

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1483 of 2019
and
Crl.M.P.No.18831 of 2019

A.Venugopal

... Petitioner

Vs.

State Rep. by the Inspector of Police,
Vigilance & Anti-Corruption,
Salem.

(Crime No.4 (AC)/2016)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code seeking to call for the records in dismissal order dated 06.12.2018 passed in Crl.M.P.No.155 of 2018 in Spl.C.C.No.15 of 2016, on the file of Hon'ble Chief Judicial Magistrate cum Special Judge, Namakkal and set aside the same.

For Petitioner : Mr.A.Edwin Prabakar

For Respondent : Mrs.Saradha Devi.V,
Government Advocate (Crl. Side)

O R D E R

This criminal revision has been filed seeking to call for the records in dismissal order dated 06.12.2018 passed in Crl.M.P.No.155 of 2018 in Spl.C.C.No.15 of 2016, on the file of Hon'ble Chief Judicial Magistrate cum Special Judge, Namakkal and set aside the same.

2.The petitioner is A1, he was implicated under Sections 490, 467, 468, 471, 477-A IPC r/w 120-B IPC and 13(2) r/w 13(1) (c) & (d) of the Prevention of Corruption Act, 1988. After filing the charge sheet, discharge petition was filed under Section 239 Cr.P.C and the same was dismissed. As against which, the the present Criminal Original Petition has been filed.

3.The case of the prosecution is that the Central Government permitted a scheme for waste land development in which the petitioner was the Supervisor, under him two government servants were working for the said Scheme. Other NGO's were also engaged in the development of the waste land. The Scheme is for development of the waste land, in which the application for ploughing the land will be received from the farmers and the lands will be ploughed by the tractors. The tractor owners will be paid for ploughing the land. In that process, A2 created M-Book for the work done by him and the payments made to the tractor owners were also mentioned in the same. In which the petitioner herein made an endorsement. There was a mis-appropriation of nearly Rs.3,00,000/- in the said project for which the petitioner in this petition was implicated as A1 who was the Assistant Executive Engineer and the other accused persons are also part of this project. The allegation against the petitioner herein is that he had conspired with the other accused persons in mis-appropriation of funds by forging the documents. Hence, a case was registered under Sections 490, 467, 468, 471, 477-A IPC r/w 120-B IPC and 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 in Crime No.4(AC)/2016. After filing of the charge sheet, the case was taken on file by the learned Chief Judicial Magistrate cum Special Judge, Namakkal and numbered as Spl.C.C.No.15 of 2016, where the petitioner had filed a discharge petition in CrI.M.P.No.155 of 2018 which was dismissed by the trial court.

4. Mr.A.Edwin Prabakar, learned counsel appearing for the petitioner would submit that though the petitioner herein was implicated as A1, his role in the said allegation is very very limited. He simply signed the M-Book which was prepared by A2. He has no mens rea for committing the alleged offence or there is no iota of evidence to show that the petitioner herein had involved in the alleged offence. Even in the charge sheet filed by the respondent there is no specific allegation against the petitioner herein and the same was raised before the trial court in discharge petition. But, the trial court without considering the contentions raised, had dismissed the petition, hence, he prays to set aside the said order by allowing this petition.

5. The learned Government Advocate appearing for the respondent would submit that the petitioner along with other accused persons, who was the Assistant Executive Engineer during the implementation of the Integrated Wasteland Development Program in connivance with other accused criminally conspired and misappropriated Rs.3,65,810/- by creating false and forged records through false entries made in M-Book as if ploughing was done in the waste land without doing the work. She would further

submit that the petitioner had already filed a quash petition before this court in Crl.O.P.No.19967 of 2017 and the same was dismissed. Against which SLP.No.8936 of 2017 was preferred and the same was also dismissed by the Hon'ble Supreme Court. Thereafter, the petitioner had sought for discharge under Section 239 Cr.P.C. before the trial court. The reasons stated in the quash petition and the discharge petition were same. There is prima facie case as against the petitioner and documents are available to prove the charge against the petitioner. Hence, she sought for dismissal of this petition.

6. Considering the facts and circumstances of the case, admittedly the petitioner/ A1 had made endorsement in the M-Book which was prepared by A2 after recording the work done by him and the payments made to the tractor owners were also mentioned in the same. However, it is alleged that without verifying the entries made by A2, the petitioner herein had made endorsement and there are several allegations made against A1. Apart from that the petitioner had in the earlier occasion filed a quash petition in Crl.O.P.No.19967 of 2017 and the same was dismissed by this court. Against which SLP.No.8936 of 2017 was preferred before the Hon'ble Apex Court and the same was also dismissed. There is no much difference in the grounds of the quash petition and discharge petition and there is a prima facie case as against the petitioner. Hence, this court is not inclined to entertain this petition, and it is accordingly dismissed. Consequently, the connected miscellaneous petition is also closed.

7. Without being influenced by the observations made in this petition, the trial court may proceed the trial. The trial court may decide the issue independently on merits without being influenced by the observations made in this petition.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Chief Judicial Magistrate cum Special Judge,
Namakkal.

2.The Inspector of Police,
Vigilance & Anti-Corruption,
Salem.

+2cc to Mr.A.Edwin Prabakar, Advocate SR.105955

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RGN (CO)
CB (31/01/2020)



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