THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.3161 of 2017

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short) is filed by the petitioner-A4 requesting to quash the charge sheet against him in C.C.No.16 of 2015 [in Cr.No.13/RCT-TCT/2008] on the file of the learned Special Judge for Trial of SPE/ACB cases, Nellore.

2. I have heard the submissions of *Sri V.R. Machavaram,* learned counsel for the petitioner-A4, and of *Sri Udaya Bhaskara Rao,* learned Standing Counsel for ACB representing the respondent. I have perused the material record.

3. The case of the petitioner-A4 in support of his request to quash the CC against him, in brief, is as follows:

The petitioner is A4 in the above Calendar Case taken on file for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ['The Act', for short]. There is no evidence against this petitioner-A4 for taking cognizance against him for the said offences. Insofar as this petitioner-A4 is concerned, there is no evidence of demand and acceptance as well as recovery of bribe amount. Therefore, the mandatory requirements of penal provisions are not there even to frame a charge against the petitioner-A4. No material is secured by the investigating agency to show even *prima facie* that this petitioner-A4 requested A3 to receive the bribe amount on his behalf. To establish the allegation that the petitioner-A4 instructed the informant to pay his share of bribe amount of Rs.25,000/- to A3, the investigating officer who laid the trap did not ask the informant to make a phone call to the petitioner-A4 in the presence of mediators to ensure that the petitioner-A4 demanded the bribe amount or instructed the informant to pay his share of bribe to A3. Voice particulars of the call alleged to have been made by the petitioner-A4 to the informant, on 24.09.2008, morning hours instructing him to pay his share of bribe amount to A3 were also not secured by the investigating officer. No material was secured by the investigating officer to show that any work was pending with the petitioner-A4 as on the date of the demand of the alleged bribe amount or as on the date of payment of the bribe amount. The failure on the part of the informant to inform the mediators, on 24.09.2008, in the morning hours in the office of DSP at the time of drafting of first mediators' report, that petitioner-A4 demanded bribe and that he asked to pay his share of bribe amount to A3 as he was unable to come along with the other accused persons to receive the bribe amount due to his office work clearly establishes that the case is a false case and that the implication of the petitioner-A4 is an after thought. The alleged bribe was allegedly demanded, on 18.08.2008. The complaint was filed, on 23.09.2008, after about 35 days. Strangely the said demand of bribe was not revealed to anybody much less to the ACB officials, Tirupati. The alleged motive for demanding the bribe by the accused-public servants viz., unless the informant pays the bribe amount to them the patta in respect of the lands for which exgratia was granted will be cancelled is unbelievable and false for the reason that no prudent person would believe that a public servant like the accused who recommend for sanction of exgratia will cancel the pattas that too after payment of exgratia. No one can come to such conclusion that the public servants have the competency to cancel the pattas and recover back the exgratia as claimed by the informant. As such the demand of bribe by the public servants for such a motive or reward is illogical. Even as per the material brought on record by the prosecution, the petitioner-A4 neither received the bribe amount nor was any recovery of bribe amount made from him. When the said conditions which are a *sine-qua-non* are absent, the prosecution of the petitioner-A4 is nothing but an abuse of process of Court.

No impartial investigation was done in this case. Except bald and vague allegations, there are no specific allegations against the petitioner-A4. Mere allegations unsupported by any other material or documentary evidence cannot be a basis and cannot be taken into consideration. No work relating to the informant or his colleague farmers, who were granted compensation by the Government, is pending with the petitioner-A4. Therefore, the question of demanding bribe by this petitioner-A4 does not arise. The call record filed by the investigating agency is a false record and there are lot of manipulations and interpolations in the said record. The procedure for obtaining the call record was not followed. The call record is not authenticated record and does not disclose the authority that issued the call record and also does not disclose as to which service provider furnished the said record. The petitioner-A4 has no role in processing the record file for grant of compensation for the lands of farmers, which are acquired. Hence, the allegation that the petitioner-A4 demanded bribe cannot be believed. The *de facto* complainant/informant is not a farmer and no compensation was granted to him. He is only a middleman. His statement cannot be believed. Hence, the case against the petitioner-A4 is liable to be quashed.

