

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2020
PRONOUNCED ON : 25.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.624 of 2020 and
Crl.M.P.No.4712 of 2020

Dr.K.Kalaimani

... Petitioner

Vs.

State rep. by,
The Inspector of Police,
Vigilance & Anti Corruption,
Crime No.7/AC/2007/SL,
Salem District.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 11.02.2020 made in Crl.M.P.No.714 of 2019 in Special C.C.No.67 of 2014 on the file of the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and set aside the same by allowing this Criminal Revision.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Revision has been filed by the petitioner/accused, to set aside the order dated 11.02.2020 made in Crl.M.P.No.714 of 2019 in Special C.C.No.67 of 2014 passed by the learned Special Judge, (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.

2.The petitioner is facing trial in Special C.C.No.67 of 2014, for offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. During the trial, at the instance of the prosecution, an alteration in the charge framed with regard to the prior demand date under Sections 215 and 216 Cr.P.C in Crl.M.P.No.714 of 2019 in Special C.C.No.67 of 2014 by

order dated 11.02.2020, against which the present revision.

3.The case of the prosecution is that the petitioner being the Superintendent-cum-Chief Medical Officer (public servant) of Government Head Quarters Hospital, Mettur demanded a sum of Rs.4,000/- on 24.07.2020 as illegal gratification from PW2/N.Jayavel, for conducting operation on uterus of his mother Arayee, for removal of big tumor from the uterus. Initially, the demand of Rs.4,000/- was made and later, on the request of PW2, it was reduced to Rs.3,500/-. On the same day, the petitioner received Rs.500/-, as advance from PW2. Thereafter, on 25.07.2007 and 27.07.2007, the amount of Rs.3,000/- was demanded by the petitioner. The trap was laid on 28.07.2007. During the trap, the petitioner demanded and received the amount of Rs.3,000/- from PW2 caught red handed. In the charge sheet, 25 witnesses are cited, of which, the prosecution examined 21 witnesses. LW4, LW8 were dispensed with and LW21 died during trial. The Investigating Officer, who filed the charge sheet was examined as PW21 on 04.12.2019. At this stage, the prosecution filed petition under Sections 215 and 216 Cr.P.C to alter the prior demand date as 26.07.2007 instead of 25.07.2007 in the charge framed

4.The learned counsel for the petitioner submitted that the correction of the date as 26.07.2007 instead of 25.07.2007 is impermissible in law. He further submitted that the attempt made by the prosecution is nothing but to fill up lacuna in the case. The petition filed by the respondent before the trial Court is only half page and the counter filed by the defence/petitioner is one page, on the other hand the order of the trial Court is running to 12 pages, which would show that the trial Court prejudged the issue. Hence, the order of the trial Court causes serious prejudice to the petitioner. The trial Court, while allowing the petition filed by the prosecution, conducted mini trial and misquoted the provisions of the Code of Criminal Procedure, 1973, in altering the prior demand date in the charge framed. The irregularities committed by the prosecution is not a curable one under Section 465 Cr.P.C. The mistake, if any to be corrected in the charge framed, has to be done only at the stage of conclusion of trial. The words "add to" means addition of new charge and not mere corrections. The power to add or alter the charge cannot be extended to correct the date of demand mentioned in the charges. Further, the filing of the petition by the prosecution is at the penultimate stage. In the absence of any provision to amend the date, Sections 215 and 216 Cr.P.C cannot be invoked during the pendency of the trial.

5.The case projected by the prosecution is that the demand made by the petitioner was on 25.07.2007. In the complaint [Ex.P2], FIR [Ex.P12] and 161 Cr.P.C statement of PW2 recorded on 28.07.2007, the second demand is on 25.07.2007. Based on which, the trial Court framed charges, mentioning demand on 25.07.2007. During the course of trial, the falsity of PW2 was exposed. In order to cover up the same and to fill up the lacuna in the case, the prosecution filed a petition, giving reason that due to typographical error, the prior demand date was wrongly mentioned as 25.07.2007 instead of 26.07.2007, which is unacceptable. Hence, the filing of petition by the prosecution before the trial Court is only a deliberate act, by which, the petitioner has been put to great prejudice.

6.In order to substantiate his arguments, the learned counsel for the petitioner has relied upon the following citations:-

- Central Bureau of Investigation Versus Karimullah Osan Khan reported in (2014) 11 Supreme Court Cases 538. The relevant portion of the citation is extracted hereunder:-

"16.The Privy Council, as early as in Thakur Shah v. King Emperor [(1942-43) 70 IA 196 : (1943) 56 LW 706 : AIR 1943 PC 192] , spoke on alteration or addition of charges as follows: (IA pp. 199-200)

"[The alteration or addition is] always, of course, subject to the limitation that no course should be taken by reason of which the accused may be prejudiced either because he is not fully aware of the charge made or is not given a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred."

