

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.21715 of 2019

K.Jayaraman

..

Petitioner/Accused

Vs.

State represented by
The Superintendent of Police,
Vigilance and Anti-Corruption,
City Special Unit I,
No.293, MKN Road, Alandur,
Chennai - 600 016.

... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent/police to consider the explanation given by the petitioner in response to the final opportunity notice dated 08.07.2019 in Crime No.2/AC/2016/CC-II on the file of the Additional Superintendent of Police, City Special Unit-I, Directorate of Vigilance and Anti-Corruption, Alandur, Chennai-600 016 and to file the final report without any further delay.

For Petitioner : Mrs.A.L.Ganthimathi

For Respondent : Mr.K.Prabakar

Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking to direct the respondent/police to consider the explanation given by the petitioner in response to the final opportunity notice dated 08.07.2019 in Crime No.2/AC/2016/CC-II on the file of the Additional Superintendent of Police, City Special Unit-I, Directorate of Vigilance and Anti-Corruption, Alandur, Chennai-600 016 and to file the final report without any further delay.

2. Today, Ms.S.P.Lavanya, Additional Deputy Superintendent of Police, City Special Unit-I, Directorate of Vigilance and Anti-Corruption (DV & AC), is present before this Court.

3. The petitioner herein filed Crl.O.P.No.21943 of 2018 under Section 482 Cr.P.C. for a direction to the DV & AC to complete the investigation and file final report expeditiously.

4. In Crl.O.P.No.21943 of 2018, this Court (M.DHANDAPANI.J.) passed the following order on 15.11.2018:

"4. The learned Government Advocate (Crl.Side) would submit that since the huge volume of the records are involved in this case and several witnesses are to be examined, the investigation could not be completed within the stipulated time of four months. Accordingly, seeks further time of six months time to complete the investigation.

5. In view of the above request made by the learned Government Advocate (Crl.Side), the respondent is hereby directed to complete the investigation within a period of six months.

6. Accordingly, this criminal original petition is disposed of."

5. It also appears that certain directions have been issued by this Court in Crl.O.P.No.14592 of 2017 that is said to have been filed by the Anti-Corruption Movement. It is indeed surprising as to what locus standi the Anti Corruption Movement has to file a petition under Section 482 Cr.P.C. in a pending investigation, because, the proceedings under Section 482 Cr.P.C. cannot partake the character of a Public Interest Litigation for all and sundry to fish in troubled waters.

6. In Crl.O.P.No.14592 of 2017 filed by the said Anti-Corruption Movement, this Court (P.VELMURUGAN,J.) passed the following order on 26.07.2017:

"5. Considering the facts and circumstances and the gravity of the offence, the respondent is directed to complete the investigation as expeditiously as possible and file the final report preferably within a period of six months from the date of receipt of a copy of this order.

This criminal original petition is disposed of accordingly."

7. Strangely, the order dated 26.07.2017 passed by this Court in Crl.O.P.No.14592 of 2017 was not brought to the notice

of this Court, when final orders were passed by this Court on 15.11.2018 in Crl.O.P.No.21943 of 2018. Since the time period of six months stipulated by this Court in the order dated 26.07.2017 in Crl.O.P.No.14592 of 2017 expired, the DV & AC filed Crl.M.P.No.3505 of 2019 in Crl.O.P.No.14592 of 2017, in which, this Court (P.VELMURUGAN,J.) passed the following order on 12.06.2019:

"2. Being satisfied with the reasons stated in the affidavit filed in support of this petition, two months time is granted for filing the charge sheet. It is made clear that no further extension of time would be granted to the petitioner under any circumstances and it is also made clear that all the procedures should be completed and charge sheet has to be filed before the appropriate Court on or before 13.08.2019.

3. Post the matter on 13.08.2019."

8. Thus, from the above, it is apparent that time for completing the investigation has been extended by this Court till 13.08.2019.

9. While that being so, the Investigating Officer issued proceedings in Proforma-28 dated 08.07.2019 calling upon the petitioner to submit his explanation within fifteen days thereof. The petitioner gave a representation dated 22.07.2019 seeking extension of time to submit his explanation and the same was rejected by the Investigating Officer by letter dated 23.07.2019, however, three days time i.e., upto 26.07.2019 was granted to the petitioner to submit his explanation. The reason assigned by the Investigating Officer in the letter dated 23.07.2019 is that, this Court, by order dated 12.06.2019, has directed the Department to complete the investigation and report the same before 13.08.2019.

10. Mr.K.Prabakar, learned Additional Public Prosecutor also brought to the notice of this Court that the Anti-Corruption Movement has filed a contempt petition in Cont.P.No.331 of 2019 in Crl.O.P.No.14592 of 2017 against the DV & AC for not completing the investigation and the said contempt petition has also been posted today before brother Mr.Justice P.VELMURUGAN, for hearing.

11. In the opinion of this Court, the explanation from the accused in response to the final notice in Proforma-28, is a sine qua non in a prosecution under Section 13 (1) (e) of the Prevention of Corruption Act (for brevity "the PC Act"), disproportionate Assets to the known source of income. On the

failure of getting an explanation from the accused, the prosecution case itself may sometimes stand vitiated. The prosecution for the offence under Section 13 (1) (e) of the PC Act is predicated on records, which may turn out to be voluminous in most cases, because, the police will have to identify the assets held allegedly by the accused in his name as well in the name of his benamis.

12. That apart, the police will have to obtain the assets statement from the employer of the public servant and scrutinize the same on the anvil of the materials gathered by the police. If the public servant offers plausible explanations in response to the notice in Proforma-28, the Investigating Officer can also drop the prosecution and file a closure report. Therefore, the hands of the Investigating Officer should not be tied in a case of this nature, lest it should result in travesty of justice.

13. The learned counsel for the petitioner submitted that the petitioner has submitted his explanation to Proforma-28 on 31.07.2019 and it is his apprehension that the Investigating Officer may not consider the same as it was submitted after the deadline. However, the Investigating Officer, who is present before this Court conveyed through the Additional Public Prosecutor that the explanation dated 31.07.2019, along with the materials running to thousand pages that have been submitted by the petitioner, will be considered before any decision is taken. This submission is recorded and this will undoubtedly allay the fear expressed by the learned counsel for the petitioner. It is always open to the Investigating Officer to place all these facts in the contempt petition and plead for extension of time.

With the above observation, this criminal original petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

nsd
To

1. The Superintendent of Police,
Vigilance and Anti-Corruption,
City Special Unit I,
No.293, MKN Road, Alandur,
Chennai - 600 016.

2. The Additional Superintendent of Police,
Vigilance and Anti-Corruption,
City Special Unit I,
No.293, MKN Road, Alandur,
Chennai - 600 016.

+1cc to Mr.Mrs.A.L.Ganthimathi, Advocate SR.No.69135

CrI.O.P.No.21715 of 2019

RSV(CO)
GMY(09/09/2019)



WEB COPY