



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.VELMURUGANCrl OP[MD]No.21286 of 2018 and
Crl MP(MD)No.9840 of 2018

M.Mohan Kennedy

: Petitioner/Accused No.I

Vs.

State by
The Inspector of Police,
Vigilance and Anti Corruption,
Kanyakumari Detachment @ Nagercoil,
[Crime No.3 of 2014]

:Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to Special Case No. 1 of 2017 pending on the file of the Chief Judicial Magistrate cum Special Judge, Nagercoil and quash the same as against this petitioner.

For Petitioner

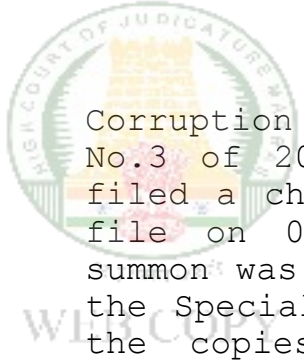
: Mr.N.Sankar Ganesh

For Respondent

: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor**ORDER**

This criminal original petition has been filed seeking to call for the records relating to Special Case No. 1 of 2017 pending on the file of the Chief Judicial Magistrate cum Special Judge, Nagercoil and quash the same as against this petitioner.

2.The case of the prosecution is that the petitioner was arrayed as A-1 in the SC No.1 of 2017. The allegation levelled against the petitioner is that while he was working as Executive Officer, Ganapathipuram Town Panchayat with an ulterior motive, he had misappropriated in collusion with John Jebakumar, Electrician, Ganapathipuram Town Panchayat, Kanyakumari District, had prepared bogus receipts in the name of Raj Agencies Colachel and Ebin Karungal during the tender of procurement of sanitary goods and without actually purchasing the sanitary goods, has created false records, as if the sanitary goods such as lime powder and bleaching powder were purchased during the period between September 2011 and March 2012 for Rs.80,390/- and swindled the Government money through SBI, Colacheal Branch through bank account of one S.Jerold Jebaraj and the accused caused loss to the Government to a tune of Rs.89,640/- and thereby M.Mohan Kennedy with John Jebakumar has committed the offence under Sections 120(B), 465, 467, 468, 471, 477-A, 409 of IPC and Section 13(2) r/w 13(1) (c) prevention of



Corruption Act, 1988. A case was registered on 08.04.2014 in Crime No.3 of 2014 and the respondent had investigated the matter and filed a charge sheet on 23.11.2017. The charge sheet was taken on file on 06.12.2017 and after completing the legal formalities, summon was issued to the petitioner on 02.01.2018 to appear before the Special Court cum Chief Judicial Magistrate, on 11.01.2018 and the copies were furnished under Section 207 of CrPC to the petitioner on 07.02.2018. Charges were framed on 14.03.2018. Then witness was summoned and PW.1 was examined on 25.04.2018 and issued summons to the other witnesses and the trial is in progress.

3.The petitioner has now filed the petition under Section 482, to quash the case against him on the ground that in this case the complainant and the Investigating Officer are one and the same, which is not permissible under law and therefor it would vitiate the entire proceedings. Further he submitted that in order to prosecute a Government Servant for the offences under IPC, previous sanction under Section 197 of CrPC from the State is mandatory and the Sanction accorded under Section 19 of PC Act cannot be equated with that of Section 197 of CrPC. Further, there is no link with the other accused to this petitioner and there is no material to show the involvement of this petitioner. Therefore, the case against the petitioner has to be quashed. In order to substantiate his contention, he placed reliance on the following judgments:

(1) Asian Resurfacing of Roan Agency Pvt Ltd and anr Vs. CBI, in Criminal Appeal Nos.1375 and 1376 of 2013. (2) Megha Sing Vs State of Haryana, reported in AIR 1995 SC 2339, (3) Bhagwan Singh Vs The State of Rajasthan, reported in AIR 1976 SC 895, (4) Bhaskar Ramappa Madar & Ors Vs State of Karnataka in Criminal Appeal No.415 of 2002 and (5) Romesh Lal Jain Vs. Naginder Singh Rana and Ors in Appeal (Crl) 691 of 2003 (5) Sanju Vs. State of Karnataka, Criminal Revision Petition No.2510 of 2011.

4.The learned Additional Public Prosecutor appearing for the state would submit that there is no total bar to a person who is complainant and also the Investigating Officer. So in this case, part of the case he conducted preliminary enquiry and submitted report. Subsequently, the complaint was investigated further by a separate officer and charge sheet was laid by a separate officer. Therefore, the contention of the learned Counsel for the petitioner will not be acceptable to the present case. PW.1 is the competent person to accord sanction and he had accorded sanction for both the offence under Indian Penal Code and Prevention of Corruption Act. There are materials collected during the investigation and also documents filed under Section 173 of CrPC reveals the involvement of the petitioner in this case. Therefore, after considering all the facts and circumstances of the case, the Special Court has taken the charge sheet on file and framed charges and the trial has commenced. There is no valid ground to quash the case against the petitioner.

