



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL OP (MD)Nos.8558 & 8659 of 2019

Ayyavoo

... Petitioner/
Accused No.14
& Accused No.16
in both the cases

Vs.

State, by the Deputy Superintendent
of Police,
Vigilance and Anti-Corruption Wing,
Madurai.

... Respondent /
Complainant
in both the cases

(in Crime No.1 of 1997)

Common Prayer : These Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code, to call for the records in Spl.Case Nos.35 & 36 of 2011 on the file of the Special Court for Cases under the Prevention of Corruption Act, Madurai and quash the same as against the petitioner is concerned.

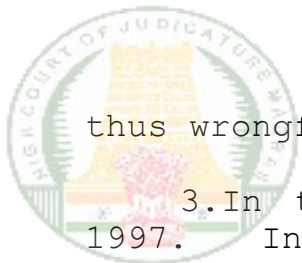
For Petitioner : Mr.N.Ananthapadmanabhan
for M/s.APN Law Associates

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

COMMON ORDER

Ayyavu figures as A14 in S.C No.35 of 2011 and A16 in S.C No.36 of 2011 on the file of the Special Court for Cases under the Prevention of Corruption Act, Madurai. He has filed these criminal original petitions for quashing the criminal proceedings insofar as he is concerned.

2.The petitioner was working as a Tahsildar under the Backward Classes Welfare Department during the relevant period. The charge against the petitioner is that there was a wrongful sanction and distribution of the stipend payable to the students studying short hand and typewriting in the various institutions of commerce in Uthamapalayam. A total sum of Rs.1,54,390/- was said to have been



thus wrongfully disbursed causing loss to the Government.

3. In this regard, an FIR came to be registered in the year 1997. Investigation was undertaken and as many as five final reports came to be filed in the year 2008. They were taken cognizance in the year 2011. To quash the same, these two criminal original petitions have been filed. The charge against the petitioner in both these cases would fall under Section 120 (b), 467, 468, 167, 420, 409 IPC and Section 13(1)(c) and (d) r/w. 13(2) of Prevention of Corruption Act, 1988.

4. The learned counsel appearing for the petitioners submitted that even though sanction under Section 19 of the Prevention of Corruption Act was not required to be taken as the petitioner had retired from service by the time the offences were taken cognizance, still sanction under Section 197 of the Criminal Procedure Code was required. He pointed out that the offences even according to the final report were committed only in the discharge of the official duty of the petitioner and that therefore, obtaining permission was a condition precedent for taking cognizance. In as much as sanction was not obtained, the very act of taking cognizance in both these cases is a nullity in law.

5. I am unable to agree with the submission of the learned counsel for the petitioner. As rightly pointed out by the learned Additional Public Prosecutor appearing for the respondent, Section 197 of Cr.Pc can be invoked by those who are removable from the service by the State Government. In this case, the petitioner was working only as a Tahsildar and retired as such. Tahsildar as per Tamil Nadu Revenue Subordinate Service Rules is removable by the District Collector concerned. In other words, the petitioner is not one of those officials who are removable by the State Government.

6. In this view of the matter, Section 197 of Cr.Pc cannot be called in aid. Of course, as rightly pointed out by the learned counsel for the petitioner, if officials from different departments are involved, then, it is only the highest authority in respect of the senior most official who would be competent to initiate disciplinary action. In this regard, the learned counsel for the petitioner drew my attention to Tamil Nadu Civil Services (Discipline and Appeal) Rules. But, in this case, the issue is not who is competent to initiate disciplinary action. The issue is who is competent to remove the person concerned. As rightly pointed out by the learned Additional Public Prosecutor, in this case, it is only the District Collector concerned who is competent to remove the person concerned from the service. Placing reliance on Section 197 Cr.Pc is misplaced.

7. Therefore, I find no merit in these criminal original petitions. These petitions stand dismissed. It is relevant to note here that these petitions suffer a dismissal only on this technical



ground. This Court has not ventured to consider the merits of the matter. The defence of the petitioner are otherwise left open. The petitioner shall not of course be permitted to canvass before the trial court the contention regarding sanction.

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Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Special Judge for Cases under the Prevention of Corruption Act, Madurai
- 2.The Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, Madurai.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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