



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2018

Pronounced on : 25.06.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Petition No.713 of 2018
and Crl.M.P.No.8206 of 2018

R.Sakthivel
Former Surveyor, (under Suspension)
Taluk Office ThiruvannamalaiPetitioner/Accused

/versus/

The State Represented by
The Inspector of Police,
Vigilance and Anti Corruption, Thiruvannamalai Detachment,
Thiruvannamalai District Respondent/Complainant

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C, to call for the records and set aside the order dated 23.05.2018 of the Hon'ble Chief Judicial Magistrate and Special Judge, Thiruvannamalai, in M.P.No.624 of 2017 in Special C.C.No.2 of 2017, dismissing the discharge petition under Section 239 of Cr.P.C against the Petitioner/Accused.

For Petitioner : Mr.V.Arunagiri

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

O R D E R

This Revision Petition is directed against the dismissal of discharge petition filed by the accused before the trial Court under Section 239 of Cr.P.C.

2. The grounds raised in the Revision Petition is that the trial Court had failed to appreciate the evidence in right perspective. It has not taken note of the fact that the application made by the defacto complainant and his brother for Sub-division of their land and for laying boundary stones was taken up for consideration by the petitioner. He has completed the measurement and had laid the boundary stone. This fact is being reflected in the letter given by the Palani [LW.12] Village Assistant. The survey report has been submitted by the

petitioner to the Tahsildar in February 2015. On 07.07.2015 2nd application for separate patta for the property was received by the revision petitioner on 03.08.2015, for which the petitioner informed the defacto complainant to get NOC from his neighbour and the same was also reported to Mr.Venugopal [LW.5]. These are all reflected in the RTR Register. While so, the allegation of the defacto complainant that he had approached the revision petitioner on 04.11.2015 to enquire about the patta transfer application, he demanded Rs.6,000/- bribe and told if the bribe is not given, he will not arrange for issuance of Patta.

3. Based on the false complaint, the trap laying officer without enough material, had laid trap and the Inspector of Police had filed a final report, as if on 06.11.2015 the revision petitioner demanded and received bribe of Rs.6,000/-.

4. It is contended by the revision petitioner that on 06.11.2015 the defacto complainant met him and gave some folded papers and said it contains NOC of the neighbour's as sought by him. He innocently received the same and found that there were some money in it and he dropped the money. The trap team recovered the money and had foisted the case. According to the revision petitioner the trial Court has failed to answer four issues raised by him in the discharge petition. There was no application for patta transfer recovered by the prosecution. The final report is confused between the name of the accused and the brother of defacto complainant Soundarajan. There is no whisper of demand and acceptance of bribe spoken by the prosecution witnesses LW.5 and LW.9. While the land was already surveyed there is no necessity for demand of bribe from the defacto complainant.

5. It is settled proposition of law that to entertain a petition under Section 239 of Cr.P.C for discharging an accused from criminal prosecution, the material placed before the Court by the prosecution even if proved 'intoto' should not end in conviction of the accused person. At the same time, if the facts are disputed and should be tested in due process of law, discharge petition cannot be entertained. The perusal of the impugned order passed by the trial Court indicate the Court below had taken note of the legal preposition and had tested the plea of the petitioner in the light of the legal preposition laid down by Hon'ble Supreme Court. There is primaface material to show that the defacto complainant had been requesting the revision petitioner to survey his land and to sub divide the same and issue patta which is also admitted by the revision petitioner. Whether he really demanded money as alleged by the defacto complainant and the prosecution or whether the tainted money was given to him under disguise. This fact is to tested before the Court during trial for trial and not material to be scrutinised summarily in a discharge petition. In addition, it is also admitted by the revision petitioner that he had asked for NOC of the neighbouring land owner for issuing patta and he

has also made some note in the records. However, LW.7 Vijayan, Zonal Deputy Inspector of Land Survey Department in his statement recorded under Section 161 of Cr.P.C has said that while measuring the land by surveyor, if the neighbouring land owner objects, the survey should make a report about it and submit it to the Tahsildar. For measuring the land and to issue patta, there is no necessity to submit NOC from the neighbouring land owner.

