IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.R.C.No.978 of 2018

K.V.Velu ... Petitioner / Accused

/Vs/

The State through
The Deputy Superintendent of Police,
Vigilance & Anti-Corruption Wing,
Villupuram Department,
Villupuram District. ...Respondent / Complainant

PRAYER: Criminal Revision Case filed under sections 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 06.08.2018 of the learned Special Court for Prevention of Corruption Act Cases, Villupuram, in C.M.P.No.36 of 2017 in Spl.C.C.No.05 of 2016, dismissing the discharge petition under Section 239 of Cr.P.C against this petitioner/accused.

For Petitioner : Mr.V.Arunagiri

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

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O R D E R

This Criminal Revision Case is filed by the petitioner/accused against the dismissal of discharge filed under Section 239 of Cr.P.C. The petitioner who is arrayed as the sole accused has been charge sheeted for offence under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution in brief as per the charge sheet is that the petitioner/accused was working as A4 Assistant at Gingee Taluk Office, Viluppuram District from 08.07.2013 to 17.06.2015 and that on 18.03.2015, the de-facto complainant, who owns a pawn brokers shop at Gingee Town in the name of “R.R.Pawn Brokers”, applied for renewal of the license for his shop for the years 2015-2018 at 10.30 hrs before the accused. At that time, the accused demanded Rs.4,500/- as illegal gratification

for processing and arranging to renew the pawn brokers licence for the years 2015-2018. Twenty days prior to 15.06.2015 on Sunday at about 11.30 hrs, when the de-facto complainant met the petitioner/accused at his office the petitioner/accused had reduced his demand to Rs.4,000/- on the request made by the de-facto complainant. On the same day at about 12.00 hrs, the petitioner/accused had contacted the de-facto complainant over mobile phone and had informed him that his license was ready and asked him to bring the demanded amount of Rs.4,000/-. On 16.06.2015 at about 11.30 hrs, when the de-facto complainant met the petitioner/accused at his office, the petitioner/accused had further reduced his demand to Rs.3,500/- as illegal gratification other than legal remuneration for delivering the processed license renewal order of the complainant's pawn brokers shop license for the years 2015-2018. Further, in pursuance of the above said demands, the petitioner/accused had on 17.06.2015 between 12.30 hrs and 12.40 hrs, at Gingee Taluk Office demanded and obtained Rs.3,500/- as illegal gratification other than legal remuneration for himself as motive or reward for processing and arranging the pawn brokers shop renewal for the years 2015-2018 and thereby, the petitioner/accused had committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Further, during the course of same transactions at the same place and same time, the petitioner/accused being a public servant by corrupt and illegal means and by abusing his position as public servant obtained the above said pecuniary advantage of Rs.3,500/- for himself in the circumstances stated above and had committed an offence punishable under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. The prosecution has cited 18 witnesses and had listed 28 documents and 6 material objects along with the charge sheet. The petitioner/accused had filed a petition for discharge under Section 239 of Cr.P.C contending that the charge sheet does not prima facie show or disclose the commission of any of the offences alleged against the petitioner/accused and that the charge sheet does not make out a case against the petitioner/accused and that even if the entire complaint goes unrebutted will not warrant the conviction of the petitioner/accused and thereby, he is entitled to discharge. Further, the petitioner/accused had stated that he was relived on 18.03.2015 at the close of the office hours, for the purpose of attending a training conducted by the State Government from 20.03.2015 to 07.05.2015 and a specific date 19.03.2015 was treated as a travelling time to reach the training place at Vellore. Further, the petitioner/accused has stated since he had gone on training he had handed over the application of the de-facto complainant vide DR.No.9487 to one Mr.Duraiselvan who was A1 section clerk and that the petitioner/accused joined duty after completion of his training at Vellore on 08.05.2015 and that the application was returned by A1 section clerk to the petitioner/accused on 13.05.2015. The petitioner/accused had submitted that the application of the de-facto complainant was processed by the Tahsildhar, Gingee on 18.03.2015 itself and was renewed on the same day as the previous license expires on 31.03.2015. The further submissions made by the petitioner/accused was that the de-facto complainant contacted the petitioner/accused when he was in the training period and the petitioner/accused briefed him that the renewed license is with A1 section clerk and had directed the de-facto complainant to contact A1 section clerk. The petitioner/accused would further submit that on 08.05.2015, he had called the de-facto complainant over phone several times to come and collect the renewed license and that the calls were made from his office landline phone number and his mobile number, whereas, the de-facto complainant had not turned up for the reasons best known to him and further, the de-facto complainant met the petitioner/accused on 16.06.2015 by 11.30 a.m., and that even on that day the de-facto complainant had refused to receive the license saying that he is going to Chennai and that he may miss the original license in transit and had told the petitioner/accused that he will collect the renewed license once he returns from Chennai. The petitioner/accused had further contended that the allegations are baseless and that the pawn broking license was already renewed on 18.03.2015 and that the charges are baseless.

