IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.05.2019
CORAM
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM
Crl.O.P.No.13711 of 2019
and
Crl.M.P.Nos.6748 & 6749 of 2019

M.S.Jaffar Sait,
Director General of Police,
Crime Branch CID, Chennai - 600 008.
.. Petitioner

Vs.

The Directorate of Vigilance and Anti-Corruption,
Represented by the Addl.Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-I Detachment, Chennai.
.. Respondent

Prayer:Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records Charge Sheet in C.C.No.25/2013 on the file of the Special Court for Cases under Prevention of Corruption Act, 1988, Chennai and quash the same, as against the petitioner, based on the Memo dated 10.08.2018 filed by the respondent in the Special Court.

For Petitioner : Mr.I.Subramanian, Senior Counsel
for M/s.Ahmad Associates

For Respondent : Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by Mr.C.Raghavan,
Government Advocate (Crl. Side)

ORDER

This petition has been filed by the accused No.1 under Section 482 Cr.P.C to call for the records relating to the Charge Sheet in C.C.No.25/2013 on the file of the Special Court for Cases under Prevention of Corruption Act, 1988, Chennai and quash the same, as against the petitioner, based on the Memo dated 10.08.2018 filed by the respondent in the Special Court.

2. The respondent herein had filed a charge sheet stating that the petitioner herein (A1) is an IPS Officer and when he was working as Inspector General of Police, Intelligence at Chennai, during the period between 2008 and 2010 at Chennai and at other places, he along with other accused persons (A2 to A7) committed criminal conspiracy to commit and abet one another in the Commission of the offence of Criminal breach of trust and the offence of criminal misconduct in connection with the allotment of the Government Discretionary Quota (GDQ) plots to the petitioner herein (A1) and his family and Dr.R.Durgashankar (A2). In pursuance of the said criminal conspiracy, the petitioner herein got a plot No.543 A, Kamaraj Nagar, Thiruvanmiyur under GDQ as per the G.O.No.370 dated 04.04.2008. Subsequently for the convenience of the petitioner herein (A1) and A5 for a joint venture of construction, it was converted into 6 plot layout from 7 plot lay out. Subsequently, the petitioner herein (A1) gave an application to cancel the said allotment and accordingly it was cancelled on 30.04.2008. Thereafter on 01.05.2008, the petitioner herein through his daughter Miss.Jenifer gave an application for the allotment of Plot No.540 and the said plot was alloted to her as per G.O.469 dated 06.05.2008. After she made full payment, she gave an application for cancellation of the said Plot on 30.04.2009 and Cancellation Order was issued on 08.05.2009. Thereafter the petitioner herein applied through his wife Tmt.Parvin Jaffer Sait (A2) for the allotment of the same Plot No.540. The said plot was alloted to her as per G.O.No.143 dated 05.06.2009. Thereafter, the said Tmt.Parvin(A2) made an agreement with A7 Mr.T.Udhayakumar and received Rs.1,27,23,000/-. Similar allegations made against A5 also. Further, it is stated that A3 and A4 have abetted other accused in the Commission of the above offences and hence all the accused (A1 to A7) are liable to be punished U/s.120 B IPC, 409 IPC and Sec 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988 and Section 109 IPC.

3. It is further stated in the charge sheet that sanction orders were obtained from the competent authorities for A3 and A6. Since A4 is retired from service, to sanction is required for him.

4. It is further stated that in respect of the first accused (petitioner herein), a request was sent to the competent authority i.e., the Home Secretary, Ministry of Home Affairs, New Delhi to accord sanction to prosecute him u/s 19(1) (a) of Prevention of Corruption Act, 1988 on 03.08.2012. Even after lapse of more than a year, DVAC is yet to receive sanction order from the competent authority and hence based on the opinion issued by the Advocate General of TamilNadu, final report is

filed without enclosing the sanction for prosecution in respect of first accused. Further, it is stated that the sanction order will be submitted to the Court as and when it is received and requested to take the case on file.

5. Based on the said final report (charge sheet) the learned Special Judge for cases under Prevention of Corruption Act, Chennai (Special Judge) has taken the case on file in C.C.No.25 of 2013 and issued summons.

6. Subsequently the Competent authority has rejected the request for sanction for prosecution by the Order dated 29.11.2013. Thereafter, the petitioner herein had filed Crl.OP.No.619 of 2016 before this Court to quash the proceedings against him in C.C.25 of 2013 and the same is pending.

7. Thereafter, the respondent himself had filed a memo before the trial Court on 10.08.2018 enclosing a copy of the order passed by the competent authority declining sanction for prosecution, but, according to the petitioner, the learned Trial Judge has not passed any order in the said memo. Further, according to the petitioner, the Government of TamilNadu has initiated the process of appointment of the Post of Head of Police Force (HOPF) of Tamilnadu and a probable list of IPS Officers has been sent by the State Government to the Selection Committee and in the said list his name is also included. His further case is that the present HOPF (DGP) is retiring on 30.06.2019 and hence he filed the present petition to quash the charge sheet against him.

