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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.08.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD) .No.50 of 2011

and

Crl.O.P. (MD) .No.13383 of 2010

and

Crl.M.P. (MD) Nos.1 and 2 of 2010

Crl.R.C(MD) .No.50 of 2011 :

1.Ramesh Nair
2.Sushil Gupta

.. Petitioners/
Accused Nos.2 and 3

-Vs-

S.Elangovan

.. Respondent/complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order passed in Cr.M.P.No.1963 of 2010 in Special Case No.2 of 2010, dated 27.09.2010, dismissing the petition seeking discharge on the file of the learned Special Judge (for PCR Cases)-cum-Chief Judicial Magistrate, Tiruchirapalli.

For Petitioners : Mr.I.Subramaniam
Senior Counsel
for Mr.K.P.Anantha Krishna

For Respondent : Mr.A.V.Somasundaram

Crl.O.P. (MD) .No.13383 of 2010

T.Sargunan

.. Petitioner/Accused No.1

-Vs-

S.Elangovan

..Respondent/respondent/complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Special Case No.2 of 2010, on the file of the learned Special Judge (for PCR Cases)-cum-Chief Judicial Magistrate, Tiruchirapalli and quash the same.



For Petitioner : Mr.I.Subramaniam
Senior Counsel
for M/s. K.P.Anantha Krishna

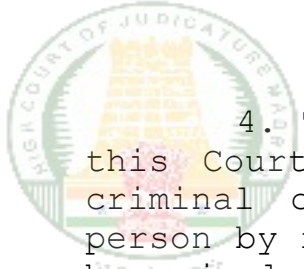
For Respondent : Mr.A.V.Somasundaram

C O M M O N O R D E R

The Criminal Revision and the Criminal Original Petition have been filed by the accused/A1 to A3 in S.C.No.2 of 2010, on the file of the learned Special Judge (Prevention of Corruption Cases)-cum-Chief Judicial Magistrate, Tiruchirappalli.

2.The petitioner in CrI.O.P.(MD).No.13383 of 2010 is arrayed as accused No.1 in the above case. The respondent/complainant was working as Chief Inspector of Factories, Department of Inspectorate of Factories, Government of Tamilnadu, Chennai. Earlier, the Deputy Superintendent of Police, Department of Vigilance and Anticorruption (DVAC), Tiruchirappalli has preferred a complaint against the respondent/complainant for the offence under Section 7 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and he was arrested and remanded to judicial custody on 12.12.2008. The above complaint has been filed by the Deputy Superintendent of Police, Department of Vigilance and Anticorruption, Tiruchirappalli, on the ground that there was an industrial accident in one Sterlite Industry, at Tuticorin, in which an employee was died, based on that the Deputy Chief Inspector of Factories, Tuticorin passed an order prohibiting the industry from operating the cooling water tower, in which A1 was working as General Manager, A2 was working as Chief Operating Officer, A3 was working as Chief Financing Officer.

3. A1 along with one Joseph Peeris, who was working as a General Manager, Human Resource Department in the industry approached the respondent/complainant herein to cancel the prohibitory order, at that time, the respondent/complainant has demanded Rs.5,00,000/- as bribe and he asked them to meet him at Tiruchirappalli on 12.02.2008 with the amount demanded by him. Subsequently, on 12.02.2008, A1 along with said Joseph Peeris went to the hotel in Tiruchirappalli, where the respondent/complainant was staying, and handed over a sum of Rs.2,00,000/-. Based on a source information, the DVAC officials laid a trap and they have inspected the hotel room and seized the money, and registered a complaint against the respondent and also arrested him. Thereafter, an investigation was conducted and a final report was filed by the Department of Vigilance and Anticorruption, now the trial is pending against the respondent.



4. Thereafter the respondent, filed a quash petition before this Court in Crl.O.P.(MD).No.7575 of 2015, to quash the above criminal case on the ground that A1 in this case and another person by name Joseph Peeris, who are offering bribe ought to have been included as accused in the above case. This Court by order, dated 21.10.2009 disposed the above quash petition with a liberty to the respondent/complainant herein to raise all the points before the concerned Trial Court and the concerned Trial Court was directed to consider the issue, whether they should be included as accused and whether a charge can be framed against them, on the basis of the available materials.

