



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 01.11.2018
DELIVERED ON: 02.11.2018

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P(MD)No.9439 of 2018

A.Kamaraj :Petitioner/Accused No.1

Vs.

1.State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Virudhunagar District. :Respondent No.1/Complainant

2.R.Ilango :Respondent No.2/De facto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the entire records and quash the impugned FIR No.03 of 2008 against the petitioner/ accused on the file of the respondent police at Virudhunagar for offence Section 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988.

For Petitioner : Mr.G.Prabhakaran

For Respondent No.1: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

For Respondent No.2: No appearance

ORDER

This Criminal Original Petition is preferred by one A.Kamaraj, Bill Collector, Chettiyarpatti Town Panchayat, Virudhunagar District, who was trapped by the Inspector of Police, Vigilance and Anti Corruption Department, Virudhunagar, while receiving bribe of Rs.5,000/- through his clerk from one Ilango for assessing fee for Building Plan Permit.

2.The petitioner herein challenges the registration of case against him and to quash the First Information Report filed against him under Sections 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988.



3.A perusal of the records relied by the prosecution reveals as below:

(i) R. Ilango, a resident of Dhalavaipuram, Rajapalayam Taluk, is the owner of a residential building, bearing Door No.72, Kasi Nadar Street, Mukavoor, Dhalavaipuram. To expand and put additional construction in the said building, he has prepared a building plan and submitted to Chettiyarpatti Town Panchayat office for approval and permit.

(ii) Thereafter, he had been visiting the Town Panchayat office frequently for planning permit. When he met Kamaraj, the petitioner herein, who is the Bill Collector of the Panchayat Union, to inspect the building and assess fee for planning permit, he had been delaying the inspection without any reason. On 29.11.2017, he directed to pay application fee of Rs.300/- by way of challan in the State Bank of India. Accordingly, with the help of Thiru. Sadeesh, Clerk of Panchayat office, he filled up the challan and remitted Rs.300/- at State Bank and gave the receipt to Kamaraj, Bill Collector.

(iii) At that time, he instructed to remit Rs.6,300/-. Accordingly, he remitted Rs.6,300/- at Union Bank of India on the same day. During the third week of December, 2017, Kamaraj inspected the building. On 03.01.2018, when he met Kamaraj and enquired about the license fee to be paid for planning permit, he demanded Rs.5,000/- as illegal gratification, which he reiterated on 04.01.2018.

(iv) Not inclined to give bribe, the said Ilango has given a complaint to the Vigilance and Anti Corruption Department on 09.02.2018. Pursuant to the complaint, trap has been laid on the same day. When the de facto complainant met the accused at his office at about 06.00 p.m. on 09.02.2018, the petitioner reiterated his demand of gratification and after ensuring that the de facto complainant has brought the money, he has asked him to come on 13.02.2018, since he has not yet assessed the building and told to give bribe on that day.

(v) Thereafter, the trap was again laid on 13.02.2018. On that day, the accused demanded money and when the money was tendered by the de facto complainant, he directed the de facto complainant to hand over the money to Sadeesh, Clerk. Then the accused informed the de facto complainant that he has assessed the building and he has to pay fee of Rs.2,710/-. The prosecution has recovered the tainted money from A.2 under mahazar. The trap has been witnessed by independent witnesses. Both the petitioner and Sadeesh, who are arrayed as accused and investigation is pending.



4. In the above said circumstances, the petition to quash the First Information Report has been filed by Kamaraj (A.1) on the ground that the allegation in the complaint that the de facto complainant went to the Town Panchayat Office, Chettiyarpatti and met the accused on several occasions ever since October 2017 is per se false, since the accused joined the office Town Panchayat, Chettiyarpatti only on 29.11.2017.

5. The next point contended by the petitioner to quash the complaint is that he is not in charge of the ward in the which the de facto complainant's building falls and he is not the authority to assess the fee for planning permit for the said building. Since he has no official connection with the work of the de facto complainant, there is no need to demand any illegal gratification as motive or reward to do any favour.

6. The learned counsel appearing for the petitioner would submit that the delay in filing the complaint does not stand reason to believe. The alleged demand of bribe was made on 03.01.2018 and 04.01.2018, whereas the complaint has been lodged only on 09.02.2018 and the trap was laid on 13.02.2018, whereas in the remand report, it is mentioned as 'today 09.02.2018, at 01.30 p.m., trap was conducted'.

7. Pointing out the lacuna in the complaint and the trap proceedings, the learned counsel for the petitioner would raise the following points:

(i) The purported meetings of the second respondent with the petitioner in the office of Town Panchayat, Chettiyarpatti even before the petitioner joined the said office only on 30.11.2017.

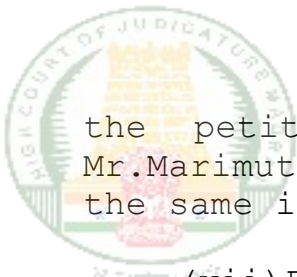
(ii) Even after the petitioner joined the office, he has had no official connection with work of the second respondent.

(iii) Although the petitioner allegedly demanded bribe way back on 03.01.2018 and 04.01.2018, he did not choose to file a complaint immediately.

(iv) The respondent did not actually conduct any preliminary enquiry, but submitted a misleading report to his superior so as to convert the false complaint into a regular case against the petitioner.

(v) In the absence of any overt or covert instructions from the petitioner directing the second respondent to pay the bribe at his office on 09.02.2018, the second respondent choosing to lodge a complaint with the respondent on 09.02.2018, who in turn proceeded to lay a trap on the same day, which eventually failed.

(vi) The narration relating to the enquiry allegedly made by



the petitioner about the presence of the official witness Mr.Marimuthu in the proceedings dated 09.02.2018 and repetition of the same in the recovery mahazar dated 13.02.2018.

