IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

Reserved on	Pronounced on
16.12.2019	20.12.2019

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. O.P. NO. 30909 OF 2019

and

Crl.MP.No.16787 of 2019

M.Sengathir Selvan ... Petitioner/5th Accused

Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Coimbatore. ... Respondent/Complainant
(Crime No.14 of 2013/AC/CB)

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in Spl. C.C.No.3 of 2018 on the file of the Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore and quash the charge sheet in so far as against the petitioner.

For Petitioner : Mr.P.Shanmugasundaram, SC
for Mr.G.Arul Murugan

For Respondent : Ms. V.Sharada Devi, GA (Crl. Side)

ORDER

The petitioner, along with four other accused, who were arrayed as A1 to A4, are the employees of the Co-operative Society and they were implicated for the offences under sections 406, 420, 120(b) and 109 of IPC r/w 13 (2) and 13 (1) (d) of Prevention of Corruption Act 1988. The charge sheet was filed by the respondent, which was taken on file in Spl.C.C.No.3/2018 by the Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore. This petition has been filed by the petitioner to quash the charge sheet filed against the petitioner in Spl.C.C.No.3 of 2018 on the file of the Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore.

2. The case of the prosecution, in brief, is stated hereunder :-

The case of the petitioner is that he is a private individual engaged in the business of promoting housing layouts. In the course of said business, after identifying the above lands, the petitioner entered into sale agreement on 28.10.2007 with the landowners by paying an advance of Rs.17,50,000/- towards the sale consideration. Thereafter, the agreement was renewed on 10.06.2008 and the petitioner made entire payment of Rs.25,50,000/- towards the sale consideration to the land owners on 28.10.2008. Thereafter, the petitioner entered into an agreement with Raj Builders for property development on 10.07.2008 by paying a sum of Rs.13,00,000/- for the purpose of development of the layout by black topping of the roads, street lights, etc. Pursuant to the development of the layout, the petitioner applied and obtained DTCP approval from the competent authorities for the layout in DTCP No.55 of 2008 dated 22.09.2008. Thereafter, the land owners executed two separate Power of Attorney deeds dated 28.10.2008 and 07.11.2008 nominating the petitioner as their power agent to deal with entire properties. Accordingly, after obtaining approval from the competent authority, gift deed was also executed in favour of the local body for gifting the necessary portion of lands for the purpose of roads and public places.

3. Whileso, the accused A1 to A4, who are employees of the Co-operative Society, approached the petitioner for purchasing the plots in favour of the society, in turn sold to the members of the society. Pursuant to the discussions between the petitioner and A-1 to A-4, it was agreed by the petitioner to sell 54 housing plots and 2 shop sites measuring 2.45 acre at the rate of Rs.51,500/- per cent. Thereafter, the Society passed a resolution for purchase of the housing sites from the petitioner's layout and the resolution of the Society was duly approved by the competent authority viz., the Registrar of Co-operative Societies (Housing) vide reference in Na.Ka. No.9476/2008/A2 dated 20.11.2008 granting approval for the society to purchase 2.75 acres and 272 sq.ft. consisting of 54 housing plots and 2 shop sites at the rate of Rs.51,500/- per cent and in turn directed the Society to sell the plots to the members at the rate of not less than Rs.60,100/-. Pursuant to the approval, the Society entered into a sale agreement with the petitioner on 01.12.2008 agreeing for purchase of 54 housing plots and 2 shop sites measuring 2.45 acres at the rate of Rs.51,500/- per cent (Rs.118/- per sq.ft.) and the society paid an advance of Rs.75 lakhs.

4. Pursuant to the same, the petitioner executed sale deed dated 08.07.2009 conveying 27 plots measuring 48,880 sq.ft. of land in favour of the Society for a sale consideration of Rs.57,78,815/- towards part performance of the sale agreement. Thereafter, the Society took some time to arrange balance sale consideration of Rs.66,62,500/- towards the conveyance of the balance 27 house sites and 2 shop sites. However, the society delayed in completing the sale and after some time, the Society expressed its inability to proceed with further purchase due to lack of funds. Accordingly, after discussions between the petitioner and the society, the sale agreement was cancelled on 18.07.2012. Even though, only a balance sum of Rs.17,21,185/- was to be returned by the petitioner to the Society towards cancellation of the sale agreement after executing the sale deed for 27 housing plots, however, by way of demand draft, a sum of Rs.25,58,323/- was paid on 13.10.2012 along with interest at the rate of 14% and thereby, the entire transaction between the petitioner and the Society got concluded.

