BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.04.2018

DELIVERED ON : 10.07.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.O.P.(MD)No.5209 of 2018
and
Crl.M.P.(MD)Nos.2521 and 2522 of 2018

Veeranan .. Petitioner

Vs.

1.The State rep. By its
The Inspector of Police,
Vigilance and Anti Corruption,
Theni, Theni District,
(Crime No.2 of 2011).

2.V.Seenivasagam .. Respondents

Prayer : This criminal original petition is filed under Sections 482 of Cr.P.C., to call for the records relating to the impugned Chargesheet in Special C.No.2 of 2017 on the file of the learned Chief Judicial Magistrate, Theni, dated 17.04.2017 and to quash the same.

For Petitioner : Mr.R.Murugan
For Respondent No.1 : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

Heard Mr.R.Murugan, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the first respondent.

2.This petition has been filed to quash the impugned Chargesheet in Special C.No.2 of 2017 on the file of the learned Chief Judicial Magistrate, Theni, dated 17.04.2017.

3.On the side of the petitioner, it is stated that the second respondent filed a petition before the learned Chief Judicial Magistrate, Theni in Cr.M.P.No.202 of 2011 dated 01.03.2011 for direction under Section 156(3) of Cr.P.C., the FIR registered on 05.04.2011 and under Section 13(2) r/w 13(1)(e) of prevention of corruption Act, 1988 under Section 406, 409, 466, 468, 471 and 420

IPC. It is stated that the learned Chief Judicial Magistrate cannot order investigation against a public servant under Section 156(3) of Cr.P.C., without obtaining necessary sanction under Section 197 of Cr.P.C. r/w. Section 19 of Prevention of Corruption Act.

4.The petitioner and his wife were Panchayat President of Kandamanoor Panchayat alternatively for several decades continuously winning in the election in the open General Panchayat Constituency. The petitioner did not yield to the pressure mounted upon him by the second respondent to issue tax receipt to a non existing building in the name and style of “Kannan Oil Mill”. The second respondent has swindled more than a crore of Rupees from TIIC Ltd., by way of loan without installing any machinery and also without running an Oil Mill. It is stated that the FIR was registered on 05.04.2011 only after six years, the final report has been filed. Thereby, the constitutional right for speedy investigation and the trial is infringed. Article 21 of the Constitution of India is applicable for police investigation also.

5.It is further stated that the case against the second respondent is also registered in Cr.No.158 of 2010. The second respondent always used to file the complaint against the petitioner and he has filed a writ petition in W.P.(MD)NO.412 of 2010 against the petitioner and three others wherein the petitioner was fourth respondent and the same was dismissed on 20.01.2011 for non appearance of the petitioner. Since the Investigation Officer without obtaining necessary sanction as contemplated under Section 197 of Cr.P.C. r/w Section 19 of Prevention of Corruption Act, the final report filed by the Investigation Officer is ultra vires. The impugned chargesheet filed by the first respondent is without authority and the same is liable to be quashed.

6.On the side of the petitioner, it is further stated that the first respondent has no locus standi to file a chargesheet to interfere in the matter arose out of petitioner's official duty as a President, public servant. There is no complaint from any quarter alleging that he received illegal gratification from anybody and hence, the invocation of Section 13(2) and 13(1)(e) of Prevention of Corruption Act is per se illegal. Based on the direction, a petition was filed before the learned Chief Judicial Magistrate, Theni under Section 156(3) Cr.P.C. The consequential chargesheet was filed by the second respondent on 17.04.2017 without conducting proper investigation and also without Authority. The account of the Village Panchayat has been periodically verified, checked and audited by the high authorities namely Assistant Director, Audit attached to Block Development Officer, Theni and thereafter if at all any discrepancy is there, the same should be reported to the Higher authorities for initiating action against the petitioner. When there is no such report either by the Auditor or by any other higher authorities or by any of the General public, the vexatious complaint of the second respondent is with sinister design and make-belief affairs to torture the petitioner on false allegations.

7.It is stated that the investigation on the basis of the false FIR without any authority has been conducted and the impugned charge sheet was laid and was taken on file in Spl.C.No.2 of 2017 on the file of the learned Chief Judicial Magistrate, Theni and the same is pending for trial and the same is posted for commencing trial on 16.04.2018. The second respondent has applied for drinking water connection to his purporsed house bearing Survey No.451/1 wherein the Kannan Oil Mill building is alleged to have been existed and the second respondent never lived therein. It is stated that the petitioner is a senior citizen and also suffering due to high sugar and heart ailment and he finds it very difficult to appear before the learned Chief Judicial Magistrate, Theni for each and every hearing date for which his personal appearance is very much essential and indispensable. Hence, he prayed to quash the impugned chargesheet in Special C.No.2 of 2017 on the file of the learned Chief Judicial Magistrate, Theni dated 17.04.2017.

8.On the side of the first respondent, it is stated that allegation against the petitioner is that he accumulated wealth beyond his income by using his official powers. Only on the direction of the learned Chief Judicial Magistrate, Theni, this case has been registered. The petitioner acquired wealth through illegal means. This petitioner has already filed a petition in Crl.O.P.(MD) No.4114 of 2017. After charge sheet is filed, the petition was dismissed on 04.01.2018. The petitioner has failed to give those particulars in this petition. The first petitioner has enquired and got the assets and got valuation reports. Though the FIR was registered six years ago, the charge sheet was filed only on 12.04.2017. The petitioner has not taken any steps till then. After quash petition was dismissed, he filed this Criminal Original Petition without disclosing the prayer in that petition.