8. Heard, Mr.I.Subramanian, learned Senior Counsel for the petitioner and Mr.S.R.Rajagopal, learned Additional Advocate General of the respondent.

9. Mr.I.Subramanian, the learned Senior Counsel for the petitioner has submitted that the petitioner belongs to the 1986 batch Indian Police Service(IPS) and had been allocated for service in the State of Tamil Nadu and presently he is holding the position of Director General of Police, Crime Branch CID. He further submitted that the petitioner has all along put in unblemished service and has also earned meritorious awards both from the Central Government and the State Government and also earned good reputation for his ability, integrity and honesty.

10. The learned Senior Counsel for the petitioner, further submitted that based on the complaint given by one Mr.A.Shankar relating to the allotment of the house plot under the Government Discretionary Quota(GDQ) in the name of petitioner's wife in Thiruvanmiyur by the Tamil Nadu Housing Board, a case was registered by the respondent in Crime No. 7 of 2011/AC/CC-I, under Sections 120(B), 409 IPC and 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 and 109 IPC against the petitioner herein and six others. He further submitted that since the petitioner herein is an IPS Officer, for prosecuting him under the provisions of Prevention of Corruption Act, a sanction has to be obtained under Section 19 of the Prevention of Corruption Act, 1988 and for prosecuting him for the IPC offences also, a sanction is must as per Section 197 of Cr.P.C.

11. He further submitted that the respondent herein had filed a charge sheet requesting the Court to take cognizance of the case against the first accused pending sanction for prosecution. He further submitted that as per Section 19 of the Prevention of Corruption Act, no Court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority. He further submitted that since the petitioner is an IPS Officer and can be removed from his service only by the Central Government, for prosecuting him under the provisions of IPC also sanction is mandatorily required under Section 197 Cr.P.C. He further submitted that the allotment of the plot in question occurred when the petitioner was holding Public Office and the alleged offences were committed by them, if at all, in discharge of his official duty, but in this case, the learned Special Judge has taken cognizance of the alleged offences against the petitioner herein without obtaining a prior sanction for prosecuting him.

12. He further submitted that on receipt of the summons the petitioner has already filed W.P.No.28798 of 2013 before this Court challenging the summons in which an interim order has been granted dispensing with the personal appearance of the petitioner before the Trial Court. He further submitted that subsequently, the Competent Authority, Ministry of Home Affairs, New Delhi, by the order dated 29.11.2013 declined sanction for prosecution, but the respondent has not informed the said fact to the Trial Court and hence, the petitioner has filed Crl.O.P.No.619 of 2016 before this Court to quash the proceedings against him and the same is pending. He further submitted that on 10.08.2018, the respondent has filed a memo before the Trial Court enclosing a copy of the order passed by

the Sanctioning Authority dated 29.11.2013, but the Trial Court has not passed any order on the said memo.

13. He further submitted that the disciplinary proceedings initiated by the State Government was set aside by the Central Administrative Tribunal, Chennai by the order dated 01.01.2018 as against which the State Government has preferred SLP.No.7522 of 2018 before the Hon'ble Supreme Court and said SLP was dismissed by the Hon'ble Supreme Court by the order dated 10.05.2019 and hence as on date no disciplinary proceedings is pending against the petitioner. He further submitted that the Government of Tamil Nadu has initiated the process of appointment for the post of HOPF of Tamil Nadu (DGP). A probable list of IPS officers has been sent by the Government to Selection Committee for the purpose of appointment and in the said list, the petitioner's name has been included at No.2. He further submitted that the present Head of Police Force (DGP) is going to retire on 30.06.2019 and since a Criminal case is pending against the petitioner, he is apprehending that his name may not be considered on that ground and hence, he requests to quash the charge sheet against the petitioner herein in C.C.No.25 of 2013 on the file of the Special Court for cases under Prevention of Corruption Act, 1988.

14. The learned Senior Counsel for the petitioner, in support of the aforesaid contentions, relied upon the following decisions:-

1) Nanjappa Vs. State of Karnataka, MANU/SC/0788/2015 = (2015) 14 SCC 186

2) Prof. N.K.Ganguly Vs. CBJ New Delhi, CDJ 2015 SC 904

15. The learned Additional Advocate General who is appearing for the respondent has submitted that the charge sheet has been filed against the petitioner herein and six others with a request to take the case on file and the sanction order will be submitted as soon as it is obtained and based on the said request, the learned Special Judge also has taken the case on file in C.C.No.25 of 2013. He further submitted that the Sanctioning Authority, by the order dated 29.11.2013 declined to grant sanction for prosecution against the petitioner herein and the respondent also filed a memo before the Trial Court on 10.08.2018, enclosing a copy of the said order, but the Trial Court, so far, has not passed any order. He further submitted that under the said circumstances, the Court may pass an appropriate order.