4. Per contra, the case of the respondent, in brief, is this:

Following all statutory measures, the case was registered and investigated into and after conclusion of investigation, the charge sheet was filed. The investigation reveals that the petitioner-A4 committed cognizable offences. Statement of LW1 was recorded under Sections 161 & 164 of the Code. The statements of LW1 disclose that the petitioner-A4 demanded bribe of Rs.25,000/- for doing official favour. The mediators reports 2 & 3 disclose that A3 received bribe amount of Rs.50,000/- including the petitioner-A4's share of Rs.25,000/-. The informant also stated that the petitioner-A4 telephoned to him and instructed him to give his share of Rs.25,000/- to A3.

A3 also stated that the petitioner-A4 asked him to collect his share of bribe amount of Rs.25,000/- from the informant. Hence, the contentions of the petitioner-A4 are untenable. One CD, showing both incoming and out going calls relating to the cell phones numbers of the informant and the petitioner-A4, is placed on record. The call data is substantial evidence supporting the version of the informant. As per the evidence collected, the role of the petitioner-A4 is very clear. The delay in lodging the complaint is justifiable as the informant promised that he will be able to pay the demanded bribe amount only after getting the exgratia amount in his account. Further, A1 to A6 informed the complainant that exgratia is credited to his bank account and demanded him to withdraw the same and pay the bribe amount to them. Though the petitioner-A4 has not received the bribe amount directly from the informant and there is no recovery of bribe amount from his possession, the evidence collected including the confession of A3 clearly shows that the informant as instructed by the petitioner-A4 paid the share of bribe amount of the petitioner-A4 to A3 and A3 accepted the same. The investigation officer has given notice to the accused officer and obtained his explanation. Even as per the statement of the informant under Section 164 of the Code, which was recorded by a learned Magistrate, it is clear that the bribe amount was demanded for doing an official favour. The documentary evidence clearly establishes and proves the role of the petitioner-A4 that he attended to works like, establishment work, correspondence pertaining to sanction of exgratia, addressing letters to the banks, obtaining DDs and handing over DDs to victims through the Spl.Dy.Collector (AO-1). His initials are found in some of the prepared letters to the banks & others and also bank vouchers, which are available in the seized files. He played a role in processing and forwarding the file pertaining to the informant. Hence, there is no merit in the petition of the petitioner-A4. The petition is liable to be dismissed.

5. I have given detailed and thoughtful consideration to the facts and submissions. I have gone through the record.

6. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while

considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

7. In the case on hand, the case of the prosecution as is borne out by the material record, in brief is this: - 'The informant-LW1 is an agriculturist having land in an extent of Ac.2.14 cents in his village Cherivi of Satyavedu Mandal. The state Government declared some of the villages in Satyavedu and Varadaiahpalem Mandals as coming under Special Economic Zones. The Government acquired lands belonging to the informant-LW1, K. Chinna Masthan, LW2, Veera Raghavulu, LW3 and others of the same village to a total extent of Ac.7.35 cents. The lands were allotted to Scheduled Tribe people by the Government originally. However for more than 10 years, the lands were under the enjoyment of the informant-LW1 and LWs2 & 3. Therefore, eight