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

5.Heard the learned Counsel for the petitioner and perused the

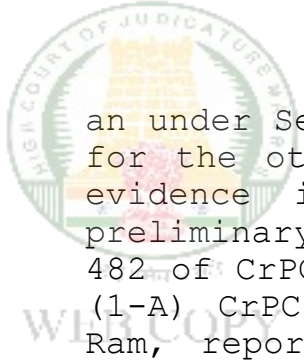


material placed on record.

6. There is no dispute with regard to the allegations levelled against the petitioner and the case was also registered in Crime No.3 of 2014. Investigation was conducted. Sanction for prosecution was also obtained. Charge sheet was laid for the offence under Section 120(B), 465, 467, 468, 471, 477-A, 409 of IPC and Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act, on 23.11.2017. Copies of the documents were furnished under Section 207 of CrPC on 07.02.2018 itself. The charges were framed on 14.03.2018 itself. After framing of the charges, the petitioner was also questioned about the charges. Trial commenced, PW.1 examined in chief and cross examined on behalf of the petitioner and other accused. Further prosecution witnesses have also been summoned and the trial is in progress. At this state, the petitioner has filed this present original petition before this Court invoking the Section 482 of CrPC on two grounds viz., (i) the sanction accorded under Section 19 of PC Act is not valid for proceedings against the offence under IPC and (ii) the complainant and the Investigating Officer are one and the same, which is impermissible under law.

7. On a perusal of the records would show that there is no total bar for the complainant being an Investigating Officer. The learned Counsel for the petitioner himself stated that there is no universal procedure and no uniform yardstick that the person who is the complainant cannot be an Investigating Officer. It depends on the circumstances of the each case. Further after trial, the prejudice caused to the petitioner has to be proved. Therefore, merely because the person, who has happened to be a complainant, being the Investigating Officer, cannot be a sole ground to quash the case under Section 482 of CrPC. It is well settled proposition of law that the power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare case.

8. Further, he received the copies under Section 207 of CrPC and after framing the charges the petitioner was questioned about the charges. Neither he challenged the charge sheet laid by the prosecution nor filed any petition for discharging the petitioner nor he challenged the charges framed by the Court. After participating in the trial and cross examining the prosecution witness No.1, at this stage he has filed this petition. Once the trial commenced, it is for him to explain in what way he was prejudiced and further insofar as the sanction order is concerned, as rightly pointed by the learned Additional Public Prosecutor, the petitioner has not questioned the competency of the PW.1 to accord sanction. He can put forth his defence during the trial and the same can be decided after the trial in the judgment. In this regard it is useful to refer to the case in State of Karnataka Vs. Pastor P. Raju, reported in 2006 (6) SCC 728, where in a prosecution for offences under Sections 466, 109 and 120-B, no sanction has been obtained for



an under Section 120-B it cannot be said that ipso facto their trial for the other offences is illegal. The question would arise after evidence is adduced. Inherent powers cannot be invoked at a preliminary stage. The proceedings would not be quashed under Section 482 of CrPC for want of sanction required under Section 196 (1-A) CrPC. Further, in the case of State of Bihar Vs. Rajmangal Ram, reported in 11 SCC 388, it is held that in a case, where prosecution had been launched against the respondents under the Prevention of Corruption Act, 1988 and provisions of the IPC, sanction for prosecution was granted by the Law department of the State and not by the parent department to which the respondents belongs. It was held by the Supreme Court that even assuming that the Law Department was not the competent authority to grant sanction and the sanction order was in valid, criminal proceedings cannot be interdicted mid-course by the High Court invoking Section 482 of the Code, unless it records a finding that failure of justice has been occasioned.

9. Therefore, under such circumstances, the citations referred to by the learned Counsel for the petitioner are not applicable to the present case on hand. The offences under IPC and Prevention of corruption Act are not separate offences, in this case both are interlinked with each other. Further a reading of the entire materials show that there are allegations and after investigation charge sheet was filed, the documents filed under Section 173 of CrPC revealed prima facie materials against the petitioner and trial has commenced. At this stage, this Court is not inclined to invoke its inherent power under Section 482 of CrPC.

10. On considering the authorities submitted by the learned Counsel for the petitioner, in most of the cases, only after completion of the trial and the accused was acquitted on the ground of technicality, whereas in this case the trial is yet to be completed. Therefore, the authorities cited by the learned Counsel for the petitioner are not applicable to the present case.

11. In view of the above discussion, this criminal original petition is dismissed. Consequently, CrI MP(MD) No. 9840 of 2018 is closed.

Sd/-

Assistant Registrar (CrI Side)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Chief Judicial Magistrate
<https://hcservices.ecourts.gov.in/hcservices/>
 Cum Special Judge,
 Nagercoil



2.The Inspector of Police,
Vigilance and Anti Corruption,
Kanyakumari Detachment @ Nagercoil.

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

+1cc to Mr.N.Sankar Ganesh Advocate in SR.No.98539

Cr1.O.P.[MD].No.21286 of 2018
04.12.2018

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