7.Hence, the learned counsel for the petitioner prayed to set aside the order of the trial Court.

8.The learned Additional Public Prosecutor appearing for the respondent submitted that the petition filed by the prosecution is permitted in law. In the complaint [Ex.P2], FIR [Ex.P12] and 161 Cr.P.C statement of PW2, PW2 mentioned the date of prior demand as 25.07.2007. On the same premise, investigation

conducted and in the charge sheet, the same is mentioned and the trial Court framed charge on the basis of the charge sheet. The demand whether it is on 25.07.2007 or 26.07.2007 does not mislead the accused and the demand is not a solitary incident. Prior to it, on 24.07.2007, the petitioner made demand of Rs.4,000/-, thereafter, on request of PW2, reduced to Rs.3,500/-. On the same day Rs.500/-, a portion of demand was received by the petitioner. On 26.07.2007, the brother-in-law of PW2 had given blood for the surgery. On that day, PW2 met the accused enquired about his mother's health condition. At that time, there was reiteration of the demand. On 27.07.2007, again the demand was insisted. Thereafter only, the complaint was lodged on 28.07.2007 and the trap was laid. During the trap, PW2 and the accompanying official witness Subramanian, had gone to the office of the petitioner, at that time, the petitioner reiterated his demand. PW2 handed over the balance bribe amount of Rs.3,000/- to the petitioner. The petitioner received the bribe amount through in his right hand, counted the same in both his hands and kept in his pocket. On receiving the pre-arranged signal, the trap team entered the office of the petitioner, PW20 conducted phenolphthalein test, which proved positive and recovered the tainted money from the petitioner. The TLO conducted investigation till then. Thereafter, the investigation was handed over to PW21, who on completion of investigation, filed the charge sheet.

9.The learned Additional Public Prosecutor further submitted that during further examination of PW2 by PW21/Investigating Officer, PW2 realized his mistake and gave explanation that he wrongly mentioned the second demand date as 25.06.2007 instead of 26.06.2007 and on 26.06.2007, he had taken his brother-in-law for donating blood. Thereafter, during examination of PW2 before the trial Court, PW2 gave explanation about the mistake. The petitioner was well aware that the first demand projected by the prosecution was on 24.07.2007 and the second demand was on 26.07.2007 and third demand was on 27.07.2007 and finally, the trap was laid on 28.07.2007. During the cross examination of PW2, the petitioner consciously denied prior demands, made on 24.07.2007 and 26.07.2007. Hence, no prejudice is caused to the petitioner, since he was very much aware of the prior demand dates. Further, the demand is not a solitary incident in this case to cause prejudice.

10.The learned Additional Public Prosecutor further submitted that if any omission, it has to be put to the witnesses concerned and the investigating officer. Thereafter, it is for the trial Court to consider whether such omission amounts to contradiction, significant and relevant to the facts

of the case. Further, before the trial Court, for correction of date in the charge, the prosecution as well as the petitioner, advanced elaborate arguments, which necessitated for the trial Court to pass such a detailed order. Hence, the order of the trial Court cannot be faulted. The passing of detailed order would not amount to inference that the trial Court had prejudged the issue. From the order of the trial Court, it is seen that the learned Special Judge had extracted the complaint of PW2 [Ex.P2], 161 Cr.P.C statement of PW2 recorded on 28.07.2007 and further 161 Cr.P.C statement of PW2 recorded on 30.07.2020, thereby, the anomaly was classified. The trial Court on considering all these aspects and found no prejudice would be caused to the petitioner in altering the prior demand date in the charge, had allowed the petition filed by the prosecution and ordered to alter the prior demand date as 26.07.2007 instead of 25.07.2007.

11. In order to substantiate his arguments, the learned Additional Public Prosecutor relied upon the citation of the Hon'ble Apex Court in the case of "Anant Prakash Sinha Alias Anant Sinha Versus State of Haryana and another reported in (2016) 6 Supreme Court Cases 105". The relevant portion of the judgment is extracted hereunder:-

"18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC."