3. The respondent had filed a counter stating that the application for renewal of pawn broker license of the de-facto complainant was picked up by the petitioner/accused on 18.03.2015, through the Distribution Register, vide No.4015 and thereafter, it was processed and the file regarding the renewal licence had been closed in the Distribution Register, vide No.9487 on 13.05.2015. While so, the petitioner/accused had managed to obtain the order of renewal from his higher-up with ante-date i.e., on 18.03.2015 and that the said facts can be proved only in a full fledged trial, by relying on the entries made in the Distribution Register. Further, statements have been recorded from witnesses through Tr.Seenuvasan and Tmt.Vasuki with regard to the procedure adopted and regarding the process of application of the de-facto complainant starting with serial No.3198 and closing with the serial No.4017 on 13.05.2015, thus, proving to show that the petitioner/accused had acted with a motive to extract bribe from the de-facto complainant and thereby, there was prima facie material against the petitioner/accused for having committed the offences under the Prevention of Corruption Act, 1988 and that it is not a case for discharge. Further, there was ample material to show that there was demand and acceptance and that the phenolphthalein test conducted on both hands of the petitioner/accused and his cloths had also proved positive and the tainted money is also recovered from the petitioner/accused.

4. The trial Court taking into consideration of materials available and after hearing both sides had having come to a conclusion that there was prima facie material against the petitioner/accused and that the allegations against the petitioner/accused could be proved only by a full fledged trial and had dismissed the application for discharge by an order dated 06.08.2018. The revision case is filed against the dismissal of the discharge petition.

5. Mr.V.Arunagiri, learned counsel appearing for the petitioner/accused would submit that the application of the de-facto complainant was processed by the Tahsildar on 18.03.2015 itself and it had been renewed on the same day and that the de-facto complainant had contacted the petitioner/accused when he was in the training and that the petitioner/accused had suggested the de-facto complainant to get the renewed license from A1 section clerk. He would further submit that the petitioner/accused had called the de-facto complainant several times to receive the license which was renewed as early as 18.03.2015, whereas, the de-facto complainant had failed to receive it for the reasons best known to him. The learned counsel for the petitioner/accused would also submit that no preliminary enquiry had been conducted and would submit that infact the pawn broking license of the de-facto complainant was renewed on 18.03.2015, vide the proceedings of the Tahsildar, Gingee, in K.Dis(A4)/9487/2015. He would also submit that the license renewal certificate was signed by three persons including this petitioner/accused and the Tashildar and that if the statement of the prosecution that the petitioner/accused had managed to get the licence with ante date is true, the respondent ought to have implicated the Tashildar also as an accused which had been strangely not done in this case. He would also submit that when facts remains so, the statement of the de-facto complainant that the petitioner/accused demanded bribe for renewal of license on 15.06.2015 is absolutely false and unbelievable. He would also rely on the judgement of the Hon'ble Apex Court in Crl.A.No.616 of 2017. He would submit that when the license had been renewed on 18.03.2015 itself, there is no question of making a demand and thereby would submit that the petitioner/accused is entitled for discharge. He would also submit that though the three persons are responsible for issuance of renewal of license, no action has been taken against the other persons and that the petitioner/accused is the only person who has been charge sheeted.

