BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
10.01.2018	25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.3528 of 2017
and
Crl.M.P(MD).Nos.2636 and 2637 of 2017

M.Nainar Mohammed : Petitioner/Accused No.1

Vs.

1. The State,
   Rep by Inspector of Police,
   Vigilance and Anti Corruption Wing,
   Sivagangai.
   (Crime No.7 of 2009) : 1st Respondent/Complainant

2. A.Vijayarajan,
   Deputy Inspection Cell Officer,
   Inspection Cell, Ramanathapuram. : 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 connection with the impugned charge sheet in C.C.No.5 of 2016, on the file of the Special Court for Prevention of Corruption Act Cases, Sivagangai and quash the same, insofar as the petitioner is concerned.

For Petitioner : Mr.S.Chandrasekaran
For Mr.D.Selvanayagam
For Respondent No.1 : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

ORDER

On a complaint of A.Vijayarajan, Deputy Inspector, District Inspection Office, Ramanathapuram, the Vigilance and Anti-Corruption Department registered a case in Crime No.7 of 2009 for the offences under Sections 7, 13(1)(a) and (d) r/w Section 13(2) of the Prevention of Corruption Act, 1988, against M.Nainar Mohammed [A-1] and four others and after completing the investigation, have filed a final report in C.C.No.5 of 2016 before the Special Court for

Prevention of Corruption Act Cases, Sivagangai, against M.Nainar Mohammed and 11 others for the offences under Sections 120-B, r/w 167, 409 IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, challenging which M.Nainar Mohammed is before this Court.

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

3. Before adverting to the points raised by the learned counsel for the petitioner for quashing the charge sheet, it may be necessary to state the allegations in the final report.

4. The case of the prosecution is that between 01.04.2009 and 26.08.2009, M.Nainar Mohammed [A-1] was working as Regional Manager TAFCORN, Karaikudi; that he had conspired with his subordinates, namely, A-2 to A-12, who were Forest Officials and had cleared off the bills to a total tune of Rs.4,86,444/- for certain contract works in the forest area, which were not actually performed.

5. The learned counsel for the petitioner submitted that the departmental proceedings was initiated against M.Nainar Mohammed and charges were framed against him for the very same allegations and that he was exonerated by the Enquiry Officer. He also submitted that the Government accepted the report of the Enquiry Officer and by order dated 27.04.2015, dropped all further proceedings against M.Nainar Mohammed and therefore, the present prosecution is an abuse of process of law. He also submitted that even going by the allegations in the charge sheet, the petitioner had only cleared off the bills, that were submitted by his subordinates showing that they had executed the contract works in various forest divisions. All the bills were processed by his subordinates and when they were placed before him, he signed those bills in good faith and therefore, he cannot be mulcted with criminal liability.

6. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, refuted the contentions.

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

8. On a careful reading of the charge sheet, it is seen that the payments were disbursed for the works said to have been carried out in Manachal Forest Division [Rs.72,912/-], Amaravathi Pudur Forest Division [Rs.32,760/-], Senjai Forest Division [Rs.1,05,840/-], Pallathur Forest Division [94,920/-], Kandanur Forest Division [Rs.41,412/-], Nedunkulam Forest Division [Rs.80,640/-] and Katturani Forest Division [57,960/-]. However, the investigation conducted by the police reveals that no work was carried out in the aforesaid forest divisions and instead, bogus bills were prepared as if the works were awarded to certain local contractors and executed.

9. The learned counsel for the petitioner submitted that the allegations in the First Information Report are different from the allegation in the charge sheet, inasmuch as in the First Information Report, it is stated that there was a surprise check in the office of the Regional Manager, Karaikudi by the inspection team and unaccounted cash was recovered, in connection with which, departmental enquiry was conducted and the petitioner has been exonerated. Therefore, it was contended that the present prosecution alleging that the bogus bills were prepared and claimed for contract works, that were never executed has no nexus with the allegations in the First Information Report.

10. It is true that when the inspection team went for a surprise check, they recovered unaccounted money from the office of the petitioner. On that premise, the First Information Report was initially registered. However, during the course of investigation, it came to light that the petitioner and the other Forest Officials had created records as if they had executed bogus contracts and had siphoned off money illegally.

11. Law does not state that the final report should always be inconsonance with the allegations in the First Information Report. For example, a person 'X' may lodge a complaint that his neighbour 'Y' killed his wife. First Information Report is registered against 'Y' under Section 302 of the Indian Penal Code. But, during investigation, if it comes to light that the wife of 'X' was not at all killed and that 'X' had created a story to claim insurance policy amount, a charge sheet for false complaint and cheating can be filed against 'X', based on the same First Information Report. On that ground, the prosecution cannot be quashed. It is a trite that just because a person is exonerated in departmental proceedings, he cannot be automatically discharged from the criminal prosecution. Therefore, the Court has to see whether there are materials in the charge sheet and the accompanying documents to find out if there are any *prima facie* materials against the petitioner/accused. The police have recorded the statements of Palanichamy, Ramukkutty, Alagesan and Packiaraj, Foresters, who have all implicated M.Nainar Mohammed and they have stated that they were forced to pay the commission to him for clearing the bills. That apart, one C.Pathirasamy, Regional Manager of TAFCORN, has clearly stated the procedure for awarding contract works in forest to petty contractors and the steps that are required to be taken by the Regional Manager for inspecting the works before sanctioning the payment. In this case, there are overwhelming evidence to show that M.Nainar Mohammed has flouted the procedure and has in collusion with his subordinates sanctioned the amounts for the contract works, that were not executed.

12. In the light of such overwhelming materials, it cannot be stated that there are no *prima facie* materials against M.Nainar Mohammed for framing charges. The facts of the case do not pass muster the law laid down by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal & Others** [**AIR 1992 SC 604 : 1992 Supp (1) SCC 335**] for quashing the prosecution.

13. In the result, this Criminal Original Petition is dismissed. The petitioner is directed to appear before the Trial Court and furnish a bond for a sum of Rs.5,000/-, without sureties under Section 88 of the Code of Criminal Procedure. If the accused absconds, the Magistrate shall direct the registration of a fresh FIR under Section 229-A IPC. If the accused adopts any dilatory tactics, he can be remanded to custody as laid down by the Supreme Court in **State of U.P. v. Shambu Nath Singh** [**2001(4)SCC 667**]. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Special Judge,
   Special Court for Prevention of Corruption Act Cases,
   Sivagangai.

2. The Inspector of Police,
   Vigilance and Anti Corruption Wing,
   Sivagangai.

3. A.Vijayarajan,
   Deputy Inspection Cell Officer,
   Inspection Cell, Ramanathapuram.

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

NB
TE/GT/SAR-2 : 06/02/2018 : 4P/5C

ORDER MADE IN
Crl.O.P.(MD)No.3528 of 2017 and
Crl.M.P(MD).Nos.2636 and 2637 of 2017
Dated:-25.01.2018