BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
11.01.2018	25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.16646 of 2017

D.Karunanithi : Petitioner/Accused

Vs.

1.State, rep by
The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur District, Thanjavur.
Crime No.3 of 2014. : 1st Respondent/Complainant

2.Anbalagan :2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records in charge sheet in Special Case No.9 of 2015, pending on the file of the learned Chief Judicial Magistrate and Special Judge, Kumbakonam and to quash the same.

For Petitioner : Mr.E.Somasundaram
For Respondent No.1 : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor
For Respondent No.2 : No Appearance

ORDER
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The case of the prosecution, as set out succinctly in the final report in Special Case No.9 of 2015, pending on the file of the learned Chief Judicial Magistrate and Special Judge, Kumbakonam, is as under:-

"One Tr.S.Anbalagan is residing at Middle Street, Alakudi, Thanjavur Taluk and he is an agriculturist. He has one lorry and one tractor. On 11.05.2014 he used his lorry and tractor and other 4 tractors for taking soil from the agriculture field in Alakudi. Tmt. P.Mariyammal, Asst. Geologist, O/o. Asst. Director of Geology and Mines, Thanjavur and the accused Tr.D.Karunanithi, Revenue Inspector, Kallaperambur Firka inspected and seized all the vehicles on 11.05.2014 and fine amount of Rs.1,50,870/- was fixed by the RDO, Thanjavur on 27.05.2014. The complainant Anbalagan paid penalty of Rs.1,25,870/- on 28.05.2014 for four tractors and one lorry and paid penalty of Rs.25,000-/ on 29.05.2014 for one tractor. On 30.05.2014, the complainant Anbalagan and his friend

Tr.K.Senthillcumar met the accused Tr.D.Karunanithi at Thanjavur District Revenue Officials Cooperative Thrift and Credit Society at Collectorate Campus, Thanjavur and the accused Karunanithi instructed the complainant Tr.Analagan not to take soil without his knowledge and instructed the complainant to come after 10 days. As per instruction of the accused Karunanithi, the complainant met the accused Tr.Karunanithi at Thanjavur District Revenue Officials Co-operative Thrift arid Credit Society at Thanjavur District Collectorate Campus on 07.06.2014 at 11.30 hrs. At that time, the accused Tr.Karunanithi demanded Rs.I0,000/- as gratification, other than legal remuneration, as a motive, for himself from the complainant for allowing him to take soil from the agriculture field and instructed to bring the bribe amount on 10.06.2014".

2. Thus, the sum and substance of the complaint of the *de facto* complainant is that he was removing sand from his private land and his lorry and tractor were seized by D.Karunanithi, the petitioner herein and that he had paid penalty fixed by the Revenue Divisional Officer, Thanjavur. Thereafter, it is alleged that on 07.06.2014, D.Karunanithi demanded bribe of Rs.10,000/- for permitting the *de facto* complainant to take sand from his own land and instructed him to pay the bribe amount on 10.06.2014. On the complaint lodged by Anbalagan, the *de facto* complainant, the Vigilance and Anti-Corruption Department registered a case in Crime No.3 of 2014, under Sections 7, 13(1)(d) r/w 13(2) and Section 12 of the Prevention of Corruption Act, 1988 and laid a trap. Services of two independent persons were requisitioned to be part of the trap party. When the trap party went to the office of D.Karunanithi, he was not there, but, he directed the *de facto* complainant to give the bribe money to Arockiyasamy [A-2], the Village Assistant, who was present nearby. As per the instructions of D.Karunanithi, the bribe money was handed over to Arockiyasamy [A-2] and on getting the signal, the officials zeroed in on Arockiyasamy[A-2]. After completing the investigation, the police have filed the charge sheet against D.Karunanithi [A-1] and Arockiyasamy [A-2] in Special Case No.9 of 2015, for quashing which D.Karunanithi has filed the present application under Section 482 of the Code of Criminal Procedure.

3. Heard Mr.E.Somasundaram, learned counsel appearing for the petitioner and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, appearing for the first respondent.

4. The learned counsel appearing for the petitioner submitted that the *de facto* complainant is a tainted person, inasmuch as his vehicles were seized by the accused for illegal transport of sand and therefore, the First Information Report based on the complaint of such a person should not have been registered at the first instance.

5. The learned counsel placed reliance upon Paragraph No.42 of the Vigilance Manual, which reads as follows:-

> "42. Planning of the trap
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> (1). A trap must be very carefully planned with thorough attention to every detail, taking every precaution necessary to ensure its successfully yielding sufficient quantum of direct as well as circumstantial evidence that will sustain the case.
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> (2). Before organising a trap, a quiet and quick verification of the general reputation of the Public Servant complained against should be made. The motives, reliability and the antecedents of the complainant should also be very carefully checked and assessed. Consistent with the need for speed in laying the trap, a study of the records relating to the complainant's request to the Accused Officer and also steps taken by the latter in this regard, should be made. The complainant should use his own resources for getting the money or any other form of gratification relevant to the demand by the Accused Officer. The complainant should not be supplied with money or other articles for this purpose by the Directorate".

6. As per the Vigilance Manual, according to the learned counsel, no preliminary enquiry was conducted and therefore, the prosecution stands vitiated. The learned counsel also relied upon the Judgment of the Supreme Court in Mukhtiar Singh Vs. State of Punjab, [2017 (3) SCC (Crl) 607] , wherein the Supreme Court held as follows:-

> "Not only the proof of demand thus was held to be an indispensable essentially and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P.Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:- [SCC p.159 para 23]
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> 23. The proof of demand of illegal gratification, thus, is the gravamen of the offfence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder."