6. Per contra, countering the arguments made by the learned counsel for the petitioner/accused, the learned Additional Public Prosecutor would submit that all the entries in the Distribution Register maintained at the Tashildhar's Office would go to show that the petitioner/accused had managed to manipulate with the other officers and had issued the license

with ante date i.e., on 18.03.2015. He would further submit that the entries in the Distribution Register would show that the application was received by the petitioner/accused on 18.03.2015, vide No.4015 and further, the process of issuance of renewal licences had been completed on 13.05.2015, vide entry No.9487 in the Distribution Register. Hence, the claim of the petitioner/accused that the renewal of license was issued on 18.03.2015 itself is false. He would also submit that the statement of witnesses LW-5 and LW-11 with regard to the procedure adopted at the Tahsildhar's Office would go to prove that the license was not made ready on 18.03.2015 as stated by the petitioner/accused. He would also submit that these aspects could be proved or disproved only by conducting a full pledged trial. He would also submit that the trap procedure confirms the demand and acceptance of tainted money by the petitioner/accused and that since there are ample materials against the petitioner/accused he cannot be discharged. He would also submit that the Court shall frame charges if there are grounds for presuming that the petitioner/accused had committed offence and that the trial court at the stage of discharge is not concerned with proof, but mere strong suspicion that the petitioner/accused had committed the offence and that the final test of guilt is not to be applied at the stage of framing charges. Further, he would submit that in respect of the allegation that the renewal of license had been issued with an ante date, departmental proceedings have been initiated against the persons concerned.

7. I have consciously gone through the materials on record. As stated by the learned Additional Public Prosecutor, it is seen that the procedure which has been adopted in the Tahsildhar's Office with regard to processing of applications is that when an application is received, an entry is made in the Distribution Register and a specific number is given in the Distribution Register and after completion of process, entries are made in the Distribution Register and specific numbers are given in respect of disposal of application. In this case, the application has been received on 18.03.2015 and the receipt has been entered in the Distribution Register vide entry No.4015 and after conclusion of process, it has been entered in the Distribution Register on 13.05.2015 vide entry No.9487. Hence, the submission made by the learned counsel for the petitioner/accused that the renewal of licence was issued on 18.03.2015 itself is doubtful and thereby, creating suspicion with regard to the procedure adopted at the Tahsildhar's Office. If the renewal licence had been made ready and issued on the same day, corresponding entries with regard to application and disposal would have been made on the Distribution Register on the same day and there is no need for making an entry regarding disposal of application on 13.05.2015. Moreover, in the statement of witnesses, LW-5 and LW11 had also stated about the

procedure adopted in the office. Further, the trap was laid on 17.06.2015 and concluded on the same day and it has also been proved positive and as rightly pointed out by the learned Additional Public Prosecutor, no explanation has been given by the petitioner/accused for receipt of the money by the petitioner/accused during the trap proceedings on 17.06.2015.

8. It is needless to say that the learned Magistrate upon considering the police report and the materials sent along with it, is of the opinion that there is a ground for presuming that the petitioner/accused had committed an offence triable against him, he shall frame charges against the petitioner/accused. At the stage of framing of a charge, the court is not concerned with the proof of the allegation; rather it has to focus on the available material and form an opinion whether there is presumption or suspicion that the accused had committed an offence, which if put to trial could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. A mere presumption is enough to frame charges against the accused. It is a well settled law that the revisional jurisdiction should be exercised cautiously. Normally, the revisional jurisdiction should be exercised on a question of law. However, when the factual appreciation is involved, then interference of this court can be warranted in class of cases where there was perverse finding with regard to the facts. So far as this case is concerned there is no error or perversity in respect of facts. Moreover, the facts in Crl.A.No.616 of 2017 relied on by the learned counsel for the petitioner/accused is not applicable to this case. The facts 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."

9. On careful analysis this court is of the opinion that there are sufficient materials available against the petitioner/accused for framing the charges. There is prima facie presumption against the petitioner/accused. Therefore, this Court is of the opinion that the order passed by the trial court does not suffer any infirmity and therefore does not require any interference.

10. In view of the above observation, the Criminal Revision case stands dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge,
The Special Court for Prevention of Corruption
Act Cases, Villupuram.

2. The Deputy Superintendent of Police,
Vigilance & Anti-Corruption Wing,
Villupuram Department,
Villupuram District.

Copy To:

The Public Prosecutor,
High Court of Madras,

+1cc to Mr.K.Ashok Kumar, Advocate, S.R.No.61654.

Crl.R.C.No.978 of 2018

VGI(CO)

rrs 24/09/2018