5. Whileso, certain allegations were raised against A1 to A4 that they colluded and conspired with the petitioner and entered into the sale agreement and, thereby, caused wrongful loss to the society. Therefore, First Information Report was initially registered in the year 2013 in which the petitioner was not arrayed as an accused. However, subsequently, the name of the petitioner was included as A-5, while the charge sheet was laid. It is averred by the petitioner that even in the charge sheet, no allegation is levelled against him. However, the court below has taken the charge sheet on file, without considering the materials against the petitioner. Therefore, the present petition has been filed to quash the charge sheet insofar as the petitioner is concerned, on the ground that there is no prima facie materials available to proceed against the petitioner.

6. The respondent has filed a detailed counter stating that the petitioner along with A1 to A4, who are officials of the Pollachi Taluk Co-operative Housing Society hatched a criminal conspiracy, whereby, 54 house sites and two sites for shops situated in SF No.75/1 and 78/1 Pillchinnampalayam were purchased from the petitioner for an escalated price knowing fully well that the said land was not owned by the A5/petitioner. It is the stand of the respondent that in violation of the by laws of the society, and in order to enrich themselves, thereby causing monetary loss to the society, A-1 to A-4 conspired with A-5 in hatching the conspiracy. It is the case of the respondent that the petitioner is neither a power holder nor the actual owner of the above lands as on 31.10.2008, but had fabricated documents showing that he is empowered to

negotiate in respect of the above lands. It is the further case of the respondent that the petitioner received a sum of Rs.75,00,000/- and executed an agreement for sale of 54 housing plots on 01.12.2008, but had executed the sale deed only for 27 house sites on 08.07.2009 and he had never chosen to execute the sale deed for the remaining plots, which resulted in wrongful loss to the society. The wrongful loss to the society by the act of the petitioner was with a mala fide intention to enrich himself by utilising the public funds. Based on the materials gathered during investigation, the prosecution filed the final report. Therefore, the present petition for quashing the charges only insofar as the petitioner is stoutly opposed by the respondent.

7. Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the petitioner submits that the transaction between the petitioner/A5 and A1 to A4 is a genuine one. The petitioner entered into a sale agreement with land owners for purchase of 3.70 acres and the petitioner paid the entire sale consideration to the land owners on 28.10.2008 and the land owners executed a Power Attorney in favour of the petitioner authorising him to deal with the property. The said land was developed and approval was obtained on 22.09.2008. In the capacity of Power of Attorney, the Officials of the Pollachi Taluk Co-operative Society negotiated with the petitioner to purchase the plots in the approved layout and the society agreed to purchase 54 plots at the rate of Rs.51,500/- per cent and also entered into a sale agreement with the petitioner on 01.12.2008 and the Society paid an advance of Rs.75 lakhs. Hence, the entire transaction is genuine and there is no intention on the part of the petitioner to cheat the society and the petitioner did not enrich or gain any undue benefits from the above transaction. Though the Registrar of Society issued a direction to sell the property at the rate of Rs.60,100/-, the property was sold for a higher rate only and society has not suffered any loss. After cancellation of the agreement, the petitioner also sold some of the plots to third parties at Rs.80,000/- per cent. There is no single evidence to implicate the petitioner along with the other accused in this case and the charge sheet has been laid only to harass the petitioner and, therefore, it is submitted that the charge sheet as against the petitioner deserves to be quashed.

8. Per contra, the learned Government Advocate submitted that A1 to A4 fraudulently obtained approval from the society by furnishing fabricated documents and false representation of the petitioner. The certificate with regard to the market value obtained by the petitioner was not issued from the concerned Office of the Tahsildhar and it is fabricated one for cheating

the society and causing wrongful loss to the society. The petitioner conspired with the A1 to A4 to enrich themselves which resulted in monetary loss to the society. Hence, prima facie there are sufficient materials to proceed against the accused and the charge sheet against the accused cannot be quashed. Further, it is submitted by the learned Government Advocate that at the time of framing charges, the probative value of the materials on record cannot be gone into and the Court has to consider whether there are prima facie materials to proceed against the petitioner. There being prima facie materials and overwhelming evidence to proceed against the petitioner, this Court shall not exercise its inherent power to quash the charge sheet, as quashing the charge sheet only against the petitioner would result in detriment to the case of the prosecution insofar as the other accused are concerned. Therefore, it is prayed that this Court may dismiss this petition.

