

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.930 of 2018

and

Crl.M.P.No.10806 of 2018

N.Tamilselvan

... Petitioner / Accused-7

/Vs/

State represented by

Additional Superintendent of Police,

SPE:CBI:ACB, Chennai.

.... Respondent / Complainant

PRAYER: Criminal Revision Case filed under sections 397 and 401 of Cr.P.C., to set aside the order dated 26.06.2018 made in Crl.M.P.No.757 of 2017 in Spl.C.C.No.1 of 2016 on the file of the learned Principal District Judge, Puducherry-cum-Special Judge for Prevention of Corruption Act, 1988.

For Petitioner : Mr.N.R.Elango, Senior Advocate for
R.Saravanan

For Respondent : Mr.Srinivasan
Special Public Prosecutor for CBI Cases.

O R D E R

This Criminal Revision Case is filed by the petitioner against the dismissal of the discharge petition filed under Section 239 of Criminal Procedure Code. The petitioner who is arrayed as A-7 has been charge sheeted along with the other accused for offences under Section 120-B r/w 420 of IPC and under Sections 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

2. The case of the prosecution is brief that, on credible source information the Central Bureau of Investigation registered a case in RC MA1 2014 A 0025 under Sections 120(B) r/w 420 of IPC and under Sections 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, on 19.06.2014 against certain named public servants of Puducherry Government, M/s.The Pondicherry Paper Mills Limited and its Directors and M/s.Navasakthi Township Developers Private Limited and its Directors and certain unknown public servants of Puducherry Government. Though the case was initially registered against six persons the respondent after completion of investigation filed the final report on 21.12.2016 implicating ten persons including the petitioner who has been arrayed as A-7. The allegations against the accused persons viz., (i) Shri.M.Venkatesan (A-1), (ii), Shri G.Ragesh Chandra (A-5)- since died), (iii) Shri.A.Selvam (A-6), (iv) Shri.Tamilselvan (A-7), (v) Shri A.Sri Sankar (A-8) is that they being public

servants, conspired with Shri C.Subha Singh (A-2) representing the Pondicherry Papers Limited (A-4), Shri K.I.Manirathinem (A-3) and Smt M.Usha (A-9) representing (A-10) M/s.Navasakthi Township Developers Private Limited at Pondicherry and other places to cheat Government of Puducherry, prepared false Encumbrance Certificate and registered the lands in R.S.No.108/1, 112/1 to 5 116/A located at Pillaiyarkuppam Revenue Village, Bahour Commune, Puducherry in favour of Smt M.Usha (A-9) and Shri K.I.Manirathinem (A-3). Thereafter, the accused suppressing the fact that the lands in R.S.No.108/1, 112/1 to 5, 116/A were acquired under land acquisition Act and given to Pondicherry Papers Limited (A-4) for running a paper mill and that knowing well that the lands could not be transferred to others without getting No Objection Certificate/Permission from Government of Puducherry permitted conveyance of lands to third parties by not objecting to grant of permission for approval of layout and construction from the Pondicherry Planning Authority Committee. After lay out and construction of plots and houses in the said lands, the same were sold to third parties. Thereby the accused persons by making false document (EC), converted the Government Property, entrusted with public servants, in to private use and allowed the private persons to use it. Thus the public servants in connivance with private persons caused wrongful loss of Rs.7,53,88,000/- (approximately) to the Government of Pondicherry and corresponding wrongful gain to the private persons. The final report was filed for offences under Sections 120(B) r/w 420 of IPC and under Sections 13(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

3. The specific allegation against the petitioner Shri.N.Tamilselvan who had been arrayed as (A-7) is that he (a) did not take any action on file No.14680 submitted by Ms Muthu Meena, the then Deputy Tahsildhar (b) kept the enquiry report against Shri M.Venkatesan (A-1) submitted by Shri K.Durga Prasad idle without taking any action (c) did not submit or ensure to submit the file No.14680, handed over by Shri G.Ragesh Chandra (A-5-since died), to Shri Deepak Kumar, the then District Collector (d) did not raise objection for issue of permission for lay out and construction on the lands in R.S.No.108/1, 112/1 to 5, 116/A to Shri K.I.Manirathinem (A-3) during Pondicherry Planning Authority Committee Meeting.

