IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2020

PRONOUNCED ON : 05.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.445 of 2020 and
Crl.M.P.Nos.3584 & 3585 of 2020

K.Nanjudan ... Petitioner

Vs.

The State Rep by,
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
The Nilgiris. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and to set aside the order passed in Crl.M.P.No.213 of 2017 in Special C.C.No.37 of 2015, on the file of the Assistant Sessions Judge cum Special Judge, Udagamandalam, Nilgiris District vide order dated 12.11.2019.

For Petitioners:Mr.M.Velmurugan

For Respondent :Mr.K.Prabakar
Additional Public Prosecutor

ORDER

The petitioner/A4 in Special C.C.No.37 of 2015 filed a discharge petition in Crl.M.P.No.213 of 2017 before the learned Assistant Sessions cum Special Judge, Udhagamandalam and the same was dismissed by order dated 12.11.2019, against which the present revision.

2.The case of the prosecution is that during the year 2007-2008, “Indira Awas Yojana Scheme” of rural development was implemented by the petitioner and other accused for getting financial assistance to construct houses for beneficiaries from Nelakottai Village Panchayat. In the implementation of scheme, the petitioner and other accused conspired to swindle the funds of government alloted for the beneficiaries. The specific case against the petitioner is that the petitioner in the capacity of Block Development Officer, Panchayat Union, Gudalur, with intention to defraud the public funds, made false accounts in the Final Contract Certificate entrusted to him by Nelakottai Village Panchayat President and he passed bills for the government subsidy amount and swindled the amount with help of other accused. When the case was registered, the petitioner was in service. After completion of investigation and filing of charge sheet, the petitioner retired from the service. Hence, the sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988, was not obtained.

3.In implementation of the above scheme, during the period from 13.06.2008 to 17.06.2009, the petitioner along with other accused in conspiracy with each other had created false documents by forging the signatures of beneficiaries and thumb impression in the Final Contract Certificate, based on which, forged cheques were prepared as genuine and thereby, committed misconduct and misappropriation of Rs.3,24,139/-. Hence, the accused committed the offence under Section 120(B), 167, 468, 471, 477(A), 409, 420 IPC and Section 13(2) r/w 3(1)(c) of the Prevention of Corruption Act, 1988. On completion of investigation, charge sheet was filed annexing statements LW1 to LW24 and documents LD1 to LD39.

4.The learned counsel for the petitioner submitted that during the year 2008, the petitioner served as Block Development Officer, Panchayat Union, Gudalur. The specific allegation against the petitioner is that he had signed and created false accounts in the Final Contract Certificate entrusted to him by Nelakottai Village Panchayat President and thereby, swindled the government subsidy amount. He further submitted that the petitioner is falsely implicated with a vindictive motive of senior government officials. The petitioner after visiting the site, had issued the Final Contract Certificate based on the report of the construction of houses and he has nothing to do with alleged offence of fabrication of bills and misappropriation of funds. Further, the petitioner during the year 2007-2008 was a public servant and discharged his official duty. The petitioner served as Block Development Officer, Panchayat Union, Gudalur from 20.12.2007 to 12.06.2008. The alleged offence is said to have been committed by him while discharge of his official duty. Hence, it is a condition precedent for getting sanction under Section 197 Cr.P.C., from the State Government to prosecute public servant.

5.The learned counsel for the petitioner further submitted that Section 197 Cr.P.C., is a devise provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is weapon at the hands of the sanctioning authority to protect innocent public servant from uncalled prosecution. Had the sanction being asked, the sanctioning authority verified the case, he could have satisfied himself that the petitioner had not committed any offence and would not have granted sanction for prosecuting the petitioner. He further submitted that after the certificate is signed by the petitioner, bills are sent to the Collector, who passes the bill. Apart from issuing Final Contract Certificate, the petitioner has got no other role in implementing the scheme. Further, there is no material to show the conspiracy between the petitioner and the other accused. The trial Court without considering the above aspects, had dismissed the discharge petition mechanically. Further, there is a distinction between the official duty and non official duty. The role of the petitioner in this case is clothed with official work. Hence, necessary sanction is required. In order to substantiate his arguments, the learned counsel for the petitioner relied upon the following decisions of the Hon'ble Apex Court:-

- State of Punjab Versus Labh Singh reported in (2014) 16 SCC 807.
- Sankaran Moitra Versus Sadhna Das and another reported in (2006) 4 SCC 584.
- P.K.Pradhan Versus State of Sikkim reported in (2001) 6 SCC 15.
- N.K.Ganguly Versus Central Bureau of Investigation, New Delhi reported in (2016) 2 SCC 143.

6.The learned Additional Public Prosecutor appearing for the respondent filed his counter and made his submissions, that there is sufficient oral and documentary evidence to prove the guilt of the petitioner, who is A4 in this case. During the year 2007-2008 while implementing "Indira Awas Yojana Scheme" for getting financial assistance for construction of houses, 11 beneficiaries were cheated by creating forged documents by taking advantage of illiteracy and ignorance of the beneficiaries. The other accused in this case are Overseer of Panchayat Union, Gudalur, Assistant Engineers, Block Development Officers, Panchayat Assistants, former Panchayat Presidents and private individuals. The petitioner had conspired and colluded with other accused falsified the records, forged the signature and thumb impression of the beneficiaries in the Final Contract Certificate and cheques and committed criminal breach of trust, criminal misconduct and misappropriated the government funds to the tune of Rs.3,24,139/-, thereby committed offence as stated above.