(vii) Pre-meditated and pre-conceived preparation of remand report on 09.02.2018 itself, although the petitioner was arrested only on 13.02.2018.

(viii) None of the tainted currency notes was recovered from the possession of the petitioner.

(ix) The recovery mahazar does not contain the signature of the second respondent.

8. The first respondent has filed a counter, wherein it is submitted that the averment made in the complaint regarding frequent visit of the de facto complainant to the Town Panchayat office and meeting the accused ever since October, 2018, has been clarified by the de facto complainant in his 161 Cr.P.C. statement. The case in respect of acceptance of Rs.5,000/- by Sadeesh at the instance of the petitioner herein as reward to assess fee for planning permit pursuant to the application given by the de facto complainant, is the matter under investigation. The points canvassed by the petitioner herein are prematured and unsustainable. Based on the complaint given by Ilango, First Information Report has been registered and the trap laying officer has conducted discreet enquiry. Being satisfied with the genuineness of the complaint, trap proceedings were initiated. The tainted money has been recovered from the possession of A.2, who is co-staff in the Town Panchayat Union office. The material evidence collected indicates that the tainted money recovered from Sadeesh (A.2) was received by Sadeesh on the instruction of Kamaraj (A.1), the petitioner herein.

9. The learned Additional Public Prosecutor would also submit the inter-departmental communication, wherein the petitioner herein has been entrusted the responsibility of collecting tax of Ward No.10. The witnesses statement and the material documents collected so far through investigation have made out case against the petitioner sufficient to lay final report for offences under Section 7 and 13(1)(d) of P.C. Act, 1988.

10. At any event, the learned Additional Public Prosecutor would submit that the contentions raised by the petitioner/A.1 to quash the First Information Report is unsustainable in the light of the fact that there is enough material collected in the course of the investigation that the petitioner/A.1 has demanded and obtained gratification of Rs.5,000/- through his co-staff

<https://hccservices.in/hccservices>

11. This Court is of the firm opinion that the Hon'ble Supreme



Court as well as High Courts have time and again reiterated that the First Information Report cannot be quashed unless there is no material available for the investigating agency to probe. It is needless to extract the relevant portions of the Judgments to emphasis the said point.

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12.This is a case of demand and acceptance of gratification. Based on the complaint given by Ilango, the trap laying officer has conducted preliminary enquiry and thereafter proceeded with trap. The tainted money entrusted to the de facto complainant has been recovered from one of the accused. There is prima facie material to show that the de facto complainant had every reason to visit the Town Panchayat office and meet the accused for processing his planning permit application. The materials so far collected by the prosecution prima facie indicates that pursuant to the demand of illegal gratification, the de facto complainant has tendered Rs.5,000/- to the petitioner/A.1, who in turn has directed the de facto complainant to give the money to Mr.Sadeesh seated next to him. When the money was tendered to Sadeesh, he has received it. Knowingly it is illegal gratification, he had counted it and kept it in his pocket. Thereafter, the petitioner/A.1 has informed the fee for planning permit is Rs.2,710/-.

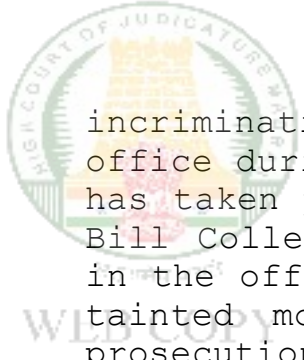
13.The prosecution yet to complete the investigation. The discrepancies pointed out by the petitioner herein are not worth to hold that no material available to incriminate the petitioner. This Court consciously restrains itself from discuss in detail the fallacy in the submissions made by the petitioner herein, since it will prejudice the petitioner and also affect the investigation as well as the trial. At the same time, it is necessary for this Court to record that none of the points raised in the petition to infer the petitioner herein is innocent.

14.Therefore, it is suffice to point out that the alleged violation of directions of Vigilance Manual or the contention that the officer, who has conducted the preliminary enquiry should not proceed on the trap, are not legally unsustainable. There is no bar for any officer who conducted preliminary enquiry to proceed with the trap. Likewise, from the materials, this Court finds no serious deviation from the Vigilance Manual which will make the investigation otise.

15.The de facto complainant has filed his objection to the petition herein, stating certain antecedents against the petitioner herein. This Court is not inclined to look into these averments, since it has nothing to do with the case under investigation.

<https://hcservices.ecourts.gov.in/hcservices/>

16.As far as this case is concerned, it is not a mere suspicion, but the material evidence already collected are



incriminating against the petitioner. May be he was not in the office during the months of October - November, 2017, but the trap has taken place on 13.02.2018. On that day, he was very well the Bill Collector of the said Panchayat Union office. His presence in the office on the day of trap, is not denied. The recovery of tainted money from Sadeesh is not denied. The case of the prosecution is that the money was received by Sadeesh on the instruction of this petitioner and this money was obtained on the direction of this petitioner. To support this version, we have the statements of the de facto complainant, shadow witness and the trap laying officer, besides, the complaint, entrustment mahazar, recovery mahazar and the tainted currency. In the said circumstances, this Court finds no reason to quash the First Information Report as prayed by the petitioner. Therefore, this Criminal Original Petition is liable to be dismissed.

17.As a result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar (CS-IV)

To

- 1.The Inspector of Police,
Vigilance and Anti-Corruption,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.G.PRABHAKARAN, ADVOCATE IN SR NO.94705
SMN
BU/PM/SAR-IV :19.11.2018 : 6P/4C

ORDER MADE IN
Cr1.O.P (MD) No.9439 of 2018
02.11.2018