



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019
PRONOUNCED ON : 03.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10832 of 2019 and
Crl.M.P.No.5557 of 2019

Sugumaran ... Petitioner /Accused -13
Vs.

State by,
The Deputy Superintendent of Police,
Crime Branch, CID, Coimbatore,
(Crime No.3 of 2014) ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for all the records and quash all the proceedings in Spl.C.C.No.1 of 2016 the learned Special Judge of the Cases Under Prevention of Corruption Act, Coimbatore.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.M.Prabhavathy
Additional Public Prosecutor

ORDER

The petitioner, who is A13 in Special C.C.No.1 of 2016 pending trial on the file of the Special Judge for the cases under the Prevention of Corruption Act, Coimbatore for the offence under Sections 457 and 380 of IPC @ Section 120B, 457, 380 r/w 120B r/w 109, 166, 166A of IPC and Section 7, 13(1)(d) (iii) r/w 13(2) of the Prevention of Corruption Act, 1988, has filed this quash petition.

2.The brief facts of the case is that on 12.12.2013 the defacto complainant Bhawarlal, a wholesale and retail dealer in Panmasala, Cigarettes, Tea dust, grocery etc., running a shop at Range Gowder Street, Coimbatore, lodged a complaint with Coimbatore City B-10 Selvapuram Crime Police Station stating that on 03.12.2013 at about 10.30 p.m when he along with his employee Jithendarkumar went to his godown located at D.No.58/2 Paraimarathur, Thelungupalayam, Coimbatore to fetch stocks found the locks of his godown and shutter broke open and 16 bags of



three roses tea dust packets, 10 sacks of panmasala and 10 boxes of gold filter cigarettes all worth of Rs.12 lakhs were stolen. In this regard a case in Crime No.1329 of 2013 for offence under Section 457 and 380 IPC was registered by Special Sub Inspector of Police, Coimbatore City B-10 Selvapuram, Coimbatore. Investigation by the police revealed that gang headed by A1 Bush @ Abuthagir had committed the offence. During investigation, A2 Harun Sherif and A3 Prabhakaran were arrested on 16.12.2013. On their confession, the involvement of the other accused namely A1 and A4 to A12 was revealed. Pursuant to the confession, cash Rs.1,100/- was recovered from A2 Harun Sherif and six bags of three roses tea dust was recovered from A3 Prabhakaran and a Honda city car bearing registration No.TN 66 H 3151 and a scorpio car bearing registration number TN 41 P 2135 which were used for commission of offence were seized. The investigation by the local police did not reveal any details regarding the involvement of police personnels in this offence. Thereafter, as per the orders of the Director General of Police Tamil Nadu in RC.No.225162/Crime No.3(1)/2013, dated 01.01.2014, the case was transferred to CBCID. On 19.02.2014 the case was re-registered in Crime No.03 of 2014 under Section 457 and 380 of IPC by the Coimbatore City CBCID, Coimbatore. During investigation by CBCID one of the absconding accused A8 was arrested on 20.03.2014 and remanded. Thereafter, A8 was taken in police custody along with A4 Asik Ali, A6 Ibrahim @ Belt Ibrahim and A7 Mohammed Asraf who were already in custody in connection with the Crime No.2 of 2014 were also taken into police custody. A1 was in custody in Crime No.01 of 2014. During custodial interrogation on 26.03.2014 and 27.03.2014, all the above accused confessed their respective involvement and about the co-accused involvement in this case. Some of the stolen properties were recovered based on their confession.

