IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2017

Pronounced on : 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.26903 of 2017
and
Crl.M.P.No.15455 of 2017

P.M.Narasimman .. Petitioner

Vs.

The Inspector of Police,
E4, Abhiramapuram Police Station,
Chennai. .. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the FIR in Crime No.583 of 2017 on the file of the Inspector of Police, E4 Abhiramapuram Police Station, Mylapore, Chennai and to quash the same.

For Petitioner : Mr.Shanmugavelayutham, Sr. counsel for Mr.T.Vijayaraghavan

For Respondent : Mr.C.Iyyaparaj Additional Public Prosecutor

O R D E R

Heard Mr.Shanmugavelayutham, learned Senior counsel for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the respondent.

2.The brief facts of the case is as follows:

The Director General of Income Tax had conducted a seizure action under Section 32 of the Income Tax Act in various places of Tamil Nadu on 07.04.2017. During the search, various documents were seized in different places alleging distribution of money to voters in the then proposed bye-election in R.K.Nagar Legislative Assembly Constituency. In continuation of the seizure, the Election Commission of India was addressed through a letter dated 09.04.2017 for further action. On 18.04.2017, the Election Commission of India, had in turn directed the Chief Electoral Officer of Tamil Nadu to initiate police action on the same. Accordingly, the Returning Officer had given a complaint on 27.04.2017 at 11.00 hrs to the respondent police detailing the search and seizure action initiated by the Income Tax Department and seeking for registering of their complaint for an offence under Section 171 (B) of IPC. The said complaint came to be registered on the same day in FIR No.583 of 2017 for an offence under Section 171 (B) IPC. The said FIR is under challenge in the present petition.

3.Mr.Shanmugavelayutham, learned Senior counsel appearing on behalf of the petitioner submitted that the FIR, even if taken on face value and accepted in its entirety, does not constitute the offence of bribery as defined under Section 171 (B) IPC. The learned Senior counsel further submitted that no person has been named as an accused in the FIR and in the absence of "giver" and the "recipient", the offence of bribery has not been made out and therefore, the FIR is liable to be quashed.

4.Mr.C.Iyyapparaj, learned Additional Public Prosecutor on the other hand opposed the petition stating that the complaint prima-facie reveals the commission of an offence under Section 171(B) of IPC and therefore, there is no infirmity or illegality in the FIR. The learned Additional Public Prosecutor further submitted that the issue requires investigation and it is pre-mature to challenge the FIR, which is pending investigation.

5.I have given careful consideration to the submissions made by the respective counsels.

6.The impugned FIR has been registered for the sole offence under Section 171 (B) of IPC and no named person has been shown as suspect in the said FIR. In this background, what requires to be analysed is as to whether an offence under Section 171(B) of IPC has been made out based on the averments made in the complaint.

7.Section 171(B) IPC reads as follows:

> 171B. Bribery — (1) Whoever—
>
> i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
>
> (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:
>
> Provided that a declaration of public policy or a promise of public action shall not

be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward."

8.The punishment for bribery is provided under Section 171 (E) of IPC, which reads as follows:

> "Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:
>
> Provided that bribery by treating shall be punished with fine only."

9.In the present case in hand, the incriminating document as per the version of the Income Tax Department is a piece of paper alleged to have been seized from the room allotted in the name of Mr.C.Vijaya Baskar in the MLA's Hostel at Chennai. The said paper allegedly seized carries certain details under the heads 'Election Work Team In-charge'. Details of six Ministers including the Chief Minister, the total booths and voters have been mentioned therein. Under the head of each of the six Ministers and one other person, various amounts to the tune of Rs.89,65,80,000/- have been shown. These information have been typed out and there is no signature or other details as to who the author of the said letter is. The letter also does not speak about of any information indicating that a gratification has been given or offered or agreed to be given to any other person for exercising their electoral rights.

10.One of the main ingredients to constitute an offence under Section 171(B) IPC is that the named person or persons ought to have given or offered to give or agreed to give or agreed to give gratification from any person to exercise their electoral rights or should have offered or agreed to give such gratification. Apparently, the paper seized by the Income Tax Department does not even remotely indicate illegal gratification or offered to be given for any person for exercising the electoral rights. While that being so, I am unable to comprehend as to how and on what basis, the respondent police has registered an FIR based on the paper allegedly seized by the Income Tax Department.

11.Yet another aspect, contrary to the procedure contemplated under the Code of Criminal procedure for registering an FIR, is that the complaint of the Returning Officer came to be received on 27.04.2017 at 11.00 hrs and registered at the same time by the respondent. There is no indication that a preliminary enquiry was conducted for the purpose of ascertaining as to whether a cognizable offence has been made out or not. The Hon'ble Supreme Court in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others reported in 2013 (6) CTC 353 has held that when the information furnished to police officer does not disclose a cognizable offence, a preliminary enquiry has to be conducted.

12.The FIR has been registered for the commission of an offence under Section 171(B) IPC. The said offence is a non cognizable offence. Apart from Section 171(B) IPC, there are no other incriminating averments to make out a case for commission of any other cognizable offence. While that being so, it is highly improper on the part of the Investigating Officer to straight away register the complaint, without a preliminary enquiry and particularly, for a non cognizable offence without obtaining the order from the jurisdictional Magistrate to investigate into the non cognizable case. Such an action of registering the complaint for a non cognizable offence without obtaining prior order from the jurisdictional Magistrate is opposed to the well laid down procedure contemplated under Section 155(2) Cr.P.C., which prohibits a police officer to investigate a non cognizable case without prior orders from the Jurisdictional Magistrate.

13.In the absence of the offence under Section 171(B) of IPC., having been made out and failure on the part of the first respondent to obtain prior orders from the jurisdictional Magistrate to investigate a non cognizable offence, it can only be concluded that the entire exercise of registration of the complaint is illegal, improper and without jurisdiction.

14.In the result, the petitioner is entitled to succeed and accordingly, the records relating to the investigation in FIR No.583 of 2017 on the file of the respondent police/Inspector of Police, E4 Abhiramapuram Police Station, Mylapore, Chennai stands quashed. Consequently, the Criminal Original Petition is allowed. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

DP

To

1.The Inspector of Police,
E4, Abhiramapuram Police Station,
Mylapore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.T.Vijayaraghavan, Advocate SR.No.19415

Crl.O.P.No.26903 of 2017
and
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KAN(CO)
GN(23/03/2018)