IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2020

CORAM :

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11060 of 2020
and
Crl.MP.Nos.4537 & 4538 of 2020

S.Doss .. Petitioner

/versus/

1.State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Cuddalore.

2.R.Raja .. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Spl.C.C.No.3 of 2018 pending on the file of the Chief Judicial Magistrate cum Special Judge under Prevention of Corruption Act, 1988, Cuddalore and quash the same.

For Petitioner : Mr.P.Ayyachamy

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor
for R1

O R D E R

This petition has been filed to quash the proceedings in Spl.C.C.No.3 of 2018 pending before the Chief Judicial Magistrate cum Special Judge under Prevention of Corruption Act 1988, Cuddalore.

2. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor for the 1st respondent and perused the materials available on record.

3. The gist of the case is as follows :

(i) The de facto complainant/2nd respondent, one Raja purchased agricultural land in S.No.545/14 to an extent of 0.14.17 ares in Vazhuthalampattu Village, Kurinjipadi Taluk and the same was registered at the Office of the Sub-Registrar, Kullanchavadi, vide Doc.No.972/2015 for a sale consideration of Rs.2,25,350/-. On verification of the said document, the Sub Registrar of Kullanchavadi found deficiency in stamp duty and it was sent for fixation of valuation of actual stamp duty to the petitioner. Thereby, the petitioner/Accused No.1 had issued Form-1 notice to the de facto complainant.

(ii) On 22.09.2015, the de facto complainant/2nd respondent, appeared before the petitioner's office, in response to the Form 1 Notice. Thereafter, the petitioner made a field visit along with Accused No.2, who is the driver of the petitioner, to the land purchased by the de facto complainant. Thereby, he noted the description of the land and later instructed the de facto complainant to meet him at his office. On 19.10.2015 at about 11.30 hrs, when the de facto complainant met the petitioner, at that time, the petitioner demanded Rs.25,000/-, as illegal gratification to fix the deficient stamp duty and to release the title deed of the document No.972/15, apart from Rs.8,500/- to be paid as deficit stamp duty. Otherwise, the complainant had to pay Rs.1,00,000/-, as deficiency stamp duty.

(iii) On 20.10.2015 at about 17.00 hrs, when the de facto complainant again met the petitioner and expressed his inability to pay the amount demanded by the petitioner, the petitioner reduced the demand to Rs.11,500/- and instructed the de facto complainant to pay in total Rs.20,000/-, which included Rs.8,500/-, towards deficient stamp duty.

(iv) In pursuance to the said demand, the petitioner had obtained Rs.11,500/-, apart from Rs.8,500/- towards deficit stamp duty which was separately taken from the de facto complainant on 26.10.2015 between 11.40 hrs and 13.45 hrs at the portico of the office of the petitioner through A2, as illegal gratification for fixing deficit stamp duty and releasing Doc.No.972/15. Hence, the petitioner/A1 had committed an offfence punishable under Section 7 of the Prevention of Corruption Act, 1988. On the other hand, the accused No.2 abetted the petitioner/A1 by aiding him in obtaining the said illegal gratification and hence, accused No.2 has committed an offence punishable under Section 12 r/w 7 of the Prevention of Corruption Act, 1988.

(v) During the course of the transaction, the petitioner being a public servant, by corrupt and illegal means and by abusing his official position obtained a sum of Rs.11,500/-, through A2 and hence, the petitioner had committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. On the date of trap, the petitioner was not in the scene of occurrence and he was attending grievance day meeting along with the Collector. He further submitted that the trap money has been handed over to A2, who is a contract driver of the petitioner. The petitioner has not instructed A2 to receive any amount on his behalf. He further submitted that in this

case, initial demand is of Rs.25,000/- and thereafter, during the recovery only Rs.20,000/-, had been recovered. Further, in the First Information Report it is seen that the demanded amount was mentioned as Rs.11,500/-, which shows there is a contradiction. Adding to it, the learned counsel further submitted that within one hour of the complaint, First Information Report came to be registered and the credentials of complaint have not been done and hence, it is seen that in a haste, the trap had been initiated. He further submitted that in the 161 statement of the de facto complainant L.W.2, it is seen that the statement was recorded on 3.11.2015, but in that statement there is a reference to the happenings of 27.01.2016, which cannot be so. He further submitted that for the past two years, trial has not progressed and the petitioner has been put to untold misery due to the pending of the above case. Hence, on the above grounds, he filed this quash petition.