9. A perusal of the documents reveals that the petitioner, who is engaged in the business of promoting housing, had entered into a sale agreement for purchase of lands measuring to an extent of 3.70 acres in S.F.No.75/1 and 78/1 of Pichinnampalayam Village and paid the entire sale consideration to the land owners on 28.10.2008 and on the same day Power of Attorney was executed in favour of the petitioner to deal with the above properties. Thereafter, it appears that the petitioner entered into an agreement with the society on 20.11.2008 for purchase of the property in Survey Nos.75/1 and 78/1. According to the petitioner, though approval was granted on 20.11.2008, even prior to the approval, the Tahsildar concerned has sent a letter to the Registrar of Co-operative Societies with regard to the guideline value of the properties. Further, it appears that in order to implement the above said project, a resolution was passed for getting financial assistance from four Societies as short term loan, viz., Rs.50 Lakhs from PSG Co-operative Housing Societies, Rs.10 Lakhs from Bharathi Co-operative Society, Rs. 15 Lakhs from Coimbatore House Building Society, in all totalling to a sum of Rs.75 lakhs.

10. It is the contention of respondent that the loans were obtained in violation of the by-laws of the Society and without getting permission from the Registrar of Co-operative Societies. It is the further case of the respondent that the without the involvement of the petitioner, the other accused, viz., A-1 to A-4, who are employees/officers of the society, could not have proceeded to put through the fraudulent transaction. Therefore, quashing the charge sheet insofar as the petitioner alone at this stage would be very much detrimental to the prosecution.

11. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426) wherein the Apex Court held as under :

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:
>
> (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
>
> (3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
>
> (4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. The above decision of the Supreme Court unambiguously makes it clear that this Court can exercise the extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of Code of Criminal Procedure either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, then the Court can interfere with the charge sheet.

13. However, a perusal of the materials available in the present case prima facie reveals that A-1 to A-4 entered into a criminal conspiracy with the petitioner for the purchase of house sites for the members of the society, knowing fully well that the petitioner had no right to negotiate for the sale of the lands, as he is not possessed of the requisite power, and in furtherance of the same, had passed a resolution against the by-laws of the society and that without obtaining approval from the Registrar of Co-operative Societies, has taken steps for securing short term loans from the other societies with a view to cause monetary loss to the society and enrich themselves. Though the petitioner may not be connected with the affairs of the society, however, his complicity in the conspiracy, as

alleged, is a matter of evidence, which can be established only at the time of trial. Therefore, it would be wholly unsafe for this court to quash the charge sheet at this stage, which would have very detrimental effect on the prosecution at the time of trial, as the petitioner is also an intrinsic part of the web of conspiracy and arraying him as accused is necessary as without him, the theory of conspiracy projected by the prosecution would fall short. Therefore, at this preliminary stage, quashing the charge sheet against the petitioner alone would not be in the interest of justice and it would work out hardship to the prosecution. The petitioner can very well prove his innocence by participating in the trial to prove his innocence. This Court, is very much circumspect in exercising its inherent powers u/s 482 Cr.P.C., at this stage and, interest of justice warrants that the trial should be taken to its logical end. For the reasons aforesaid, this Court is of the considered view that the relief of quashing the charge sheet insofar as the petitioner is concerned, as sought for at this stage, cannot be acceded to and this petition is liable to be dismissed.

14. Accordingly, this Criminal Original Petition is dismissed. It is made clear that the trial court shall proceed independently on the merits of the issue without in any way being influenced by any observation that have been made by this Court in the above order. Consequently, connected miscellaneous petition is also dismissed.

15. At the time of pronouncement of the order, learned counsel on record, appearing for the petitioner submitted that the petitioner is an age old person and, hence, this Court may consider dispensing with his personal appearance before the court below. Taking into consideration the request as made by the learned counsel for the petitioner, the appearance of the petitioner before the trial court is dispensed with except for his appearance for the purpose of questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct his appearance on those days, however, taking into account the age of the petitioner.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Special Judge,
   Special Court for Cases under the
   Prevention of Corruption Act,
   Coimbatore.

2. The Deputy Superintendent of Police,
   Vigilance and Anti-Corruption,
   Coimbatore.

3. The Public Prosecutor,
   High Court of Madras,
   Chennai 600 104.

+1 cc to M/s.G.Arulmurugan Advocate sr106374

CRL. O.P. NO. 30909 OF 2019

aa20/02/2020