16. The learned Additional Advocate General has further submitted that since the petitioner has already filed Crl.OP.No.619 of 2016 to quash the charge sheet against him, let the petitioner give an undertaking that he will withdraw the Crl.OP.No.619 of 2016.

17. The learned Senior Counsel for the petitioner has submitted that Crl.OP.No.619 of 2016 was filed on the ground that after the Central Government declined to grant sanction, the proceedings against the petitioner cannot be continued, where as the present petition has been filed on different cause of action i.e., even though the respondent himself has filed a memo enclosing a copy of the order of the Central Government declining to grant sanction for prosecution, the Trial Court has not passed any order. However, he submitted that to avoid technicalities, he will file a memo to withdraw the Crl.OP.No.619 of 2016. Accordingly, he filed a memo stating that he is withdrawing the Crl.OP.No.619 of 2016.

18. The learned Additional Advocate General has submitted that he has no objection for recording the said memo. Since, it seems that other connected matters also pending, the said memo may be placed before the regular court for appropriate Orders.

19. The learned Senior Counsel for the petitioner has submitted that since the point to be decided is a very limited one, he requests to take the main criminal original petition itself for final disposal. The learned Additional Advocate General also submitted that he has no objection to take up the main criminal original petition itself for final disposal.

20. Taking in to consideration the petitioner has filed a memo stating that he is withdrawing the Crl.OP.No.619 of 2016 and also the submission of the learned Additional Advocate General that he has no objection to dispose of the main Criminal Original Petition itself and the point to be decided is a very limited one, this Court heard arguments in the main criminal original petition itself and disposed of by this Order.

21. It is seen from the typed set of papers filed by the learned counsel for the petitioner that the respondent herein had filed a charge sheet against the petitioner herein and six others stating that they have committed offences under Sections 120(B), 409 IPC and 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 and Section 109 IPC. In the said charge

sheet itself the respondent herein has stated that based on the opinion issued by the learned Advocate General of Tamil Nadu, the final report has been filed without enclosing sanction for prosecution in respect of accused. Further, he has stated that he will submit the sanction order as and when it is received and hence, he requested the Court to take the case on file. It appears that based on the said request, the learned Special Judge has taken the case on file in C.C.No.25 of 2013 and issued summons to the accused persons.

22. On 29.11.2013, the Competent Authority, Ministry of Home Affairs, Government of India has passed an order declining the sanction for prosecution of the petitioner herein. The respondent herein also filed a memo before the Trial Court on 10.08.2018 enclosing a copy of the said order, but it appears till today, the learned Trial Judge has not passed any order in the said memo.

23. As per Section 19 of the Prevention of Corruption Act, 1988, no Court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority. In Nanjappa Vs. State of Karnataka (cited supra) the Hon'ble Supreme Court while dealing with a case under Section 19 of the Prevention of Corruption Act, 1988 in Paragraph No.15 has observed as follows:

> " The legal position regarding the importance of sanction Under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction in terms of Clauses (a) (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such

prosecution".

24. In Prof.No.N.K.Ganguly Vs. CBI New Delhi (cited supra) the Hon'ble Supreme Court in Paragraph No.25 has held as follows:

> " From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.

25. In this case also, the allegations made against the petitioner in the final report filed by the respondent show that the alleged offences were committed by him in discharge of his official duty and hence previous sanction from the Central Government under Section 197 of Cr.P.C was required. Therefore, the trial court should not have taken the case on file without producing sanction order. However, it has taken the case on file based on the request made by the respondent. But, subsequently, the Competent Authority declined to grant sanction for prosecuting the petitioner under the Prevention of Corruption Act. For prosecuting under the provisions of IPC also no previous sanction obtained as mandatorily required under Section 197 of Cr.P.C. Hence, this Court is of the view that the continuance of the proceedings against the petitioner would amount to abuse of process of Court. Therefore, the charge sheet against the petitioner in C.C.No.25 of 2013 on the file of the Special Judge for Cases under Prevention of Corruption Act, Chennai, is liable to be quashed.

26. For the aforesaid reasons, this petition is allowed, the charge sheet in C.C.No. 25 of 2013 on the file of the Special Judge for Cases under Prevention of Corruption Act, Chennai is quashed, in so far as the petitioner herein alone is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

kkn/smv

To,
1. The Addl.Superintendent of Police,
The Directorate of Vigilance and Anti-Corruption,
Vigilance and Anti-Corruption,
Chennai City-I Detachment, Chennai.

2. The Special Court for Cases
under Prevention of Corruption Act,
Chennai.

3. The Public Prosecutor,
Madras High Court,
Chennai.

+2cc to M/s.Ahmad Associates, Advocate sr.44236

Crl.O.P.No.13711 of 2019 and
Crl.M.P.Nos.6748 & 6749 of 2019

cp(co)
nr 29/05/2019