



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. (MD) No.2474 of 2014

R.R.Babulal : Petitioner/Accused 1

-Vs-

State, represented by
The Superintendent of Police,
Vigilance and Anti-Corruption,
No.74, Thiruvananthapuram Road,
Palayamkottai,
Tirunelveli District.

: Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to the charge sheet laid in Special Case No.7 of 2008 on the file of the learned Chief Judicial Magistrate -cum- Special Judge, Tirunelveli and quash the same insofar as the petitioner herein is concerned.

For Petitioner : M/s.P.Vimala

For Respondent : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor

ORDER

The Vigilance and Anti-Corruption registered a *suo motu* First Information Report in Crime No.9 of 2001 on 31.12.2001 under Sections 120-B, 420, 409, 477A of the Indian Penal Code, Section 13(1)(c) and (d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 against Louis Simon (A-1), formerly Executive Engineer, Agricultural Engineering Department, R.R.Babulal (A-2), Assistant Executive Engineer, Kanthimathinathan (A-3), Assistant Engineer and Gabriel Premkumar (A-4), a private person. During the course of investigation, Louis Simon(A-1) died. After completing the investigation, the police have filed a charge sheet, which has been taken on file as Special Case No.7 of 2008 by the learned Chief Judicial Magistrate -cum- Special Judge, Tirunelveli against R.R.Babulal (A-1), the petitioner herein and others, for quashing which, R.R.Babulal (A-1) has filed the present quash application.



2. To appreciate the case of R.R.Babulal (A-1), it may be necessary to extract the relevant paragraphs from the final report, which read thus:

"As per G.O.Ms.No.546 Agricultural (H1) Department dated 18.12.1997 the Government of Tamil Nadu have sanctioned an amount of Rs.1312.47 Lakhs to implement the Drip Installation and Drip Demonstration to Horticulture Coops for the year 1997-1998 under the Central Government Sponsored Scheme and allocated an amount of Rs.50 lakhs to Tirunelveli District for the implementation of the Drip Installation and Drip Demonstration Scheme above stated in Tirunelveli District.

As per the above G.O., a subsidy of 90% of the cost of installation of the Drip Irrigation was allowed to the small, marginal, SC/ST and Women Farmers and 70% of the cost of Rs.25,000/- was allowed in respect of other farmers.

As per the proceedings in C1/7192, dt.25.09.1997 Tr.M.Louis Simon (Since deceased) the Executive Engineer had nominated Tr.Kanthimathinathan, AE., Tr.A.Subramanian and Tr.A.Abdul Salaam (since deceased), Junior Engineer for the implementation of the drip irrigation scheme and also directed accused Tr.R.R.Babulal (A1) to supervise their work.

The Chief Engineer in his letter dated 27.11.1997 to the Executive Engineers directed that the Executive Engineers should conduct test check measurement and then only they should allow the subsidy. The letter further directed that the AE/JE should measure the installations and make entries in the M.Books regarding the work done and that the Assistant Executive Engineer should check measure the work done and should allow the subsidy only after the installation.

Prior to and between 27.10.1997 and 16.04.1998 the accused A.1 to A.7 and the deceased Tr.M.Louis Simon and A.Abdul Salaam entered into and executed a Criminal Conspiracy having agreed among themselves to commit and abet one another in the commission of offences of framing in correct documents such as false invoices, false entries in the M.Book and false agreements relating to the drip irrigation work within Tirunelveli District, forgery, using forged documents as genuine for the purpose of cheating, causing injury by way of financial loss to the Government, cheating, criminal breach of trust by public servants and criminal misconduct by public servants."