3.A1 Bush @ Abuthagir had also given a confession statement which revealed the role played by the petitioner/A13, Deputy Commissioner of Police Sugumaran and other police personnels, payment of cash of Rs.57,000/- through A2 as part of advance amount and regarding the deal made to share 50% of the booties to the DCP. Further, it revealed that A1 to A12 are closely associated with each other in committing the criminal acts continuously. During the commission of one of such acts, A1 was informed that A2 Harun Sherif was close to A13 Sugumaran, DCP Crime, Coimbatore City and on getting his help they would be protected from prosecution. The petitioner/A13 had given his concurrence. This was evident from Call Detail Records (CDR) particulars between A2 and the petitioner and also SMS. In pursuant to the same, the petitioner had deputed A14 Selvaraj Sub Inspector and other police personnel A15 to A17. A14 is the driver of the petitioner and A16 and A17 are reliable constables. All the accused were in constant touch with each



WEB CTS

other. On 03.12.2013 the petitioner/A13 was available in and around the scene of crime. The presence of other police personnels in the scene of crime were spoken by the witnesses and evident through call details and pocket diary. Before commission of offence on 03.12.2013, Rs.1 lakhs was demanded as advance. This deal was accepted and Rs.57,000/- was handed over through A2 to A13. Thereafter, the accused A1 to A12 on the instructions of A13, gone to the godown of the defacto complainant on 03.12.2013 broke open the locks of the shutters of the godown and had stolen the articles worth Rs.12 lakhs. Subsequent to this, the defacto complainant had received threatening calls from A1 demanding Rs.30 lakhs and that police vehicles would surround his godown and seize the banned articles which are found in his godown. Sensing fear tthat the remaining stock would be attempted to be removed, the defacto complainant along with his employee arranged a vehicle to clear the remaining stock at about 01.00 a.m on 04.12.2013. On his way, he was intercepted by the petitioner A13 and was enquired. Meanwhile the other police personnels had reached the godown and started making enquiry with regard to the banned items. The petitioner threatened the defacto complainant that a case would be registered against him for stocking banned items and for which the petitioner demanded Rs.5 lakhs from the defacto complainant for not registering any case and for not seizing the banned items.

4. Further the defacto complainant was informed that if he pays Rs.5 lakhs, the stolen articles would also be recovered and entrusted back to him. On instructions of the petitioner the police had locked the godown and kept the key with them. Meanwhile the defacto complainant was continuously receiving the threatening calls for a demand of Rs.30 lakhs. The uncle of the defacto complainant handed over Rs.4 lakhs to A15 driver of the vehicle, who in turn handed over it to the petitioner. Thereafter, the Sub Inspector of Police handed over the godown key to the said Salaram and allowed them to vacate the godown. The other police personnels continued their demand for the remaining cash of Rs.1 lakh from the accused. On 05.12.2014 the police personnels had taken the defacto complainant and his uncle Salaram from his home near Cheran Towers by 11.00 a.m and thereafter, near sungam bypass road threatened and demanded the balance cash of Rs.1 lakh to be paid to A13. Further monthly bribe of Rs.5 lakh was also demanded from the defacto complainant to continue his business. The defacto complainant unable to bear the demand and fearing threat for his life, approached the Commissioner of Police, Coimbatore and made a complaint. Sensing being exposed, the accused on 08.12.2013 by 08.00 p.m., took the defacto complainant and his uncle to Sakkampudur Graveyard near SBOA School, Coimbatore and handed over cash Rs.3.86 lakh to them and informed that the petitioner



had repaid the amount and also threatened the defacto complainant not to inform and further pursue the complaint with the Commissioner of Police, Coimbatore. Thereafter, on 09.12.2013 Rs.14,000/- was also returned. The defacto complainant lodged a complaint to the Commissioner of Police on 09.12.2013. On the orders of DGP, the case was transferred to CBCID, Coimbatore, who had conducted investigation, recorded the statements, collected the CDR and some of the witnesses have given 164 Cr.P.C statements after obtaining sanction for prosecution, filed the charge sheet citing LW1 to LW56 and served documents before the trial Court against A1 to A17 for the above said offences.

5.The contention of the learned counsel for the petitioner is that the defacto complainant is a dubious person, who is dealing in the business of Prohibited and Banned Items as wholesale dealer and his godown was broken and theft of the articles have been committed. Fearing stringent action he has preferred a false complaint. Further, the defacto complainant, earlier foisted cases against the police officials and others for taking action against him. Hence, a ploy was adopted by him. Even on 20.09.2017 when the Food Safety Officer and his assistant conducted an inspection on the godown of the defacto complainant, they were threatened by him and his employees.

