public Prosecutor appearing for the first respondent, based on the counter statement filed by the first respondent, would contend that the defacto complainant / R2 made a complaint on 09.05.2015 at 12.30 Hrs and only after confirming the demand of money by the accused from the 2nd respondent on conversation recorded with the help of the voice recorder in the course of preliminary enquiry on 11.05.2015 and since the date 10.05.2015 was Sunday, the FIR was registered on 11.05.2016 at 13.00 Hrs and the FIR and Preliminary Enquiry Report along with C.D in connection with conversation between the petitioner / accused and R2 were sent to the Court and no correction has been taken out in



the date of demand in the FIR and corrections have been explained by the Inspector of Police during investigation and such correction has not caused any prejudice to the accused. He would further submit that it is not necessary to be a member of Panchayat to make construction of culvert, since the construction of culvert is for the common use of the Public and the 2nd respondent is also one of the beneficiary of the proposed culvert and therefore, the Panchayat President, taking into consideration of the above and keeping the uses of common people in mind, has passed the Resolution and obtained the rough estimate from the Block Development Officer (Village Panchayat concerned) and submitted them before the Executive Engineer, PWD/WRO, Chittar Basis Division, Tenkasi, along with his petition for obtaining 'No Objection Certificate', since the proposed work is construction of culvert across the PWD Irrigation canal and only after obtaining NOC from PWD authorities, the regular proceedings for the proposed construction of culvert would be done by the other agency like BDO etc., The above said file was forwarded to the Assistant Executive Engineer, PWD / WRO, Chittar Basin Sub Division, Tenkasi and he had sent the said file to the petitioner / accused for spot verification and report and as such, the petitioner / accused, without authority to verify the spot and to forward his report to the Executive Engineer of the said Department, in the course of executing his duty to verify the spot and forwarding his report in connection with the construction of the above said culvert across PWD canal has demanded and received the bribe amount of Rs.50,000/-, as part payment and it is further contended that the documents ie., the RTI Report relied by the accused cannot be acted upon at this stage without evidence of the concerned official, since those documents are subject matter of trial and BDO (Village Panchayat) is the competent authority to deal with the matter in relation to Village Panchyat, since the Senthamaram Village comes under the jurisdiction of Village Panchayat.

6. While the CrI.O.P(MD)No.22905 of 2015 is pending before this Court, the first respondent informed to this Court that R2 / defacto complaint died and charge sheet has also been filed already on 04.12.2015 and was taken on file and is pending as Spl.Case No.4 of 2015, on the file of the Special Court for trial Cases under Prevention of Corruption Cases, Tirunelveli, for framing charges in this case against the petitioner / accused. Hence the petitioner / accused filed CrI.O.P(MD)No.23799 of 2016 to call for the records in Special Case No.4 of 2016 and to quash the same since the first respondent contended that the CrI.O.P(MD)No.22905 of 2015 (quashing FIR) has become infructuous.

7. The learned counsel appearing for the petitioner / accused would further contend that the defacto complaint encroached into PWD land and started construction at his choice to the benefit of his proposed cashew factory and it was stopped by the petitioner, as Junior Engineer, and because of that the accused has become a victim and fell pray to the trap and that the Melaneelathanallur Village



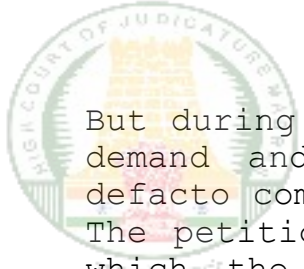
Panchayat Union, by letter dated 23.06.2015, has stated that there was no proposal or plan to construct a bridge in Senthamaram Village on the Kulasekara Mangalam Canal that shut the case and as per the letter dated 02.06.2015 the Tahsildar, Kadayanallur has informed that there is no Mangammal Salai in the Village accounts and the petitioner / accused is confident that the charge can also will be quashed and he need not to undergo the painful trial.