5.The Additional Public Prosecutor appearing for the 1st respondent submitted that in this case there was an initial demand of Rs.25,000/-, later the demand was reduced to Rs.20,000/-. Further, the bribe amount recovered was Rs.11,500/- as illegal gratification and Rs.8,500/- being the differential stamp duty and that the amount totally comes upto Rs.20,000/-, which is in conformity to the case of the prosecution. He further submitted that the the petitioner takes alibi stand and it is a settled proposition that in a case of claiming alibi it is for the concerned person to prove the same by producing positive evidence during the trial and not in the quash petition. Further, with regard to the contention raised in the 161 statement about the date, at the most, it would amount only to contradiction which has to be raised during the trial. He further submitted that in this case charges framed and the case is posted for trial on 27.08.2020, summons have been taken to the witness. He further submitted that the points raised by the learned counsel for the petitioner are to be decided only during trial and not in this quash petition. In view of the same, he prayed for dismissal of this petition.

6. In order to prove the case, 23 witnesses have been examined. According to the prosecution, L.W.1 is the sanctioning witness; L.W.2 is the Decoy; L.Ws.3 and 4, are accompanying witnesses; LW.5 is an official witness, who was present at the time of phenolphthalein test; L.W.6 is an official witness, who was present during the demand ; L.Ws.7 and 8, state about the presence and attending office by the petitioner; L.W.9 is the S.R.O, who was examined to prove that the document submitted by the petitioner was with deficit stamp duty and it was sent for fixation of correct valuation to the petitioner. The other witnesses viz., L.Ws.10 and 11, speak about patta, chitta and adangal; L.W.12, examined to prove the fact that A2 was engaged by A1; L.Ws.13, 14, 15 and 16 are the witnesses speak about the procedures with regard to

the fixation of the valuation and stamp duty; L.W.17, is the superior of the petitioner, speaks about the arrest of the petitioner ; L.Ws.18 and 19, assisted during the phenolphthalein test; L.W.20, is the scientific officer from the Forensic Department; L.W.21 is the Trap Laying Officer; L.Ws.22 and 23 are the subsequent Investigating Officers. Listed Documents are L.D.1 to L.D.34.

7. From perusal of the charge sheet, it is seen that after receipt of the complaint, pre-trap proceedings have been conducted and the same were recorded in the entrustment mahazar. Thereafter, following the trap recovery, phenolphthalein test turned positive and the same was recorded in the recovery mahazar. Thereafter, the Trap Laying Officer handed over the investigation to the subsequent Investigating Officers, who conducted the investigation, recorded the statement of the witnesses. On completion of the investigation, final report was submitted before the Sanctioning Authority, L.W.1 who issued sanction order L.D1. Thereafter, charge sheet was filed and the trial Court taken the case on file and now, the case is posted for examination of witnesses.

8. In view of the above submissions made by the learned counsel on either side and perusal of the materials, this Court, finds that there is no merit in the contention of the learned counsel for the petitioner and the points raised by the petitioner have to be decided only during the trial. It is made clear that the Trial Court uninfluenced by the observations made herein shall independently decide the case on merits and in accordance with law.

9.Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1.The Chief Judicial Magistrate cum
Special Judge under Prevention of Corruption Act,
Cuddalore.

2.The Public Prosecutor,High Court, Madras.

3.The Inspector of Police,
Vigilance and Anti-Corruption, Cuddalore.

Ssd(co)
krd 29/10