They locked the food safety officer and another in the godown and kept them under confinement. The Food Safety Inspector Officer lodged a complaint against the defacto complainant and his employees which came to be registered in Crime No.733 of 2017 for the offence under Sections 269, 270, 284, 342, 353, 506 (2) and Section 7(2) and 7(5) of the Cigarette and other Tobacco Products Act, 2003. Thus the defacto complainant is not of good virtue, his complaint is a motivated one against the officials. The defacto complainant had lodged a complaint on 09.12.2013 before the Commissioner of Police and thereafter on 12.12.2013 before the Inspector of Police, B-10 Selvapuram Crime Police Station. Both the complaints are contradictory to each other, Admittedly, the name of the petitioner does not find place in both the complaints.

6.He further submitted that the petitioner had been roped in this case on the theory of conspiracy. The petitioner had neither met the defacto complainant nor made any demand and has also not received any amount in furtherance to the demand from the uncle of the defacto complainant. The petitioner was on night patrolling duty on the relevant day. He was in constant move and was in touch with more than 50 officials of the city. The petitioner having contact during the night patrol with his subordinates is a routine work for which no criminality could be attributed. Further the entire case proceeds on the confession of the co-accused which is without any basis. The Call Detail



Records does not show any contact between A2 and the petitioner on 03.12.2013 which is the foundation of this case. During the investigation conducted by the local police, none of the witnesses have implicated the petitioner. Only after the case was transferred to the file of the respondent, statements were recorded as though the petitioner had complicity with the other accused and the statements have been doctored to include the name of the petitioner. The petitioner recently has joined as Deputy Commissioner of Police, Crime in Coimbatore city. The day's allotted for night patrol was few days before the Anniversary of Babur Masjith Demolition and the petitioner was on constant move, keeping visit of the city.

7.He further submitted that most of the witnesses in this case who have implicated the petitioner, are in the nature of hearsay. The petitioner has no involvement in commission of offence as projected, such as, the offence of demand, acceptance, bribe amount and handing back the bribe amount. The theory preponed by the prosecution is imaginary and artificial. The petitioner has been falsely implicated in this case.

8.In order to substantiate his arguments the learned counsel for the petitioner relied upon the case reported in (2003) 8 SCC 461 in Nazir Khan and others Versus State of Delhi and the case reported in (2005) 12 Supreme Court Cases 631 in K.R.Purushothaman Versus State of Kerala and submitted that a person cannot be implicated in a case merely on the theory of conspiracy, that to on the tainted witness of the co-accused. The essential ingredient of offence of conspiracy requires some kind of physical manifestation of agreement. In this case, no such manifestation of agreement could be even remotely inferred. Hence, he prayed for quashing of the proceedings against the petitioner/A13.

9.The learned Additional Public Prosecutor appearing on behalf of the respondent filed counter and submitted that on 12.12.2013 the defacto complainant Bhawarlal, a wholesale and retail dealer of Panmasala, Cigarettes, tea dust, grocery etc, having a godown at Range Gowder Street, Coimbatore lodged a complaint to Inspector of Police, Coimbatore City B-10 Selvapuram Crime Police Station about breaking open his godown and theft of articles to the value of Rs.12 lakhs on 03.12.2013. The local police registered a case in Crime No.1329 of 2013 under Section 457 and 380 of IPC. During investigation it revealed that a gang headed by A1 along with other accused had committed the offence. Initially, some of the accused were arrested, articles were recovered. Based on the confession, complicity of the other accused came into light. Thereafter as per the direction of the Director General of Police Tamil Nadu in RC.No.225162/Crime No.3(1)/2013, dated 01.01.2014, the case