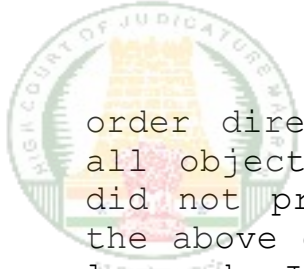
5. Thereafter, the respondent/complainant filed a private complaint against the four persons for committing offence punishable under Section 8 of the Prevention of Corruption Act, 1988. The above complaint has been filed on the ground that A1 in this case along with other persons, who were working as General Managers have offered bribe to the respondent herein and A2 and A3 in this case were also conspired along with A1, and sanctioned a sum of Rs.2,00,000/- from the company funds for the purpose of giving bribe to the respondent, hence, all the accused are liable to be punished for the offence punishable under Section 8 of Prevention of Corruption Act, 1988. The Court below after taking cognizance and issued summons to three persons and dismissed the complaint in respect of the said Joseph Peeris. At that stage A2 and A3 filed a petition to discharge them from the offence under Section 245(2) Cr.P.C. and to drop the proceedings against them. But the trial Court dismissed the same. Challenging the order of dismissing the petition filed under Section 245(2) Cr.P.C., A2 and A3 filed this criminal revision before this Court. A1 filed a petition to quash the proceedings in Crl.O.P.(MD).No.13383 of 2010.

6. I have heard Mr.I.Subramaniam, learned Senior Counsel for the petitioners/A1 to A3 and MR.A.V.Somasundaram, learned counsel appearing for the respondent/complainant in both cases and perused the records carefully.

7. The learned Senior Counsel appearing for the petitioners contended that as per the order passed by this Court, the only remedy open to the respondent is to approach the trial Court in the criminal case pending against the respondent and work out his remedy there, and the respondent cannot file a separate private complaint against the petitioners, which is totally against the orders passed by this Court. Having been invited an order from this Court, the respondent is estopped from filing a private complaint and the learned Judicial Magistrate ought not to have taken cognizance of the offence and issued summons.

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8. Per contra, the learned Counsel for the respondent would submit that eventhough this Court in earlier occasion passed an



order directing the respondent to work out his remedy and raise all objections before the concerned trial Court, and this Court did not prohibit the respondent to file a private complaint. In the above circumstances, the private complaint has been filed, the learned Judicial Magistrate after considering all materials, issued summons to the petitioners and also dismissed the discharge petition filed by A2 and A3, since a *prima facie* case made out against the accused and the complaint cannot be quashed against A1.

9. I have considered the rival submissions made on both sides and the materials available on record.

10. Before going to the merits of the case, as rightly contended by the learned Senior Counsel appearing for the petitioners, this Court, earlier in a quash petition filed by the respondent, wherein he prayed that the persons, who are willing to offer bribe should have been included as accused, has held as follows:

"2. The learned counsel for the petitioner submitted that the case of the prosecution is against only one accused is erroneous, since the persons, who are willing to offer bribe should have been included as an accused in the present case.

3. On perusal of records and after hearing the arguments of the learned counsel for the petitioner, this Court is of the view that the trial Court and the concerned trial Judge is also at liberty to decide whether they should be included as an accused and whether a charge can be framed on the basis of the available materials in the present case. Hence, it is open to the petitioner herein to raise all the points before the trial Court."

11. From the perusal of the order, it is very clear, and this Court directed the respondent to raise all the points available to him before the trial Court and this Court also given liberty to the trial Judge to decide whether other persons should have been included as accused and whether charges may be framed on the basis of the available materials. But inspite of the order passed by this Court, in which this Court only directed the respondent to raise his objection before the trial Court, he cannot file an independent private complaint.

12. In the above circumstances, without going to the merits of the case, in view of the order passed by this Court, the respondent is permitted to approach the Court in which, the case is pending against him, in Spl.C.No.7 of 2009, namely, the Special Judge-cum-Chief Judicial Magistrate, Tiruchirapalli, and raise all his objection.



13. In the above circumstances, the private complaint filed by the respondent is not maintainable. Hence, the private complaint filed by the respondent is liable to be set aside and all the accused entitled to be discharged.

14. In the result, the order passed in CrI.M.P.No.1963 of 2010 in Spl.C.No.2 of 2010 on the file of the learned Chief Judicial Magistrate, Tiruchirappalli, is set aside and CrI.R.C.(MD).No.50 of 2011 is **allowed** and CrI.O.P.(MD).No.13383 of 2010 is also **allowed** and the criminal case in Spl.C.No.2 of 2010 on the file of the learned Chief Judicial Magistrate, Tiruchirappalli is quashed. Consequently, connected miscellaneous petitions are closed. Since the matter is pending from the year 2009, the trial Court is directed to proceed with the trial in Spl.C.No.7 of 2009, as expeditiously as possible.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Special Judge for Prevention of Corruption Act Cases
cum Chief Judicial Magistrate,
Tiruchirappalli.

+1cc to Mr.G.Anbu Saravanan, Advocate Sr.No.73425

+1cc to Mr.R.M.Arun Swaminathan, Advocate Sr.No.73392

PJL

VB/SKN/RSK/SAR2/03.10.2017/5P/4C

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and
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