9.On the side of the first respondent, it is stated that the sanction under Section 197 of Cr.P.C., is not necessary. At the time of lodging the FIR, the petitioner was the President. At the time of filing charge sheet, he was not the President and there is no competent authority to remove a person from the post of President and hence, the sanction is not necessary.

10.On the side of the first respondent, the learned counsel placed reliance on the Judgment passed in the case of The State of Karnataka v. R.Prakash, which reads as follows:

> "Since the counsel for the accused has stated that without obtaining sanction of the Government accused shall not be prosecuted, so it is the counsel for the accused who ought to have disclose stating as to who is the competent authority to issue sanction to prosecute the accused for the offence alleged against him."

11.On the side of the first respondent, the learned counsel relied on the Judgment passed by the Patna High Court in the case of

Sri Abhijit Sinha, Spl Judge and Others v. S.Z.H.Zafari and another, which reads as follows:

> "The facts that the offences were allegedly committed during the period between 28.05.1985 and 20.05.1986, at that time, Opp. Parties were posted as Secretary-cum-Commissioner and Technical Secretary to Engineer-in -Chief in the department PHED, offences were committed in exercise of official duties by the Opp. Parties and when the charge-sheet against the Opp. Parties was submitted, both the Opp. Parties had superannuated, there is no sanction under Section 197 (1), Cr.P.C., or under Section 19 of P.C. Act, 1988 are admitted fact and there is no dispute on it."

12.Records perused. A perusal of the records reveals that the second respondent has lodged a complaint against the petitioner. The second respondent has filed a petition in Cr.M.P.No.202 of 2011 dated 01.03.2011 before the learned Judicial Magistrate, Theni, directing the first respondent to register a case against the petitioner. The first respondent has registered a case under Sections 13(2) r/w. 13(1)(e) of P.C. Act, 1988 and Sections 406, 466, 468, 471 and 420 of IPC. The petitioner questioned the FIR and filed a quash petition in Crl.O.P.(MD)No.4114 of 2017 and the same was dismissed by this Court wherein it has been stated that the charge sheet has also been filed S.C.No.2 of 2017, before the learned Chief Judicial Magistrate/Special Judge, Theni on 12.04.2017. Recording the same, that Criminal Original Petition was dismissed as infructuous.

13.From 01.03.2011 till January 2018, no steps was taken regarding the complaint forwarded to the Deputy Superintendent of Police, Vigilance and Anti Corruption Wing, Theni. The petitioner now questioned the order passed by the learned Chief Judicial Magistrate under Section 156(3) Cr.P.C., on the ground that sanction is necessary under Section 197 Cr.P.C., r/w. under Section 19 of Prevention of Corruption Act. On the side of the respondent, it is stated that sanction is not necessary for elected members of a local body. On the side of the first respondent, it is stated that it is not the case of demand of bribery but a case for accumulation of wealth beyond the income and that sanction is not necessary.

14.The claim of the petitioner is that the he is not a public servant and that Section 13(2) and 13(1)(e) of Prevention of Corruption Act is applicable only for the public servant and not applicable to him.

15. The petitioner at one point he is claiming himself as a public servant and claiming that sanction is necessary for investigation against him but he was also claiming that he cannot be prosecuted under Prevention and Corruption Act as he is not a public servant. So the dual stand of the petitioner is not acceptable.

16.On the side of the petitioner, it is stated that there is a delay of six years in filing the charge sheet. The petitioner has not disclosed the fact that he has already filed the writ petition before this Court.

17.On the side of the first respondent, it is stated that the delay is due to examination of witnesses and for collecting reports, materials, documents and for assessing the value and for getting violation report.

18.On the side of the petitioner, it is stated that the second respondent is having some grudges or enmity over the petitioner as the petitioner refused to issue receipt for payment of tax for a non existing building in the name of 'Kannan Oil Mill'.The petitioner also refused to try to get drinking water connection in Survey No.451/1 wherein the so called Kannan Oil Mill building existed whereas the statement of the petitioner is contradictory. A person who is in public service holding office as the elected member of a local body should have clean hands. When there is a cloud upon his integrity, it is the duty of the public servant to prove his integrity through proper forum. The petitioner has not taken any steps for the past six years to quash the FIR. Only in the month of January 2018, the petitioner has taken steps to quash the FIR and that writ petition was dismissed by this Court.

19.The petitioner has not elicited this facts in the writ petition. The petitioner can raise all the points regarding the necessity for a sanction order regarding the motive for the respondents 1 and 2 against him before the appropriate forum. There is no necessity to quash the charge sheet at the present stage. There is nothing wrong for the petitioner to face the trial. The reasons for quashing as narrated by the petitioner in the petition are not satisfactory and there is no merits in the petition. The petition is liable to be dismissed. Hence, this criminal original petition is dismissed. Consequently, Crl.M.P.(MD)Nos.2521 and 2522 of 2018 are closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate, Theni District.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Theni, Theni District.

3.The Inspector of Police,
 Vigilance and Anti Corruption,
 Theni, Theni District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.Murugan, Advocate SR.No. 71920

Crl.O.P.(MD)No.5209 of 2018
10.07.2018

mrn
JM/SKN RSK/SAR 2/23.07.2018/6P/6C