6. From this statement of the witnesses and the other materials relied by the prosecution, it is clear that the case of the prosecution is, to measure the land and issue separate patta, under the guise of objection by the neighbour and seeking NOC from the neighbour which is not necessary, the petitioner who is the surveyor of that land had demanded Rs.6,000/- as illegal gratification and had received the same. Whereas the defence case is that under the guise of producing the NOC of the neighbour, tainted money kept in the cover was given to him. All these facts are necessarily to be tested through appropriate evidence and in a full fudged trial. The truthfulness or otherwise of disputed facts cannot be summarily decided.

7. It is also pertinent to point out that this revision petitioner earlier approached this Court for quashing the F.I.R and had raised most of the points which he is canvassing before this Court in the revision petition. This Court after perusing the records, had passed a detailed order in Crl.O.P.No.5766 of 2016 dated 31.08.2017. Suppressing this facts, the petitioner has tried to re-canvass the same point in the discharge petition. This Court finds that no merit in the petition but only a dilated tactic to protract the proceedings. The revision petitioner herein had successfully delayed framing of charges for nearly three years by filing quash petition, discharge petition and now the revision petition. Therefore, this Court directs the trial Court to frame the charge on the next hearing and proceed with the trial and complete the trial at the earlier, probably within a period of six months.

8. With the above direction, the Criminal Revision Petition No.713 of 2018 is dismissed. Consequently, connection miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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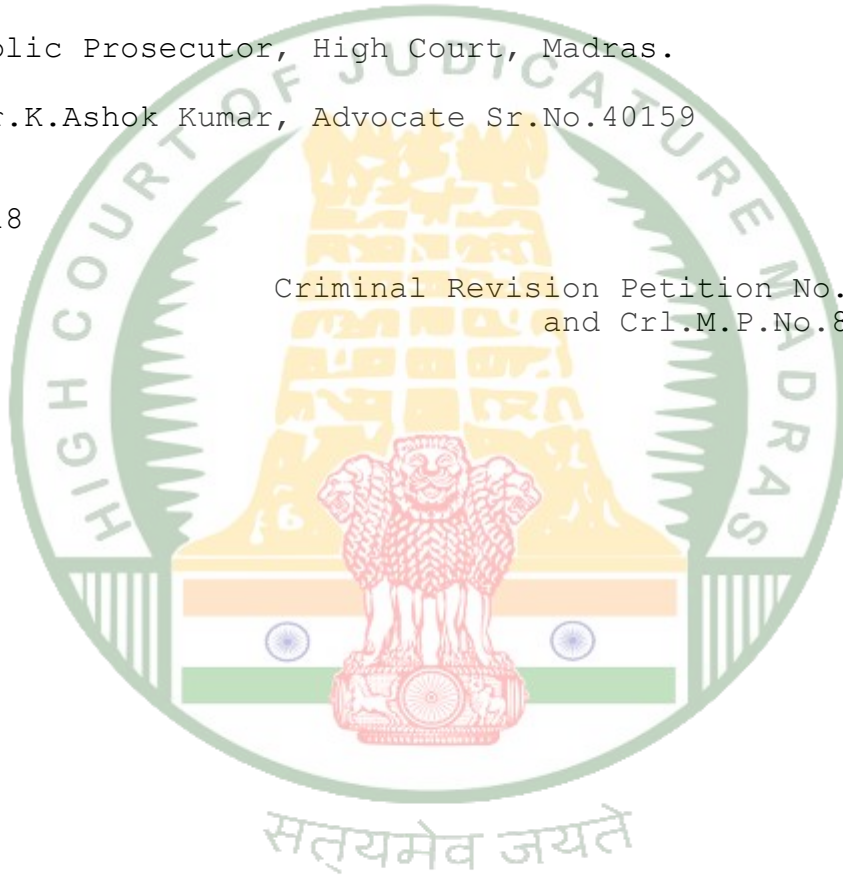
To

1. The Chief Judicial Magistrate and Special Judge,
Thiruvannamalai
2. The Inspector of Police,
Vigilance and Anti Corruption, Thiruvannamalai Detachment,
Thiruvannamalai District
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.Ashok Kumar, Advocate Sr.No.40159

NRL (CO)
sm:2.7.2018

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