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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.869 of 2014
and
M.P.(MD)No.1 of 2014

P.Jayaraman,
(Divisional Officer, Fire and Rescue Services,
Sivagangai-under suspension),
No.3, P.S.S.Mahal, Madurai Road,
Sivagangai-630561. ... Petitioner / Accused No.1

-Vs.-

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Theni, Theni District,
(in Crime No.4 of 2011) ...1st respondent / complainant

2.A.Nagaraj,
S/o.Ayyarsamy,
4/78, Adaikkampatti,
Kandamanur Via
Thekkampatti Post,
Theni District. ...2nd respondent / De-facto Complainant

Prayer: Criminal Original Petition - filed under Section 482 of the Code of Criminal Procedure, to call for the charge sheet and the records relating to the case in C.C.No.19 of 2011 on the file of the learned Special Judge for the prevention of Corruption Act Cases, Madurai pertaining to the FIR in Crime No.4 of 2011 of the first respondent and quash the same in respect of the petitioner.

For Petitioner	: Mr.M.Saravanan
For R-1	: Mr.C.Mayil Vahana Rajendran Additional Public Prosecutor
For R-2	: No appearance

O R D E R

The *de facto* complainant is the owner of a Poultry Farm. He wanted to expand his poultry farm, for which, he had applied for a loan with the State Bank of India, Andipatti. For the purpose of obtaining the loan, the *de facto* complainant required

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No Objection Certificate from the Fire Service Department. Therefore, the *de facto* complainant submitted an application on 11.11.2011 to the District Fire Officer, namely, Jayaraman (A1).

2. It is the case of the *de facto* complainant that at the time of submission of the application, Jayaraman (A1) told him that a sum of Rs.25,000/- should be given as bribe. When the *de facto* complainant told him that he cannot pay such a huge amount, Jayaraman (A1) did not budge. Further, Jayaraman (A1) told the *de facto* complainant that one Jegadeesan (A2), Station Fire Officer, Andipatti would come to the place on 15.11.2011 for inspection and that he can deal with him. Jayaraman (A1) provided the mobile phone number of Jegadeesan (A2). The *de facto* complainant contacted Jegadeesan (A2) over phone and Jegadeesan (A2) said that he will come on 15.11.2011 for inspection. Accordingly, on 15.11.2011, Jegadeesan (A2) came for inspection. At that time, Jegadeesan (A2) told the defacto complainant that Jayaraman (A1) has fixed the bribe money at Rs.15,000/- for himself. Jegadeesan (A2) demanded Rs.5,000/- for himself. When the *de facto* complainant stated that he cannot give such a large amount, Jegadeesan (A2) told him that Jayaraman (A1) already reduced his share from Rs.25,000/- to Rs.15,000/- and there cannot be any further reduction. Saying so, Jegadeesan left. Since the *de facto* complainant did not want to pay bribe, he lodged a complaint to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Theni, based on which, a case in Crime No.4 of 2011 was registered on 16.11.2011 under Section 7 of the Prevention of Corruption Act, 1988, against Jayaraman (A1) and Jegadeesan (A2).

3. The Deputy Superintendent of Police, Theni, arranged a trap, for which, he called two Government Servants, by name, V.Nagarajan and T.Venkatesh Kumar to be trap witnesses. The defacto complainant and the trap witnesses were explained about the trap procedure. Phenolphthalein was smeared on Rs.20,000/- notes. A trap was laid in which Jegadeesan (A2) was caught. Thereafter, the trap party proceeded to the office of Jayaraman (A1) at Theni and in the presence of Jayaraman and Jegadeesan, prepared the Mahazer.

4. After completing the investigation, a charge sheet has been filed in C.C.No.19 of 2013 against Jayaraman (A1) and Jegadeesan (A2) for the offences under Sections 7, 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. Jayaraman (A1) has filed the present quash application for quashing the charge sheet.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

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6. The learned counsel for the petitioner submitted that a false case has been foisted against Jayaraman (A1), at the

instance of one A.K.Nagarajan, a Station Fire Officer, against whom, Jayaraman (A1) had taken disciplinary action and had also recommended his removal from service.

7. The learned counsel for the petitioner submitted that the said A.K.Nagarajan and the *de facto* complainant Nagaraj belong to the same caste and therefore, a false case has been foisted at the instance of A.K.Nagarajan, Station Fire Officer.

8. The learned counsel for the petitioner also submitted that the *de facto* complainant, Nagaraj and A.K.Nagarajan were frequently contacting each other over phone as could be seen from the call detail records that have been submitted by the prosecution.

9. The learned counsel submitted that the phone number of A.K.Nagarajn is 9843140449. When this Court asked him to show any material to which caste A.K.Nagarajan and the *de facto* complainant Nagaraj belong to, he was not be able to produce any tangible material. That apart, Just because two persons belong to the same caste, *mala fide* cannot be inferred. Moreover, the trap has been laid against Jegadeesan (A2) and only thereafter, the trap party had gone to the office of Jayaraman. If there has been any *mala fide*, there would not be any necessity to go behind Jegadeesan and instead, the trap party would have proceeded straight away against Jayaraman.

10. When this Court asked the counsel to show any material with regard to the telephone number of A.K.Nagarajan, Station Fire Officer, the learned counsel produced a CSR Register, which is said to have been given by A.K.Nagarajan to the local police stating that his mobile phone bearing numbers 9445086271, 9843140449 went missing on 19.07.2011.

11. In the opinion of this Court, these are disputed questions of fact, which cannot be decided in a quash application. It is for the accused to prove at least by preponderance of probability, in the cross-examination of the witnesses or otherwise about the *mala fide* nature of the prosecution by confronting the witnesses with the documents. The call detail records cannot be relied upon by this Court in a quash application to decide that the entire prosecution was motivated.

12. The learned counsel for Jayaraman (A1) submitted that the office of two trap witnesses is in Periyakulam and it would have been impossible for them to come to the office of the Vigilance and Anti-Corruption within 45 minutes of the registration of the First Information Report. This is also a disputed question of fact, which cannot be decided in an application under Section 482 Cr.P.C.. These questions should have been put to the witnesses, when they are in the witness box.

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13. In such view of the matter, when there are *prima facie* materials against the petitioner, this is not a fit case to quash the prosecution. Hence, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is dismissed. Whatever is observed herein is only for deciding the quash application and liberty is given to the petitioner to raise all these points at the time of cross-examination of the witnesses during trial. The trial Court is directed to proceed with the trial expeditiously and complete the same within a period of six months from the date of receipt of a copy of this order.

14. The accused shall cross-examine the witnesses on the date of their examination in chief and there should not be any adjournment as held by the Hon'ble Supreme Court in the case of Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542 subject to the right under Section 242 (3) Cr.P.C.. If the accused adopts any dilatory tactics, he can be remanded to custody under Section 309 Cr.P.C. in the light of the law laid down by the Supreme Court in State of U.P. v. Shambu Nath Singh [2001(4)SCC 667].

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To
1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Theni, Theni District,
(in Crime No.4 of 2011)

2.The Special Judge for the prevention of Corruption Act Cases,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras HighCourt,
Madurai.
+1cc to Mr.M.SARAVANAN,Advocate,SR.40150

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SM:
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