

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.01.2018****CORAM:****THE HONOURABLE MR. JUSTICE P.N. PRAKASH****Cr1.O.P. (MD) No.19054 of 2016**

S.Saibunisha ... Petitioner / Accused No.1

vs.

1. State represented by
The Inspector of Police
Vigilance and Anticorruption
Tirunelveli
Tirunelveli District
(Cr.No.2 of 2015)

... 1st Respondent / Complainant

2.P.S.Arulraj

... 2nd Respondent /
De-facto Complainant

PRAYER: Criminal original petition filed, under Section 482 Cr.P.C., to call for the records relating to FIR in Crime No.2 of 2015, dated 16.05.2015, on the file of the Inspector of Police, Vigilance and Anticorruption, Tirunelveli, Tirunelveli District and quash the same as against the petitioner.

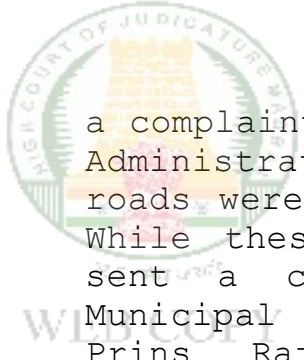
For Petitioner : Mr.A.Selvendran

For Respondents : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor for R1
No Appearance for R2

O R D E R

The factual matrix of the case are as under:

The petitioner was the Chairman of Kadayanallur First Grade Municipality in the year 2014. The Kadayanallur First Grade Municipality under the Chairmanship of the petitioner herein passed resolutions approving 36 road projects valued at 6,94,00,000/-. It was observed by one Seethalakshmi, Councillor of Ward No.7 and Sugandira, Councillor of Ward No.23, that roads were not laid in their Wards, but however, bills were raised and paid to the Contractors as if roads were laid. Therefore, they approached the petitioner and orally complained to him sometimes in May 2014. Since the petitioner did not take any action, Sugandira sent a complaint dated 05.05.2014 and Seethalakshmi sent

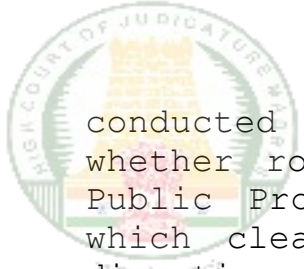


a complaint dated 08.05.2014 to the Regional Director of Municipal Administration, Palayamkottai, Tirunelveli, alleging that though roads were not laid, payments have been made to the Contractors. While these complaints were under consideration, the petitioner sent a complaint dated 14.12.2014, to the Commissioner of Municipal Administration, Chepauk, Chennai, alleging that one Prins Rajendran @ Vijaya Kumar, Executive Engineer and Commissioner-in-Charge, has misappropriated amounts sanctioned towards road projects. The said complaint was referred to the Additional Director General of Police, C.B.C.I.D., Chennai, who in turn sent the complaint back to the Office of the Commissioner of Municipal Administration, Chepauk, Chennai, stating that C.B.C.I.D. has no jurisdiction to enquire into the said complaint. While so, an Advocate by name, Arulraj gave a detailed complaint, dated 23.01.2015, to the Vigilance and Anti-Corruption stating that the Municipal Chairman along with the Municipal Officers have defalcated huge amounts by fabricating contract works and bills as if roads were laid. Thereafter, Arulraj filed CrI.O.P.(MD) No.5549 of 2015, before this Court, in which a learned Single Judge of this Court, by order dated 26.03.2015, directed the Director of Vigilance and Anti-Corruption, Chennai, to follow up with the Government with regard to the said complaint. Pursuant to the said direction, the Vigilance and Anti-Corruption have registered the present case, in Crime No.2 of 2015, under Sections 465, 468, 471, 409, 477-A I.P.C., r/w Sections 13(1)(c) and 13(1)(d) of P.C.Act, 1988 r/w 120-B I.P.C., against six accused, in which the petitioner has been shown as the first accused. Seeking to quash the said F.I.R., the petitioner has filed the present criminal original petition.

2. Heard Mr.A.Selvendran, learned counsel for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the first respondent and perused the materials filed in the form of typed set of papers.

3. The learned counsel for the petitioner submitted that the petitioner was the duly elected Chairman of the Municipality and that the petitioner has no role in passing the bills and drawing the cheques for payment to the Contractors; that such powers are only with the Commissioner of Municipality; that there was a difference of opinion between the petitioner and the Commissioner of Municipality and that at the instance of the Commissioner of Municipality, this petitioner has been added as accused in the F.I.R. The learned counsel for the petitioner further submitted that the petitioner has got enough records to show that roads were actually laid and there was no misappropriation of funds.

4. Per contra, the learned Additional Public Prosecutor submitted that after registration of the F.I.R., much water has flown under the bridge inasmuch as the Investigation Officers have



conducted a Super Check in the Municipality in order to find out whether roads were really laid or not. The learned Additional Public Prosecutor produced a copy of two Super Check Reports, which clearly show that notices were issued to the petitioner directing him to be present for the Super Check scheduled to be held on 06.09.2016 and 07.09.2016. But, the petitioner did not turn up for the inspection. The learned Additional Public Prosecutor further submitted that the investigation conducted so far discloses the involvement of the petitioner in the defalcation of the amounts in collusion with the co-accused.

5. This Court gave its anxious consideration to the rival submissions.

6. The fact remains that the case in Crime No.2 of 2015 has been registered pursuant to the directions of this Court. When there are *prima facie* materials in the F.I.R., the question of malice cannot be looked into in a proceedings under Section 482 Cr.P.C., in view of the law laid down by the Honourable Supreme Court in **State of Bihar vs. P.P.Sharma**, reported in **1991 SCR (2) 1**. In **State of Haryana and Others vs. Bhajan Lal**, reported in **[1992 Supp (1) SCC 335]**, the Honourable Supreme Court has laid down the parameters for quashing an F.I.R. The facts of the present case do not pass muster the law laid down in the above cited Judgment. As regards the contention of the petitioner that it was the petitioner, who was the whistle blower, inasmuch as he had given the complaint to the Commissioner of Municipal Administration on 14.12.2014, it is seen that much before the petitioner gave the complaint, Sugandira and Seethalakshmi had already set the ball in motion during May, 2014 itself. Sensing that the complaints lodged by them may implicate him, the petitioner must have sent the complaint, dated 14.12.2014, as defence. In such view of the matter, this Court is of the view that this is not a fit case, wherein the F.I.R., can be quashed.

7. In the result, the criminal original petition is devoid of merits and it is dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Inspector of Police,
Vigilance and Anticorruption,
Tirunelveli,
Tirunelveli District.



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

+1cc to Mr.S.R.A.Ramachandran, Advocate Sr.No.42932

SSS/KRK

VB/MR/SAR4/12.02.2018/4P/4C

Cr1.O.P. (MD) No.19054 of 2016
19.01.2018