BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.144 of 2017

[Orders Reserved on 11.04.2017]

M.Nainar Mohammed : Revision Petitioner / A1

Vs.

The State, Rep.by
The Inspector of Police,
Vigilance & Anti Corruption,
Sivagangai District
(Crime No.7/09) : Respondents / Respondents

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to allow this Criminal Revision and set aside the order passed in Cr.M.P.No.510 of 2016, dated 28.12.2016 by the learned Special Judge (Prevention of Corruption Act), Sivaganga.

For Petitioner : Mr.D.Selvanayagam
For Respondent : Mr.P.Kandasamy
Govt.Advocate (crl.side)

ORDER

This Criminal Revision Case has been filed praying to set aside the order passed in Cr.M.P.No.510 of 2016, dated 28.12.2016 by the learned Special Judge (Prevention of Corruption Act), Sivaganga. The petitioner herein is arrayed as A1 in C.C.No. 5 of 2016, pending on the file of the said Court.

2. This matter is taken up for final disposal at the admission stage itself with the consent of the learned counsels appearing for the respective parties.

3. A case has been registered by the respondent Police against the petitioner and 4 others in Crime No.7 of 2009 for the offences under Sections 7, 13(1)(a), 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 and Section 102 of Cr.P.C., in the following circumstances.

4. When a joint surprise check was conducted at the office of the Regional Manager of the Tamil Nadu Forest Plantation Corporation Limited [TAFCORN], Karaikudi, on 02.08.2009 between 5.30 p.m., and 11.55 p.m., by the Vigilance and Anti-Corruption Officials, Sivagangai with Deputy Cell Officers, Ramanathapuram, the petitioner was found in possession of Rs.1,94,100/- as unaccounted money and the said amount was seized on 26.08.2009 and a surprise check proceedings was prepared in connection with the surprise check and at that time, the petitioner has only stated to the Cell Officers that the said amount was his salary amount and he has not produced proper account to the Cell Officers and to prove that the said amount was his salary amount. Since the petitioner could not satisfactorily account for the same to the Cell Officers at the time of surprise check, the said amount of Rs.1,94,100/- was seized from the petitioner's residential house on 26.08.2009. As per the surprise check proceedings, the seized list of unaccounted money has been produced before the lower Court mentioning with the currency denomination and numbers on Form 91 and the same has been remanded in P.R.No.64 of 2014.

5. After completion of investigation, charge sheet was laid against the petitioner and 11 others before the learned Special Judge (Prevention of Corruption Act) Sivagangai and is pending as C.C.No.5 of 2016.

6. The case of the prosecution as per the charge sheet is that between 01.04.2009 and 26.08.2009 at TAFCORN, Karaikudi Region, the petitioner along with other accused, being a public servant, conspired together the illegal acts of furnishing incorrect records viz., vouchers and other records to misappropriate the Government money to the tune of Rs.4,86,444/- and in pursuance of the said criminal conspiracy, each one helped each other in one way or other, achieve their common design and thereby, the petitioner and other accused have committed an offence punishable under Sections 120(b) IPC., r/w 167 & 409 of IPC., and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

7. The petitioner has already filed Cr.M.P.No.215 of 2010 for return of the seized amount of Rs.1,94,100/- and it was dismissed on 09.04.2011 by the concerned Court. The petitioner again filed Cr.M.P.No.510 of 2016 before the trial Court and the same was dismissed by its order dated 28.12.2016. Aggrieved by that order of dismissal, the present Revision is filed by the

petitioner / A1 before this Court, to set aside the order passed in Cr.M.P.No.510 of 2016, dated 28.12.2016 by the learned Special Judge (Prevention of Corruption Act Cases), Sivagangai.

8. The learned counsel appearing for the petitioner would submit that the order of the Court below is in contradiction of G.O.Nos.90 and 91, dated 27.04.2014 (Environment Forest (FR.1) Department, in which departmental proceedings were dropped for the very same incident as against the petitioner after submitting proper account and explanation to the department and the same was accepted and the charge memo was dropped and the seized amount was unnecessarily kept in judicial custody for the past 7 years without utilizing the same and without getting any interest.