WEB COURT

was transferred to the CBCID, Coimbatore. Thereafter, the CBCID re-registered a case in Crime No.3 of 2014 under Section 457 and 380 of IPC. During investigation it was found that A1 and A12 operated as gang and indulged in such nature of offences. The petitioner was working as Deputy Commissioner of Police Crime, Coimbatore City. During the relevant period A14 to A17 were his subordinates. On 03.12.2013 and 04.12.2013, A13 to A17 in conspiracy with each other had aided and abetted A1 to A12 to commit the above offence. Further advance of Rs.1 lakhs was demanded as bribe and 50% share in the booties to be paid to the petitioner. Further demanded Rs.5 lakhs as bribe from the defacto complainant and threatened him that cases would be registered against him for possession and dealing with the prohibited and banned items. The defacto complainant paid Rs.4 lakhs which was received by the police personnels and was handed over to the petitioner. Thereafter, for the remaining Rs.1 lakh the demand was continued. Further, monthly bribe of Rs.5 lakh was demanded from the defacto complainant to continue with his business. Not willing to pay and fearing threat for his life and business, the defacto complainant lodged a complaint to the Commissioner of Police, Coimbatore, who ordered enquiry. In the meanwhile the Crime No.1329 of 2013 investigated by the Coimbatore City B-10 Selvapuram Police and Crime Nos.2028 of 2013 and 2029 of 2013 investigated by B-8 Variety Hall Police Station, Coimbatore were transferred on the orders of the Director General of Police and Crime Nos.1, 2 & 3 of 2014 was assigned by the respondent and charge sheet in three cases came to be filed.

10.The accused persons are mostly common in all the cases except in Special C.C.No.1 of 2016. Other than the private individuals five police personals namely A13 to A17 were arrayed as accused. On completion of the investigation charge sheet came to be filed before the trial Court. During investigation, witnesses have given 164 Cr.P.C., statements. The demand of bribe was persistent, all the accused were in constant touch with each other in accomplishing their demand as could be seen from the CDR. There have been close contact between each of the accused during the relevant period. Further it is a case of conspiracy and there are enough materials by way of statement and documents to prove the involvement of the accused. On completion of the investigation witnesses LW1 to LW56 statements have been recorded and documents LD1 to LD62 have been annexed to the final report. The trial Court on perusal of the materials had taken the cognizance of the offence and assigned C.C.No.1 of 2016 and hence, prayed for dismissal of the quash petition.

11.Considering the rival submissions and on perusal of the materials, this Court finds that in this case LW1 to LW5 had stated about the occurrence and the complicity of all the



accused. Further they had also given 164 statements before the Judicial Magistrate No.II, Coimbatore. There are other witnesses who have spoken about the conspiracy. On the arrest and confession of the accused, recovery and seizures have been made. The weekly diary, pocket note book, vehicle movement diary which were collected prove the movement of the police personnels and their presence in and around the scene of crime. The call details of the accused would show that they were in constant touch and proximate to each other during the relevant period. The sanctioning authority on perusal of the investigating materials have accorded sanction. Further one of the charge in the case pertains to offence of conspiracy.

12.The citations referred by the learned counsel for the petitioner would apply in the case of appeal only, after the completion of trial. In this case, the trial is yet to be completed and it is too early to draw inference on the nature of evidence.

13.This Court finds that there are prima facie materials to proceed against the petitioner and the other accused in this case. The points raised by the petitioner are to be raised during trial and hence, the quash petition stands dismissed. It is made clear that the observations and findings recorded in this order are only for the purpose of disposal of this quash petition arising out of application filed under Section 482 of Cr.P.C. It is open for the trial Court to decide the pending trial on its own merits, uninfluenced by this order.

14.Learned counsel for the petitioner submitted that the petitioner is now posted at Madurai and in view of his posting, it would be difficult for him to appear before the trial Court on all hearing dates. In view of the above, the personal appearance of the petitioner before the Court below is dispensed with unless he is specifically required by the Court below. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



vv2

To

WEB COPY

- 1.The Special Judge of the Cases
Under Prevention of Corruption Act,
Coimbatore.
- 2.The Deputy Superintendent of Police,
Crime Branch, CID,
Coimbatore,
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.10832 of 2019 and

ca[co]
srg 01/07/2020