12. This Court considered the rival submissions and perused the materials on records.

(i) From the facts of the case, it is not in dispute that the petitioner was working as Superintendent cum Chief Medical Officer of Government Head Quarters Hospital, Mettur. The mother of PW2 Araayi took treatment in the said Hospital from 19.07.2007 to 23.07.2007. During the treatment, she was taken X-Ray, blood test and scan.

(ii) The dispute is with regard to the date, on which the alleged prior demand was made by the petitioner. According to PW2, the demand was made on 24.07.2007, 26.07.2007 and 27.07.2007 and trap was laid on 28.07.2007. The mistake committed by PW2, while lodging the complaint [Ex.P2] is that the second demand is said to have made on 25.06.2007. Hence, in the complaint [Ex.P2], FIR [Ex.P12] and 161 Cr.P.C statement of PW2 recorded on 28.07.2007, the prior demand date is mentioned as 25.07.2007 at about 03.30 p.m. After the trap on 28.07.2007, the case was handed over by TLO to PW21 who examined again PW2 on 30.07.2002, at that time PW2 realized his mistake and gave explanation for omission caused by him in giving the second prior demand date as 25.07.2007 instead of 26.06.2007.

(iii) In this case, while filing the final report on 29.10.2008, the omission and the correction of the second prior demand date has not been carried out in the brief of the case submitted in the charge sheet and the second prior demand date was wrongly mentioned as 25.07.2007. While framing the charge by the trial Court on 20.04.2011, the same mistake continued. Hence, in the charge, the second prior demand date has been mentioned as 25.07.2007 instead of 26.07.2007.

(iv) During trial, the chief examination of PW2 was held on 06.01.2016 and he was cross examined on 03.03.2016. During chief examination at page No.3, 8th line from the top, PW2 stated that on 26.07.2007, his brother-in-law had given one bottle of blood and on the same day at about 03.30 p.m., when he met the petitioner, the demand for bribe has been made by him. Further, at page No.9, 10th line from the bottom, PW2 has stated the reason for omission committed by him. In his cross examination held on 03.03.2016, at page No.11, 2nd line from the bottom, PW2 stated the date of prior demands as 24.07.2007 and 26.07.2007. Likewise, at page No.14, the contradiction of the petitioner has been drawn with regard to the omission. Thus, the petitioner is well aware about the contents and particulars in the charge.

(v) The prosecution ought to have brought to the notice of the trial Court with regard to alteration of prior demand date at the time of framing of charge or examination of PW2, but at

the penultimate stage, while examination of PW21/Investigating Officer, the fact has been noticed by the prosecutor. Hence, the prosecution has filed a petition under Sections 215 & 216 of Cr.P.C before the trial Court.

(vi)The Chapter XVII of the Code of Criminal Procedure, 1973, pertains to Charge. Section 211 Cr.P.C specifies what to be mentioned in the Charge and its contents. Section 212 Cr.P.C specifies the Charge shall contain particulars as to time, place and person. Section 213 Cr.P.C specifies the manner in which the alleged offence was committed. Section 214 Cr.P.C specifies the Words in charge taken in sense of law under which offence is punishable. Section 215 Cr.P.C specifies that no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission. In this case, the omission of mentioning as 26.07.2007 instead mentioning as 25.07.2007 is not material and the accused is not misled by such omission and no prejudice would be caused to him and no way occasioned failure of justice.

(vii)Further, the Hon'ble Apex Court has held that if the amendment becomes necessary even in the complaint, the Court will have power to permit such an amendment in the criminal cases and in cases governed by Code of Criminal Procedure, 1973. The Court is not powerless and may allow amendment in appropriate cases. Hence, the contention of the petitioner that there is no power of amendment has to be negated.

8.Thus, on perusal of the materials produced, this Court finds that there is no illegality or infirmity in the order dated 11.02.2020, passed by the learned Special Judge, (Special Court for Trial of Cases under the Prevention of Corruption Act, 1988), Salem, in Crl.M.P.No.714 of 2019 in Special C.C.No.67 of 2014 and the same is, hereby, confirmed and the revision is, accordingly, dismissed. Consequently, the connected miscellaneous petition is closed.

9.The learned counsel for the petitioner submitted that the petitioner may be permitted to recall the witnesses under Section 217 Cr.P.C. If he so desires, the petitioner may file a petition before the trial Court with proper and plausible reasons to recall the witnesses. The trial Court is to decide the same on merits and pass order in accordance with law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Inspector of Police,
Vigilance & Anti Corruption,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

+1cc To Mr.N.Manoharan, Advocate, sr no.27668

Crl.R.C.No.624 of 2020

RSV(CO)
RMP(15/09/2020)



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