9. The learned Government Advocate (crl.side) appearing for the respondent would submit based on the counter that even though there is no departmental proceedings pending against the petitioner, a criminal case for misappropriation of the Government money to the value of Rs.4,86,444/- by the petitioner alone with the other accused under Section 120(b) IPC., r/w. 167, 409 IPC., and Section 13(2) r/w. 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 is pending before the Court and the seized amount was remanded to the judicial custody by the investigating officers and the said amount was in Court custody by way of in criminal Court deposit by following the Apex Court Judgment referred to by the petitioner and the departmental charges are in violation of Tamil Nadu Government Servants Conduct Rules, 1973. Even on the same set of facts, the criminal case is for the commission of specific offence under the special Act viz., Prevention of Corruption Act, 1988, the petitioner is not competent to get the seized amount without conducting the trial and hence, prayed for dismissal of this revision.

10. Perused the materials available on record. Heard and considered the rival submissions made by either side.

11. Petitioner is arrayed as A1. The Regional Manager, TAFCORN, Karaikudi, Sivagangai District, in Special C.C.No.5 of 2016, pending on the file of the Special Judge for cases under the Prevention of Corruption Act, Sivagangai, for the misappropriation of Government Money to the tune of Rs.4,86,444/- in pursuance of the criminal conspiracy with the other accused on the basis of the incorrect documents and vouchers, as if work was done in several divisions under the control of the petitioner, who is said to have approved and passed the vouchers for the offences under Sections 120(b) r/w 167, 409 of IPC., and under Section 13(2) r/ws. 13(1) (c) and (d) of the Prevention of Corruption Act, 1988. The scope of charges framed against the petitioner in departmental proceedings initiated as per G.O.Nos.90 & 91, dated 27.04.2014 are entirely different from the case of the prosecution and its charges against the petitioner in the charge sheet filed by the

respondent, which is pending for trial. Hence, the charges against the petitioner in the departmental action are not identical in nature. The principle laid down by the Hon'ble Supreme Court in the Judgment in Sunderbhai Ambalal Desai Vs. State of Gujarat reported in (2002 Supp(3) SCR 39), as referred by the Counsel for the Revision Petitioner in respect of the procedures to be adopted in respect of currency notes is followed in this case. The seized amount was remanded to the concerned Court in P.R.No.64 of 2016 and the said currency notes were deposited in criminal Court deposit by the trial Court and the seized amount is kept safely by the Court. Suppressing the earlier petition filed in Cr.M.P.No.215 of 2010, which was dismissed on 09.04.2011 by the same Court, the petitioner filed the impugned application as a 2^{nd} time for return of the seized amount. No reason is assigned by the Revision Petitioner for not preferring any Revision against the order of dismissal dated 09.04.2011. As per the charged sheet filed in Special C.C.No.5 of 2016 there are 96 prosecution witnesses and 172 documents. Now the case is pending for trial.

12. In the light of the foregoing discussion, considering the case of the prosecution and also the alleged charges against the petitioner found in the charge sheet, the petitioner has to face the trial, in the considered opinion of this Court and therefore, this Court is not inclined to grant the relief as sought for by the petitioner.

13. In the result, the Criminal Revision stands dismissed. However, the trial Court is directed to expedite the trial of the case and dispose of the same as expeditiously as possible.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To
1.The Special Judge
(Prevention of Corruption Act), Sivagangai.
2.The Inspector of Police, Vigilance & Anti Corruption,
Sivagangai District
3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4.The Record Keeper,
Criminal Section
Madurai Bench of Madras High Court, Madurai
+One cc to M/s.D.Selvanayagam, Advocate, SR.No.81697
MPK
RL/6C/4P/JC/SAR2/20/10/2017

Pre-Delivery Orders made in
Crl.RC(MD)No.144 of 2017
Dated:-
05.10.2017