8. In reply, the learned Additional Public Prosecutor appearing for the first respondent would state that the proceedings of the concerned Village Panchayat initiated the obligation seeking NOC for constructing Bridge on Mangammal Salai from the Executive Engineer, PWD Chittar Basin Sub Division, Tenkasi, and the petitioner / Junior Engineer, Kadayanallur, is the authority to visit the spot for forwarding the report regarding the feasibility and he was trapped for his demand and acceptance of bribe of Rs.50,000/- from the defacto complainant for his recommendation to construct the bridge. The learned Additional Public Prosecutor, in support of his contention, has relied on the Judgment of the Hon'ble Supreme Court reported in **(2004 SCC (Cr1.) 353) State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others;** and the Judgment reported in **(1997 (4) SC 84) State of Maharashtra Vs. Priya Sharan Maharaj and Others.**

9. Perused the materials on records. Heard and considered the rival submissions advanced by either side.

10. The contention of the petitioner in Cr1.O.P(MD)No.22905 of 2015 is that without getting sanction from the Block Development Officer and also Public Works Department office the works to construct the culvert has been started by the Senthamaram Panchayat and it has been stopped by the petitioner / accused in this case, as Junior Engineer in P.W.D Water Resources Organization, Chittar Basin Division, Kadayanallur, Tirunelveli District and aggrieved over this, the 2nd respondent has given a false case against the accused.

11. In contra, in Cr1.O.P(MD)No.23799 of 2016 (quashing of charge sheet in pending case proceedings) the petitioner contended that the defacto complaint wanted to construct a bridge of his choice to the benefit of his proposed cashew factory and it was stopped by the petitioner / accused and the defacto complaint was angered to give a false complaint and staged a trap for which the accused has become a victim. The contention of the first respondent is that the President of the concerned Village Panchayat initiated steps to construct a bridge / culvert over the PWD Canal for the benefit of the Villagers, Senthamaram and the R2 is also one of the beneficiaries for his proposed construction of cashew factory in the initial stage with proper resolution and estimate from the Executive Engineer, PWD, Chittar Basin Sub Division, Tenkasi, who in turn, forwarded the file to the petitioner / accused working as Junior Engineer, P.W.D, Kadayanallur, to inspect the spot and report about the feasibility for the construction of bridge across the PWD canal.



But during the rearrangement itself the accused was trapped for his demand and acceptance of bribe amount of Rs.50,000/- from the defacto complainant for initiating his recommendation on 11.05.2015. The petitioner / accused produced certain documents and relied for which the first respondent also filed documents to answer the contention of the petitioner / contention in these impugned petitions.

12. This Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained ie., the function of the trial Judge. It is the material collected during the investigation and evidence let in the Court which decide the issue. The allegations of *malafides* against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings while exercising the jurisdiction under Section 482 Cr.P.C., It is not permissible for the Court to act as if it was a trial Judge. Even when a charge is framed at that stage the Court has to only prima facie satisfy about the existence of sufficient grounds for prosecuting against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The Court should not act as an annexure to the petition under Section 482 Cr.P.C., which cannot be termed as evidence without being tested and proved.

13. In view of the settled law that at the stage of framing charges the Court has to consider the materials with a view to find out if there is a ground for presuming that the accused has committed the offence and not arriving at a conclusion that it is not likely to lead to a conviction. The Court is required to evaluate the materials and documents on record with a view to finding out with the facts emerging therefrom taken at their face value disclose the existence of ingredients caused to the alleged offence. This Court has also taken into consideration the settled law in quashing the FIR or charge sheet under Section 482 Cr.P.C., in pending proceedings. The contents of the FIR registered in this case and also the charge sheet, which is now pending as Spl.C.C.No.4 of 2016, prima facie discloses the offences under the Prevention of Corruption Act, against the Petitioner / Accused.

14. Considering the above facts and circumstances of the case nothing is found by this Court to quash the proceedings in Crime No.1 of 2015, on the file of the Inspector of Police, Vigilance and Anticorruption Wing, Tirunelveli, Tirunelveli District, and also the proceedings in Spl.Case No.4 of 2016, on the file of the Special Court for Trial Cases Under Prevention of Corruption Act, Tirunelveli, for the reasons stated in these petitions filed by the petitioner / accused and hence, this Court is not inclined to allow these Criminal Original Petitions.



15. In the result, these Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Special Court for Trial Case Under Prevention of Corruption Act,
Tirunelveli
2. The Inspector of Police,
Vigilance and Anticorruption Wing,
Tirunelveli,
Tirunelveli District
3. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli,
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Record Keeper,
Criminal Section
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.T.S.R.VENKAT RAMANA, ADVOCATE IN SR No. 90809

MPK

TE/SKN-RSK/SAR-1 : 22/12/2017 : 7P/7C

Orders made in
Crl.OP(MD)No.22905 of 2015 &
Crl.OP(MD)No.23799 of 2016 and
CRL MP(MD)No.1 of 2015
Dated:- 04.12.2017