3. Coming to the specific allegations as against R.R.Babulal (A-1), it is stated in the final report as follows:



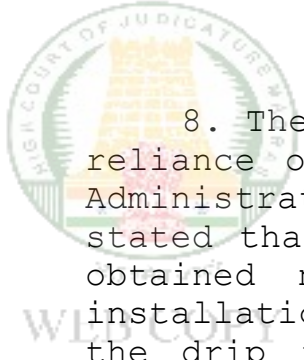
"In pursuance of the said conspiracy and in the course of the same transaction the accused Tr.R.R.Babulal (A.1) on 28.02.1998 framed incorrect record by making false entry in the M.Book No.2245 in page No.70 & 71 as if he check measured the drip irrigation system installed in the land of accused A6. Tr.C.Christudhas and A7.Tr.C.Nelson and as if that the drip irrigation system was laid therein with a cost of Rs.20,502,95 and as if that the above said accused were entitled for a subsidy of Rs.12,881/- whereas in actuality no such drip irrigation system was installed in the land of A6 Tr.C.Christudhas and A.7 Tr.C.Nelson."

4. It is contended by R.R.Babulal (A-1) that the transaction in this case had taken place in the year 1997-1998 and that the First Information Report itself was registered only on 31.12.2001 and a charge sheet has been filed in the year 2008 and there has not been any progress in the case till 2014, on account of which, undue prejudice has been caused to the accused and his right under Article 21 of the Constitution of India has been infringed. It is also contended that the main accused, namely Louis Simon had died and Abdul Salaam, who was in-charge of the Installation, had also died and, therefore, nothing survives in the case.

5. The learned Additional Public Prosecutor placed strong reliance upon the 161(3) Cr.P.C., statement of one O.S.Suseendhiran, the Superintending Engineer, Agricultural Engineering Department, who had stated that he went along with the police on 17.10.2003 to inspect the lands of the beneficiaries/accused, namely Thangaraj (A-3), Rajarathinam (A-4) and Essakku(A-5) and that on inspection, he found that there were no traces of drip irrigation having been installed in the said lands, but the measurement book maintained by R.R.Babulal (A-1) showed as if drip irrigation was installed.

6. It is the contention of the petitioner that even according to the statement of O.S.Suseendhiran, the measurement of the land of the beneficiaries tallied with the measurement noted in the measurement book and, therefore, the petitioner cannot be said to be involved in the offence.

7. It is true that the measurement of the land of the accused tallies with the measurement noted in the measurement book. But the allegation is that the petitioner and others have created records as if drip irrigation was installed and they had misappropriated the subsidy of Rs.42,393/-.In fact, in the statement of O.S.Suseendhiran, he has stated that when the beneficiaries were asked to show the pipes, they were not able to produce the same.



8. The learned Additional Public Prosecutor also placed strong reliance on 161(3) Cr.P.C., statement of A.Ramachandran, Village Administrative Officer during the relevant point of time, who has stated that Thangaraj (A-3), Rajarathinam (A-4) and Essakku (A-5) obtained necessary Certificates from him for the purpose of installation of drip irrigation in their lands, but, in reality, the drip irrigation facility was not installed in their lands. Thus, the prosecution has obtained both negative evidence and positive evidence to show that there has not been installation of drip irrigation facility, but, whereas, the measurement book shows as if the facility was provided and the subsidy of Rs.42,393/- has been utilized. Thus, when there are *prima facie* materials, the prosecution cannot be quashed merely on the ground of delay, especially, in the light of the judgment of the Supreme Court in **Ranjan Dwivedi v. C.B.I., Through the Director General [AIR 2012 SC 3217]**.

9. In such view of the matter, the prosecution cannot be quashed in the light of the law laid down by the Supreme Court in **AIR 1992 SC 604 [State of Haryana v. Bhajan Lal]**.

10. In fine, the Criminal Original Petition is devoid of merits and accordingly, the same is dismissed. However, the Trial Court is directed to proceed with the trial in Special Case No.7 of 2008 expeditiously, since the case is pending from 2008 onwards.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate -cum- Special Judge,
Tirunelveli.
2. The Superintendent of Police,
Vigilance and Anti-Corruption,
No.74, Thiruvananthapuram Road,
Palayamkottai, Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SML
AE/MR/SAR4/22.01.2018/4P/4C