



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
03.09.2018	17.09.2018

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.O.P(MD)No.16266 of 2018

S.Sebastine

..... Petitioner

Vs.

The Inspector of Police
Vigilance and Anticorruption Wing
Madurai Detachment,
Madurai
(Crime No. 3 of 2015)

..... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to Crime No. 3 of 2015 on the file of the Inspector of Police, Vigilance and Anti Corruption Wing, Madurai Detachment, Madurai and quash the proceedings in respect of the petitioner herein.

For Petitioner : Mr.I.Subramanian, Senior Counsel
for Mr.S.Hameed Ismail

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed by one Sebastian former Municipal Commissioner of Madurai Corporation. He seeks this Court to exercise its power under Section 482 of Cr.P.C., to quash the proceedings in respect of investigation initiated by the respondent police in respect of certain omission and misappropriation by the corporation officials in respect of collecting infrastructure and amenity charges as prescribed by the Government in 3G.O's namely G.O.Ms.No.191, dated:01.06.2007, G.O.Ms.No.84, dated 08.04.08, G.O.Ms.No.161, dated 09.09.2009 of Housing and Urban Development Department.

2. The FIR which has been registered on 13.01.2015 is based on incredible information disclosing Thiru.P.Murugesan former, Assistant Town Planning Officer, Madurai Corporation, Madurai and others have failed to collect the enhanced infrastructure and amenity charges as found in the three G.O's mentioned above. It is now alleged that due to the said failure the revenue has lost nearly Rs.13.78 crores. Several officials who were incharge of collection



have failed to collect appropriate charges which has led to this loss.

3. It is contended by the learned counsel for the petitioner, that it is brought to the knowledge that he is also arrayed as one of the accused in the case registered in by Vigilance and Anti Corruption Wing, Madurai Detachment, Madurai in Cr.No.3 of 2015 for alleged offences under sections 120 (B), 420, 409, 420 r/w.109,409, r/w.109 IPC and 13(2) r/w.13(1)(c) of P.C.Act 1988.

4. Referring certain communications which has been emanated from the Commissioner, Madurai Corporation dated 26.07.2010. The Principal Secretary, Municipal Department and Water Supply dated 19.03.2010 and latest communication of the Commissioner, Madurai Corporation dated 29.05.2018 and Commissioner of Municipal Administration addressed to the Principle Secretary Municipal Department and Water Supply dated 30.05.2018. The learned Senior Counsel for the petitioner would submit that the department has gone into the issue of non collecting enhanced infrastructure fees by the Madurai Corporation and has consistently recorded that the said G.O's relating to enhancement of amenities charges were not communicated to the concerned corporation in time and therefore the officials were not aware of the enhanced fees. Having come to know about it, later every steps been taken for collection. As of now, Rs.13.71 crores has been collected. To collect the balance amount around Rs.4.20 crores, all steps are taken.

5. Further citing the order passed by the Honourable Division Bench of this Court in W.A(MD) No. 173 of 2016 quashing the charge memo issued to prime accused Murugesan, the learned counsel would submit that when the department had satisfied that there is no misappropriation, fraud or cheating on the part of the officials, there is no meaning in investigating the offence. Hence the First Information Report has to be quashed.

6. Per contra the learned Additional Public Prosecutor has furnished the file pertaining to the investigation and would submit that only after detailed preliminary enquiry the Vigilance and Anti Corruption Wing, Madurai Detachment, Madurai has found prima facie material to register the complaint and on registration of the complaint investigation conducted. From the investigation it has been found that the persons who are responsible for collecting enhanced infrastructure and amenity charge as per the said G.O passed by the Government time to time have deliberately failed to collect the enhanced Amenities and infrastructure charges. There is no truth in their submission that the issuance of the G.O's were not made known to them. Records collected during the course of investigation disclose the petitioner had the knowledge of the said 3 G.O.s immediately after its issuance. In few of his communications he has also referred these G.O's Since the investigation is almost completed, the present petition to quash the FIR is totally unsustainable.



7. Heard the submission made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. The records furnished by the learned Additional Public Prosecutor perused. On scrutiny of the records, this court finds that allegations found in the FIR and the material collected during the course of investigation indicates the petitioner herein and the other accused have knowingly failed to carry out the G.O passed in respect of enhanced infrastructure and amenity fees. The beneficiaries appears to be the land promoters and real estate dealers. Consequently the state had become poorer by few crores.

8. The learned Senior counsel for the petitioner beside the plea of non-communication of the G.O's also contented that the petitioner was holding the post of Commissioner, Madurai Corporation only for a short period 23.02.2009 to 27.07.2011 and has not committed any error or omission. Whereas the files produced by the respondent police containing the materials collected during investigation reveals the petitioner/S.Sabastine during his tenure as Commissioner, Madurai has perused 68 files and approved it. The revenue loss is estimated as Rs.9,57,80,079/- . Therefore, only on the completion of the investigation and filing of final report, exact role of the respective accused persons in the crime or their innocence could be ascertained.

9. This is not a fit case, where the FIR could be quashed. When prima facie materials are found available to suspect the accused, whether the letters among the officials of local body and the Municipal Administration and Water supply Department pending investigation will have a bearing has to be decided only after completion of investigation. It is too premature for the court to arrive at any conclusion regarding the guilt or otherwise of the petitioner herein.

10. Under such circumstance this petition is dismissed as devoid of merits.

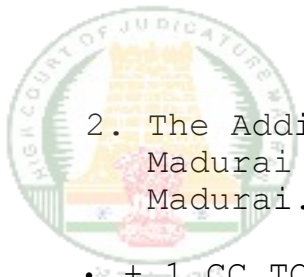
Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai Detachment, Madurai



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

• +1 CC TO Mr.S.Hameed Ismail, ADVOCATE IN SR No.84539.

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ORDER MADE IN
Crl.O.P (MD) No.16266 of 2018

17.09.2018