4. The petitioner filed a petition for discharge under Section 239 of Criminal Procedure Code contending that there was no prima facie evidence or material for framing charges against him. The petitioner had submitted that his name did not find a place in the First Information Report and that the source information did not disclose any role played by the petitioner or the complicity of the petitioner in the alleged offences and that the prosecution has converted a Civil case into a Criminal case and that there was no material to show that there was meeting of minds between the petitioner and the other accused persons for commission of the alleged offences and that no dishonest intention was made out as against the

petitioner. Further he had contended there was no prima facie evidence on record to show that the conduct of the petitioner in doing his official acts were malafide in nature since the officials acts and judicial acts are presumed to have been done in good faith and that the petitioner is presumed to be innocent and as such the petitioner is clothed with Section 114 (e) of the Indian Evidence Act and that there was no iota of evidence implicating the petitioner to the offences.

5. The respondent had filed the Counter.

6. The trial Court having found that no case for discharge has been made out by the petitioner and having found that there was enough documentary and oral evidence sufficient to frame charges against the petitioner dismissed the petition for discharge by order dated 26.07.2018. The Revision is filed against dismissal of the discharge petition.

7. The learned Senior Counsel for the petitioner would submit that absolutely no ingredients of an offences Section 420 of IPC have been made out against the petitioner and that there is no direct or indirect evidence or any iota of evidence pointing to any illegal act of the petitioner and there is not even any whisper about any criminal misconduct as defined under Section 13(1) (d) or any other subsections available against the petitioner and as such when there being absolutely no material for framing a charge under Section 13 (2) of the Prevention of Corruption Act, 1988 and under Section 420 of IPC against the petitioner the trial Court should have discharged the petitioner. He would further submit that the charge against the petitioner is completely based on surmises, presumptions and suspicion for which no evidence could be gathered in the investigation. He would also submit that admittedly, even before the petitioner joined duty on 03.08.2009, a file note regarding No Objection Certificate from the Government had been put up and it had been taken up till the highest level of the Government and when no order of resumption has been passed by the Government till date absolutely nothing can be inferred against the lower level officials like that of the petitioner and that non-exercise of the right of the Government to resume the property can never be the cause for presumptive criminal misconduct. He would also reiterate that the petitioner took charge as Special Officer only on 03.09.2009, by which time already request of No Objection Certificate, the file notes and other process were done and the petitioner can never be looped in the whole episode and also would submit that the final report is on wrong understanding of facts and would also submit that no criminality can be attributed to the transactions. He would further submit that the Deputy Collector (Revenue) South Puducherry passed an order vide No.002/DCRS/LA/BR/2014 dated 23.09.2014 for freezing of the Government Land Revenue value of the lands and that the third accused on behalf of the Navasakthi Townships Developers Private Limited filed

W.P.No.27616 of 2014 before this Court and that this Court had set aside the order passed by the Government and that the Writ Appeal filed by the Government of Puducherry in W.A.No.302 of 2015 had also ended in favour of the third accused. He would also submit that this Court in the above mentioned Writ Petition and Writ Appeal have held that since that Civil litigations are pending the matter could be adjudicated before the appropriate Civil Courts were the disputes are pending. In short he would also submit that the disputes related to are in respect of violation of conditions of grant of lands in favour of Pondicherry Paper Mills Limited and subsequent sale of lands in violation of conditions and as such the disputes being civil in nature, the petitioner has been unnecessarily roped in and would submit that the revision may be allowed and that the petitioner may be discharged.