7.The Additional Public Prosecutor further submitted that the petitioner, who is A4 was worked as Block Development Officer, Panchayat Union, Gudalur, the Nilgiris District from 20.12.2007 to 12.06.2008. The general duty of the petitioner is that on receipt of alloted list of beneficiaries by the Panchayat President, the Block Development Officer should send the list to the Collector of district through District Rural Development Agencies. On the basis of beneficiaries list sent by the Block Development Officer, the Collector of the District will pass Administrative Sanction Order for the construction of houses and to monitor the construction work at each stage and also to inspect the site after the completion of construction. During the construction, the Block Development Officer has to issue needed material for construction. It is the Block Development Officer to pass bills in each stage of the work and thereafter, prepare accounts in Final Contract Certificate/completion certificate and verify M-books and pass the bill for subsidy amount, excluding the amount for materials supplied.

8.The petitioner as Block Development Officer with intention to defraud, had signed and entered false account in the Final Contract Certificate entrusted to him and passed the bill for government subsidy amount. Defrauding and entering false account, creating false documents are not official duty of the petitioner. The petitioner had not discharged his official duty and he had defrauded the public funds. Therefore, it cannot be said that the petitioner had discharged his official duty and the provisions under Section 197 Cr.PC., is not applicable to the petitioner. The petitioner in conspiracy with other accused had cheated the poor beneficiaries, thereby denied their rightful benefits.

9.The petitioner's specific duty is to monitor and issue materials for construction each stage of the work. The corresponding entries in M-book to be verified. These functions are not mere formalities. In conspiracy with the other accused, the petitioner had issued the Final Contract Certificate and signed the forged Final Contract Certificate, which cannot be claim to be part of his official duty. Hence, the sanction for prosecution under Section 197 Cr.P.C., is not required. There are enough materials available to proceed against the petitioner and the trial Court, on considering the materials had rightly dismissed the discharged petition.

10.In order to substantiate his arguments, the learned Additional Public Prosecutor relied upon the decision of the Hon'ble Apex Court Court in the case of "Station House Officer, CBI/ACB/Bangalore Versus B.A.Srinivasan and another reported in (2020) 2 SCC 153."

11.Considering the rival submissions and on perusal of the materials, this Court finds that the petitioner was the Block Development Officer during the relevant period and his duty is to verify the beneficiaries, send the list to the Collector and after getting Administrative Sanction Order for constructing houses for beneficiaries, he has to monitor the construction work in each stage and also to inspect the site after completion of construction. Further, he shall issue the prescribed materials needed for construction. It is the Block Development Officer/petitioner's duty to verify each stage of the work and thereafter, prepare the Final Contract Certificate/completion certificate. After verifying the M-books and records, the petitioner has to physically inspect the construction and pass bill for subsidy amount, excluding the amount for the materials supplied.

12.In this case, the records submitted to the District Collector for getting grant for the beneficiaries are forged documents. Hence, the offence of forgery using false documents and misappropriating the government funds had occurred. In view of the same, the sanction under Section 197 Cr.P.C., is not required. Further, during the relevant period, the petitioner was working as Block Development Officer, Nelakottai Village Panchayat, Gudalur, after completion of investigation and filing of charge sheet, the petitioner retired from the service.

13.It would be beneficial to extract the paragraph Nos.13 & 14 of the decision of the Hon'ble Apex Court in the case of "Station House Officer, CBI/ACB/Bangalore Versus B.A.Srinivasan and another reported in (2020) 2 SCC 153":-

> 13.Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing "that the protection available to a public servant while in service, should also be available after his retirement". That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act.
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> 14.Again, it has consistently been laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed "while acting or purporting to act in discharge of their official duty", but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. The statements of law in some of the earlier decisions were culled out by this Court in Inspector of Police v. Battenapatla Venkata Ratnam [Inspector of Police v. Battenapatla Venkata Ratnam, (2015) 13 SCC 87 : (2016) 1 SCC (Cri) 164] as under: (SCC pp. 89-90, paras 7-9)

"7. No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them 'while acting or purporting to act in discharge of their official duty'. That question is no more res integra. In Shambhoo Nath Misra v. State of U.P. [Shambhoo Nath Misra v. State of U.P., (1997) 5 SCC 326 : 1997 SCC (Cri) 676] , SCC para 5, this Court held that: (SCC p. 328)

> '5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court [Shambhoo Nath Mishra v. State of U.P., 1995 SCC OnLine All 492 : (1995) 32 ACC 775] as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.'

8. In Parkash Singh Badal v. State of Punjab [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] , at para 20 this Court held that: (SCC pp. 22-23)

> '20. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these

> acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.'

and thereafter, at para 38, it was further held that: (Parkash Singh Badal case [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] , SCC p. 32)

> '38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.'

9.In a recent decision in Rajib Ranjan v. R. Vijaykumar [Rajib Ranjan v. R. Vijaykumar, (2015) 1 SCC 513 : (2015) 1 SCC (Cri) 714] , SCC at para 18, this Court has taken the view that: (SCC p. 521)

> '18. … even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted.' "

14.Hence, this Court, does not find any illegality or infirmity in the order dated 12.11.2019 in Crl.M.P.No.213 of 2017 in Special C.C.No.37 of 2015 passed by the learned Assistant Sessions Judge cum Special Judge, Udagamandalam, Nilgiris District. The revision is, accordingly, dismissed. Consequently, the connected miscellaneous petitions are closed.

15.It is made clear that the observations and finding made herein are only for the purpose of disposal of the revision. The trial Court uninfluenced by this order, is directed to proceed with the trial and decide the case on its own merits.

Sd/-
Assistant Registrar(ADI MDU)

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Sub Assistant Registrar

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To

1.The Assistant Sessions cum Special Judge, Udhagamandalam,
The Nilgiris District.

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

3.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.445 of 2020

MP(CO)
GMY(09/09/2020)