



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) Nos.17080 and 17081 of 2016

E.Samy ... Petitioner in Crl.O.P. (MD) No.17080 of 2016

Raja Climax ... Petitioner in Crl.O.P. (MD) No.17081 of 2016

Vs

1.The State represented by
The Inspector of Police,
Thallakulam Police Station,
Madurai District.
(Crime No.679 of 2016).

2.R.Murugan ... Respondents in both Crl.O.Ps.

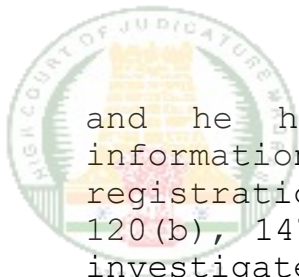
COMMON PRAYER :- Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the final report filed in P.R.C.No.28 of 2016 on the file of the Judicial Magistrate's Court No.II, Madurai and quash the same as illegal in so far as the petitioner is concerned.

For Petitioners : Mr.V.Anantha Padmanaban
For R1 : Mr.A.Robinson, GA (Crl.Advocate)
For R2 : Mr.N.Nagendran
(in both Criminal Original Petitions)

COMMON ORDER

The petitioners herein are shown as accused in PRC.No.28 of 2016 on the file of the learned Judicial Magistrate No.II, Madurai. The defacto complainant in this case, is the second respondent herein. The second respondent is a CBI officer who had gone to the office of Customs and Central Excise for laying a trap. The defacto complainant had received an information that there was a demand of bribe on behalf of one Ashok Raja. The trap was laid on 08.04.2016.

2.According to the prosecution, one N.Krishnan was caught red handed while accepting the bribe amount. After formalities were completed, the trap laying officer and his colleagues were attacked by a group of 9 persons in the office of the Customs and Central Excise, B.B.Kulam, Madurai. The defacto complainant was assaulted



and he had to be hospitalized in V.M. Hospital. He lodged information before the Tallakulam Police Station, leading to registration of Crime No.679 of 2016 for the offences under Sections 120(b), 147, 148, 450, 332, 307, 397, 506(ii) of IPC. The case was investigated and final report came to be filed.

WEB COPY

3.Cognizance of the offence was taken and the case is presently pending at the stage of committal before the learned Judicial Magistrate No.II, Madurai, in PRC No.28 of 2016. The prosecution has arrayed as many as 12 persons as accused. A1 and A10 have filed these Criminal Original Petitions for quashing the impugned proceedings.

4.The learned counsel for the petitioners reiterated all the contentions set out in the memorandum of grounds. He would point out that A10 E.Samy was illegally detained and that a petition under Section 97 of Cr.P.C., was filed by his son-in-law Shiva in Cr.M.P.No.1605/16 before the Judicial Magistrate No.II, Madurai. An Advocate commissioner was appointed and he had categorically given a report observing that A10 E.Samy was illegally detained in Tallakulam Police Station.

5.The learned counsel for the petitioners would claim that E.Samy was implicated in this case as a counter blast to these proceedings. Since Tallakulam police will have to necessarily justify the detention of E.Samy, they have also made him an accused in this case.

6.The learned counsel for the petitioners took me through the statement recorded under Section 161 of Cr.P.C., given by one Madhavan. The said Madhavan is employed as a Constable in CBI. His statement was recorded. After CCTV footage was seen in the presence of other listed witnesses namely Ayyan and Kannan, the said statement was recorded on 09.04.2016. The said statement does not implicate Samy at all. But then, in the statement of Ayyan, which was recorded on 11.04.2016, A10 Samy is mentioned along with other accused.

7.The learned counsel for the petitioners would pointedly contend that if really Samy was involved in the conspiracy to attack the representing party, certainly his name would have been referred to in the statement of Madhavan that was recorded on 09.04.2016. The counsel for the petitioners would link his subsequent implication to the outcome of the proceedings initiated by them under Section 97 of Cr.P.C.

8.Though the submissions made by the learned counsel for the petitioner is quite persuasive, I am of the view that this Court would not be justified in appreciating the factual matrix at this point of time. These petitions filed by the accused herein is only

<https://hcservices.ecourts.gov.in/hcservices/> the impugned proceedings. When I exercise my



jurisdiction under Section 482 of Cr.P.C., I cannot assume the role of a trial Court and even that of a revisional Court.

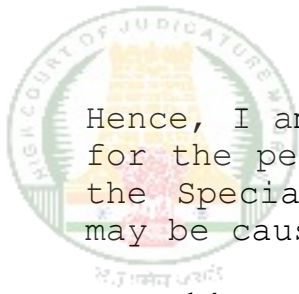
9.As rightly contended by the learned Government Advocate, the Honourable Supreme Court in a recent decision reported in **2019 6 SCC 107** in the case of **Mohd.Allauddin Khan Vs State of Bihar and others**, held that the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of Cr.P.C., because "whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciate the evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this Case".

10.This Court cannot quash the proceedings by invoking its inherent powers. The said decision is clearly applicable to the case on hand. As regard A1, Ashok Raja, the learned counsel for the petitioner could obviously not advance any contention because his name is figuring prominently in the statement recorded under Section 161 of Cr.P.C. As regards Samy, his role is spoken to by the witness Ayyan.

11.Since there are prima facie materials against the petitioners herein, no case for quashing the impugned proceedings has been made out. I therefore, find no ground to grant relief. These Criminal Original Petitions stand dismissed.

12.At this stage, the learned counsel for the petitioners submitted that the case under the Prevention of Corruption Act, has been charge sheeted and taken on file by the Special Court for CBI Cases, Madurai in C.C.No.2 of 2017. In the said case, not only the petitioners herein, but the co-accused in PRC No.28 of 2016 are also figuring as accused. This is because, the prosecution in the said case has specifically alleged that the accused in P.R.C.No.28 of 2016 were responsible for destruction of evidence. Hence, charge under Section 201 of IPC has been framed against them.

13.The grievance expressed by the learned counsel for the petitioners is that if the case on hand is tried independently or earlier in point of time, their defence will be totally exposed and therefore they will be severely prejudiced while contesting the case in C.C.No.2 of 2017. But, the Special Court constituted under the Prevention of Corruption Act, 1988 can also try any offence other than the offence under the Prevention of Corruption Act in which the accused may under the code of Criminal procedure, be charged at the same trial. In this case, as rightly pointed out by the learned counsel for the petitioner, though the investigation officers are different. There is overlapping between the two proceedings in view of the charge under Section 201 of I.P.C. Obviously, the Special Court will not be in a position to try the case on hand.



Hence, I am not able to accede to the request of the learned counsel for the petitioners for directing joint trial of both the cases, by the Special Court. However, as regard the possible prejudice that may be caused to the petitioners herein, I leave the issue open.

14. Accordingly, these Criminal Original Petitions stand dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pnn

To

- 1.The Inspector of Police,
Thallakulam Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) Nos.17080 and 17081 of 2016

18.12.2019

SMA/04/06/2020/4P/3C