months prior to 23.09.2008 the informant met AO5, the then Tahasildar of Satyavedu Mandal to issue patta in the names of LWs1 to 3 in respect of the above Ac.7.35 cents of land and at that time AO5 demanded him to pay a bribe of Rs.1.00 Lakh to issue pattas in their names and asked him to meet AO6, Village Revenue Officer, Office of the Tahasildar, Satyavedu, Satyavedu Mandal, for processing the file relating to the above lands. LW1 met AO6 and requested for issuance of pattas. AO6 demanded the bribe amount of Rs.50,000/- for doing them the favour. LW1 expressed his inability to pay such huge amount. AO5 and AO6 asked him to pay the bribe amount after releasing the exgratia amount and after releasing the demand drafts. Under unavoidable circumstances, he agreed to pay the bribe amounts to AO5 & AO6. LW1 informed the same to LWs2 & 3. They asked him to look after the issue on their behalf also. AO6 prepared the file and basing on the proposals of AO6, AO5 issued DKT pattas in the names of the LWs1 to 3 during the year March, 2008. AO5 forwarded relevant file to the SEZ Land Acquisition Officer and asked LW1 to personally meet the LAO to get sanction of exgratia amount. LW1 went to the SEZ office situate at Tirupati and met AOs1 to 4 and requested them for sanction of exgratia amount. A1 & A2 demanded bribe of Rs.1.00 lakh each and A3 & A4 demanded bribe of Rs.25,000/- each. The informant expressed his inability to pay such huge bribe amount to them. Then they stated that he can pay the demanded bribe amount after receipt of exgratia amount. Demand Drafts for Rs.18,37,500/- was issued to LWs1 to 3 on 18.08.2008 in the office of LA SEZ Unit-1, Tirupati and at that time A1 to A4 again reiterated the earlier demands for bribe while handing over the demand drafts and also threatened to cancel their pattas and recover the sanctioned amount if they failed to pay the bribe amounts to them. On 22.09.2008, A5 & A6 called LW1 to their office and demanded for the bribe amount under threat to cancel the pattas if he fails to pay the bribe amounts to them from the amount received and directed him to pay the bribe amounts on 24.09.2008 at their office. A1 to A4 also called LW1 to SEZ office on the same day and asked him to pay the bribe amounts to them on 24.09.2008 at 10.00 hours at Cherivi cross road during their visit to Cherivi village. LW1 informed the same to LWs2 & 3 who are also not willing to pay the bribe amounts to the accused officers. Therefore, a written report was given against the accused officers 1 to 6 to the Inspector of Police, Tirupati, on 23.09.2008 and the subject crime was registered and during the course of investigation, trap was laid. On 24.09.2008 morning, the petitioner-A4 contacted LW1 over cell phone and asked him to pay the bribe amount of Rs.25,000/- demanded by him to AO-3 as he was not coming to Cherivi Village along with AOs 1 to 3. Subsequently, the trap was successfully laid and AOs1 to 3 were successfully trapped and AO3 received Rs.50,000/- from the informant including the share of the petitioner-A4 as instructed by the petitioner-A4.'

8. As rightly pointed out by the learned Special Public Prosecutor, at the stage of considering request for quashing of proceedings, this Court has to only consider the allegations of the prosecution case on their face value. In the case on hand, the material record shows that the informant in his statements recorded under Sections 161 & 164 of the Code maintained his stand about the complicity of the petitioner-A4 and the demand for bribe made by him and the subsequent instructions on cell phone to pay his share of bribe to AO3 on the ground that he was not coming to Cherivi village on that day. Further, the prosecution also collected the call data.

9. At this stage, this Court is only required to find out as to whether a *prima facie* case is made out but is not supposed to make a roving enquiry and examine deeply the evidence brought on record. Keeping in view the scope of interference and the ambit of jurisdiction, this Court has to focus on the material to form an opinion whether there is a strong suspicion that the petitioner herein has committed an offence which if put to trial could prove his

guilt. The contentions now raised by the petitioner which are stated supra, in detail, that during the pre trap proceedings the investigating officer has not asked the informant to make a call to the petitioner-A4 in the presence of mediators to ensure that the petitioner-A4 demanded the informant to pay his share of bribe amount to AO3 and that the call data is not properly collected as per the procedure and that it is interpolated and manipulated and other contentions cannot be countenanced at this stage. Whether such contentions merit consideration or not cannot be pre judged and the said contentions have to be examined after full fledged trial but not at this stage. Further, the contention that no official favour is pending with the petitioner need not detain this Court for long for the reason that as rightly urged by the learned Standing Counsel, under Section 7 of the PC Act there must be motive or reward for an official act and that the word motive evidently refers to a future act while the word reward is manifestly intended to apply to a past service and, therefore, the payment of a sum as bribe to a public servant whether paid before or after the doing of the official act would constitute bribe under law.

10. Viewed thus, this Court finds that there is no need at this stage to form an opinion that petitioner-A4 is certainly guilty of the offence alleged against him. This Court examined the issue involved keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the precedential guidance in the aforestated decisions and the decision in State of Rajasthan v. Fatehkaran Mehdu[1]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioner-A4 and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that this is a case where a final adjudication of the charge against A4 has to be

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made only after oral and documentary evidence is adduced in a full-fledged trial.

11. On the above analysis and for all the reasons assigned supra and the legal position obtaining, this Court finds that the request of the petitioner-A4 to quash the criminal proceedings against him does not merit consideration and that the petition is liable for dismissal. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the accused herein to raise before the Special Court all the defences, which the facts and law permit.

12. In the result, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

01.09.2017
Vjl