8. Mr.Srinivasan, learned Special Public Prosecutor for CBI would submit that though the name of the petitioner does not find a place in the First Information Report, the evidence adduced by the prosecution through various official documents and statements of witnesses has brought out the culpability of the petitioner and that during the investigation it had come to light that the petitioner had colluded and entered into criminal conspiracy with the other accused and in pursuance of the same had wilfully failed to take action on the file relating to sale of the property. He would further submit that the petitioner had abused his official position and had kept the file pending and that he had attended a meeting with regard to according plan approval for the said property before the Pondicherry Palnning Authority Committee and he had wilfully failed to bring to the notice of the concerned authorities regarding the non approval of the Government for the sale of the alleged property. He would also submit that there are enough material to prove the complicity of the petitioner in the offences. He would also submit that there is prima facie evidence to prove that the accused entered into criminal conspiracy, abused his official position and cheated Government of Pondicherry and there are also enough material to prove various covert and overt acts of the petitioner substantially to prove his complicity in the offence which is evident through the oral and documentary evidences. He would also submit that the File No.14680 relating to seeking approval for sale of Government land of M/s.Pondicherry Papers Limited was marked to the petitioner and that he had kept the file pending without assigning any reasons and he had failed to take timely action. Further there is evidence to prove that the petitioner had attended the Pondicherry Planning Authority meeting on 30.03.2010 and that he had wilfully suppressed the fact and failed to bring to the notice of the concerned authorities that there is no Government approval for the sale of the land and plan approval should not be granted in the respect of the said land. He would also submit that the petitioner being a Government servant ought to have taken timely action and intervened and prevented the sale of lands

and thereby, the property would not have been sold and wrongful loss to the Government could have been averted. He would also submit that there are ample materials to show the criminality of the accused and his role in selling the lands for which no objection had not been issued by the Government. He would also submit that the Pudhucherry Government has filed SLP against the order passed in W.A.No.302 of 2015 and that the SLP has been admitted. He would further submit that mere pendency of civil dispute between the parties in respect of the very same transactions would not by itself alter the status of the allegations constituting the criminal offence. He would also submit that Venkatesan (A-1) had filed Crl.O.P.No.23255 of 2017 to quash the proceedings and A-3, A-9 and A-10 had filed the Crl.O.P.No.3554 of 2017 for quashing the final report on the ground of pendency of civil disputes and that this Court taking note of the similar grounds raised by the accused regrading civil liabilities between the parties has dismissed the quash petitions. He would submit that earlier this Court taking into consideration that there are prima facie materials against the accused had rightly dismissed the petitioner for quashing. He would rely on the judgement of the Hon'ble Apex Court in 2012 (9) SCC and 460 and would submit that the legal principle remains that the Court shall frame charges if there are grounds for presuming that the accused had committed the offences and that the trial Court at the stage of discharge is not concerned with proof but mere strong suspicious that the accused has committed the offence and that the final test of guilt is not to be applied at the stage of framing charges.

9. Heard both parties. Now what is to be seen is whether the trial Court is right in dismissing the discharge petition and whether the petitioner has made out grounds for and is entitled for discharge.

10. The trial Court had dismissed the discharge petition. Holding that in the case of hand prima facie materials are available and that there is no circumstances to show that there is no sufficient ground for proceeding against the petitioner. Further the trial Court has held that what needs to be considered at the stage of discharge is whether there is ground for prosecuting that the offence has been committed and not a ground for convicted the accused has been made out. The trial Court had held that even strong suspicion founded on material, which leads the Court to form a presumptive opinion has to the existence of the factual ingredients constituting the offences alleged would justify the framing of charging against the accused, in respect of the commission of that offences. Further the trial Court had held that the ground raised by the petitioner regarding the civil liability can be tested only after elaborate trial and that at the stage of discharged what the Court has to look into is whether prima facie materials are available against the the accused. Holding all the above grounds in negative against had dismissed the

discharge application.

11. I have carefully and consciously gone through the materials on record and the statement of witnesses furnished by the petitioner. The dates and events are relevant.