7. He also relied upon the Judgment of a learned Single Bench of this Court in Bavanandam Vs. State, [2015 (4) MLJ (Crl) 5], wherein in Paragraph No.13, this Court has held as follows:-

> "13. In view of the foregoing discussions, I find that the prosecution has succeeded only in making out a very strong suspicion against the accused. The said suspicion would not take the place of proof. Therefore, I am constrained to hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and therefore, the accused is entitled for acquittal".

8. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, placed reliance upon the Judgment of a Division Bench of this Court in Duraimurugan Vs. State, [CDJ 2013 MHC 003], wherein in Paragraph No.39, the Division Bench has held as follows:-

> "39. Assuming for the sake of argument that the respondent has failed to follow Rule 76 of the DVAC Manual in letter and spirit, it is for the concerned department to take action against the concerned official and it is not open to the writ petitioner/appellant to take advantage of the same".

9. This Court gave its anxious consideration to the submissions made by the learned counsel on either side.

10. The fact remains that even in the complaint given by the *de facto* complainant, he has not concealed the fact that his lorries and tractors were seized by D.Karunanithi. Thus, there has not been any suppression of fact by the *de facto* complainant. The *de facto* complainant was taking sand from his own agricultural land and not from any river bed or from a public place. It is the specific allegation of the *de facto* complainant that D.Karunanithi demanded a sum of Rs.10,000/- as bribe to ensure that he will not foist case against him for taking sand from his land. This had triggered the registration of the First Information Report, as stated above.

11. The issue whether the Vigilance Manual was followed or not is a question of fact, which cannot be gone into in an application filed under Section 482 of the Code of Criminal Procedure. That apart, the Vigilance Manual cannot have the effect of overriding the provisions of the Code of Criminal Procedure and at the most, the concerned officials can be departmentally proceed with, if there is any violation of the provisions of the Vigilance Manual. Even if there has been violation of certain provisions of the Code of Criminal Procedure, like search procedure etc, the prosecution cannot be quashed on that score. In this case, there are sufficient materials to show that a sum of Rs.10,000/- was taken along with independent witnesses to the office of A-1 and A-1 instructed that the money be handed over to A-2.

12. The learned counsel for the petitioner submitted that the petitioner was placed under suspension, but, his suspension order has been stayed by this Court, by an interim order dated 23.06.2017 in W.P.(MD).No.18130 of 2016, by assigning the following reasons:-

> "i). A criminal case in Crime No.2 of 2014 under Section 7 of the Prevention of Corruption Act, 1988 was registered against the petitioner on the basis of a complaint given by one Anbazhagan, who paid find of Rs.1,50,870/- and Rs.25,000/- respectively pursuant to the petitioner's action.
>
> (ii). The allegation in the present case is that the petitioner demanded a sum of Rs.10,000/- as bribe from an individual. No other independent witness or evidence is disclosed to prove that the petitioner has demanded a sum of Rs.10,000/, except the statement of the de facto complainant. Because of the action taken by the petitioner against the de facto complainant, a clear motive in this case is established by the petitioner against the de facto complainant".

13. The aforesaid reasoning may be a ground for granting interim stay of the order of suspension, but, the observations made in the interim order cannot amount to acquittal of the accused. May be in the final disposal, the Court can always change the view. Even if the Court does not change the view with regard to the revocation of the suspension, the finding in the writ proceedings can, in no way, affect the evidentiary value of the statement of witnesses for framing charges against the accused.

14. The learned Additional Public Prosecutor submitted that the trial, in this case, has commenced and one witness has been examined. It must be borne in mind that the appropriate authority has given sanction to prosecute the accused under the provisions of the Prevention of Corruption Act, 1988, after having been satisfied with the materials collected by the police during investigation.

15. The aforesaid two Judgments relied on by the learned counsel for the petitioner relate to appeals, after full-fledged trial. Malice or motive cannot be decided on affidavits and counter affidavits. The Supreme Court in State of Bihar Vs. P.P.Sharma, [AIR 1991 SC 1260 : 1991 SCR (2) 1] has held as under:-

> "The question of *mala fide* exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose. There is no material whatsoever is this case to show that on the date when the FIR was lodged by R.K. Singh he was activated by bias or had any reason to act maliciously. The dominant purpose of registering the case against the respondents was to have an investigation done into the allegations contained in the FIR and in the event of there being sufficient material in support of the

allegations to present the charge sheet before the court. There is no material to show that the dominant object of registering the case was the character assassination of the respondents or to harass and humiliate them. This Court in State of Bihar v J.A.C. Saldhana and Ors., [1980] 2 SCR 16] has held that when the information is lodged at the police station and an offence is registered, the mala fides of the informant would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. This Court in State of Haryana and Ors. v. Ch. Bhajan Lal and Ors., J.T. 1990 (4) S.C. 655 permitted the State Government to hold investigation afresh against Ch. Bhajan Lal in spite of the fact the prosecution was lodged at the instance of Dharam Pal who was enimical towards Bhajan Lal".

16. The facts of the case do not pass muster the law, as laid down by the Supreme Court in State of Haryana Vs. Bhajan Lal and others, reported in AIR 1992 SC 604.

17. In the result, the Criminal Original Petition is devoid of merits and accordingly, it is dismissed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Chief Judicial Magistrate and Special Judge,
Kumbakonam.
3.The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur District, Thanjavur.
3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+One cc to Mr.E.Somasundaram, Advocate, SR.No.44466
NB
RL/5C/6P/MR/SAR2/30/1/2018

ORDER MADE IN
Crl.O.P.(MD)No.16646 of 2017

Dated:-
25.01.2018