12. The charge sheet reveals that in the file with regard to issue of No Objection Certificate to Pondicherry Paper Mills Limited notes were put up and initiated by witness Ms.Muthu Meena incorporating the financial implication along with advantages and disadvantages and she had proposed to resume the land by the Government on repayment of the awarded amount and that the land may be utilised for other public purposes. She had also noted about the cost involved and that there will be gain to the Government by resuming the land. The file along with the note was put up to the petitioner on 03.08.2009 who was then the Special Officer, whereas he had kept the file pending without taking any action for almost 2 1/2 months. Thereafter, the file had been called by Shri.G.Ragesh Chandra (A-5-since died) on 17.10.2009, who sent the file to the Secretary (Revenue), placing the subject before the Cabinet for discussing the matter. Thereafter, the file was pending with the Government wherein the Chief Minister who had commented on the file as "please discuss" and marked the same to the District Collector on 27.10.2009. There is no material on record to show that further orders were passed.

13. The further allegations against the petitioner is that on 30.03.2010 he had attended the meeting on behalf of A-5 and that the petitioner who was aware of the pendency of the file before the Government had failed to inform the authorities about the pendency of No Objection Certificate before the Government. There are ample materials and evidence against the petitioner that the petitioner did not take any action on file No.14680 submitted by Ms Muthu Meena, the then Deputy Tahsildhar (b) kept the enquiry report against Shri M.Venkatesan (A-1) submitted by Shri K.Durga Prasad idle without taking any action (c) did not submit or ensure to submit the file No.14680, handed over by Shri G.Ragesh Chandra (A-5-since died), to Shri Deepak Kumar, the then District Collector (d) did not raise objection for issue of permission for lay out and construction on the lands in R.S.No.108/1, 112/1 to 5, 116/A to Shri K.I.Manirathinem (A-3) during Pondicherry Planning Authority Committee Meeting. In short, the petitioner who is a public servant colluded with the other accused and knowing fully well that the accused are not entitled to dispose the property, he had allowed the conveyance and failed to prevent the accused from getting approval and sell the property to third parties.

14. It is needless to say that, in respect of any prosecution instituted on a police report and tried as warrant case, the procedures regarding framing of charge, discharge,

revision against the order of discharge could be culled out from combined reading of under Sections 239, 240, 397 and 401 of the Code. In nutshell, the course of action could be as under:

a) The Magistrate, upon considering the police report and the documents sent with it.

i) Shall frame charges, if he is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code. (Subject to his opinion about his competency to try the offence and adequacy to punish); (or)

ii) He shall discharge the accused persons, if he considers the charge against the accused to be groundless. Before exercising the power to discharge, he should afford opportunity of being heard, to the prosecution and the accused.

b) Nowhere in the Code, it is stated that the exercise of the above power shall be at the instance of the parties to the proceedings. In fact, it is mandate on the part of the Magistrate to consider (Final report and documents sent along with the report), Examine (accused, if he thinks necessary) and hear (giving prosecution and the accused an opportunity of being hear) to form opinion on whether there is ground for presuming that the accused has committed offence or the charges are groundless.

What is mandated is, if the Magistrate decides to discharge, he should record the reasons for doing so. If he decides to frame charge it must be in writing, read and explained to the accused.

15. In the case of Amit Kapoor Vs. Ramesh Chander and Another reported in (2012) 9 SCC 460, the Hon'ble Apex Court held as follows:-

"30. We have already noticed that the legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra Vs. Som Nath Thappa referred to the meaning of the word "presume" while relying upon Black's Law Dictionary. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the

incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgement. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence."

16. So far as the facts of this case is concerned this Court finds that there are sufficient incriminating materials available to frame the charge against the petitioner / accused and that the civil dispute pending between the parties would not by itself alter the status of the allegation constituting the criminal offence against the accused. No valid grounds have also been raised in the revision petition warranting interference by this Court. Therefore, this Court is of the opinion that the order passed by the trial judge does not require any interference. This Court finds incriminating materials available against the petitioner and thereby, a prima facie case has been made out for proceeding further.

17. In view of the above observation, the Criminal Revision case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv
To

1. The Principal Sessions Judge, Puducherry
2. The Additional Superintendent of Police,
SPE:CBI:ACB, Chennai.
3. The Special Public Prosecutor (C.B.I)
High Court of Madras.

+1cc to Mr.Saravanan, Advocate SR.NO.57770

MG(CO)
sm:3.9.2018

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and
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