

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2020

PRONOUNCED ON : 20.11.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.966 of 2020 and Crl. M.P.Nos.6680 and 6681 of 2020

J.Mugundan
Formerly District Manager-cum-Deputy Collector
TASMAC
Villupuram District Petitioner

Vs.

The State rep. by
The Inspector of Police
Vigilance and Anti-Corruption
Villupuram
(Crime No.11 of 2017) Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. to set aside the order dated 08.10.2020 passed in Crl.M.P.No.48 of 2020 in Special Case No.5 of 2020 on the file of the Special Court for Prevention of Corruption Act Cases at Villupuram.

For petitioner Mr. V. Krishnamoorthy

For respondent Mrs. P. Kritika Kamal
Govt. Advocate (Crl.Side)

ORDER

The petitioner was working as District Manager, TASMAC, Villupuram. The TASMAC had an outlet in the building of Muthu (de facto complainant) in Brammadesam Village. The de facto complainant had rented out his shop on 03.05.2017 to the TASMAC, on a monthly rent of Rs.5,000/-. The de facto complainant was running a petty shop adjacent to the TASMAC shop, where, he was supposedly selling some eatables compatible to the tipplers patronising the TASMAC shop. While this being so, six months rent was due to the de facto complainant and so, when he approached the petitioner, the latter is said to have demanded Rs.50,000/- as bribe. Not willing to part with the money, the

de facto complainant lodged a complaint, based on which, a trap was laid on 21.10.2017 and the petitioner fell into the snare. After the usual trap proceedings, the petitioner was arrested and remanded in custody and after completing the investigation, the police have filed a final report in Special Case No.5 of 2020 in the Court of the Special Judge for Prevention of Corruption Act Cases, Villupuram, against the petitioner for the offences under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act Cases, 1988.

2 The petitioner appeared before the trial Court and collected the final report and documents under Section 207 Cr.P.C. He filed a petition in Crl.M.P.No.48 of 2020 in Special Case No.5 of 2020 under Section 239 Cr.P.C. for discharge, which has been dismissed by the trial Court by the order impugned herein, on 08.10.2020, aggrieved by which, the petitioner has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

3 Heard Mr.V.Krishnamoorthy, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondent/State.

4 The contentions urged by the learned counsel for the petitioner and this Court's findings therefor are catalogued as under:

(i) Even before the alleged demand of bribe on 19.10.2017, the petitioner had processed the rent papers as early as 11.09.2017 in respect of 63 rentals, including that of the de facto complainant and therefore, there was no further official act he was required to perform for demanding bribe from the de facto complainant. In support of this contention, the learned counsel relied on document No.18 filed along with the final report. He also placed reliance upon the judgment of the Supreme Court in State through Inspector of Police, A.P. vs. K.Narasimhachary¹.

This Court's finding:

The fact remains that the petitioner was the District Manager of the TASMAC which had taken the shop of the de facto complainant on rent. The petitioner was a public servant. Six months rent was due to the de facto complainant from the TASMAC and therefore, when the former approached the petitioner, the petitioner is said to have demanded Rs.50,000/- as bribe. At this juncture, it cannot be stated that the de facto complainant was aware that the petitioner had processed the rent papers and had sent it to his higher ups. As far as the de facto complainant is concerned, when the rent for a period of six

months was due to him, he approached the petitioner and the petitioner demanded a price for doing his official work.

(ii) When the rental arrears works out only to Rs.30,000/-, the alleged demand of Rs.50,000/- by the petitioner as bribe defies logic.

This Court's finding:

A reading of the complaint shows that the petitioner demanded the bribe of Rs.50,000/- not only for processing the rent papers, but, on the ground that the de facto complainant was earning lot of money from the customers patronising the TASMACH shop. In the light of these allegations, it will be too preposterous at this stage to hold that the demand of Rs.50,000/- as bribe defied logic. Narasimhachary (supra) was an appeal against acquittal after a full-fledged trial and further, it was not a case that arose against a quash or discharge application.

(iii) The petitioner was on leave on 19.10.2017, the day of alleged initial demand and therefore, the story of the de facto complainant should be disbelieved.

This Court's finding:

Alibi is a question of fact relevant under Section 11 of the Evidence Act, 1872, to be decided only during trial and not pending trial.

(iv) There are several criminal cases against the de facto complainant as could be seen from the information provided by the police under the Right to Information Act, 2005 and therefore, he being a person of questionable character, the entire prosecution is vitiated. That apart, the petitioner had lodged several complaints against the de facto complainant to his higher authorities and hence, accentuated by malice, the police have framed the petitioner.

This Court's finding:

Law does not mandate that only a paragon of virtue can set the criminal law in motion. The alleged bad antecedents of the de facto complainant are not a bar for him to lodge a police complaint. As regards malice, as rightly pointed out by Mrs.P.Kritika Kamal, the same can be tested only during trial as held by the Supreme Court in State of Bihar and another vs. P.P.Sharma and another².

(v) The petitioner belongs to 'X' community, whereas, the de facto complainant and the police officers belong to 'Y' community and that is why, this case was foisted on the petitioner by the police. This apart, the police had beaten the petitioner and had caused injuries on his person which have been noticed by the remanding Magistrate at the time of remand.

This Court's finding:

This aspect has been answered by the trial Court in paragraph no.4 of the impugned order. The trial Court has found that the injuries found on the person of the petitioner have been narrated in the mahazar itself by the trap laying officer, in that, when the trap party zeroed in, the petitioner tried to escape from them and dashed against the door and sustained injuries. In the teeth of this explanation even in the trap mahazar, a finding that the petitioner was assaulted by the police, because, he belongs to a different community cannot be given in discharge proceedings.

(vi) The petitioner has lodged a complaint in the Human Rights Commission on this aspect and the same is pending.

This Court's finding:

Pendency of proceedings before the Human Rights Commission can, by no stretch of imagination, be a bar for the trial of the petitioner, inasmuch as, the scope of enquiry before the Human Rights Commission is totally different from that of the trial before a criminal Court.

5 Further, the judgments of the Supreme Court qua discharge of an accused from a prosecution are a legion. Suffice it to refer to the judgment of the Supreme Court in State of Tamil Nadu vs. N. Suresh Rajan and others³, wherein, all the earlier rulings on the subject has been analysed threadbare and it has been held that even a strong suspicion is sufficient to frame charges. In this case, there is more than a strong suspicion disclosing the involvement of the petitioner in the offence and hence, he cannot be discharged from the prosecution.

In view of the aforemade discussion, this Court finds no merit in this criminal revision and accordingly, this criminal revision stands dismissed. However, it is made clear that whatever is stated in this order is only for the limited purpose of deciding this criminal revision and the trial Court shall proceed with the trial uninfluenced by any of the observations made in this order. Connected CrI.M.Ps. are closed.

Sd/-

Assistant Registrar(CS IV)

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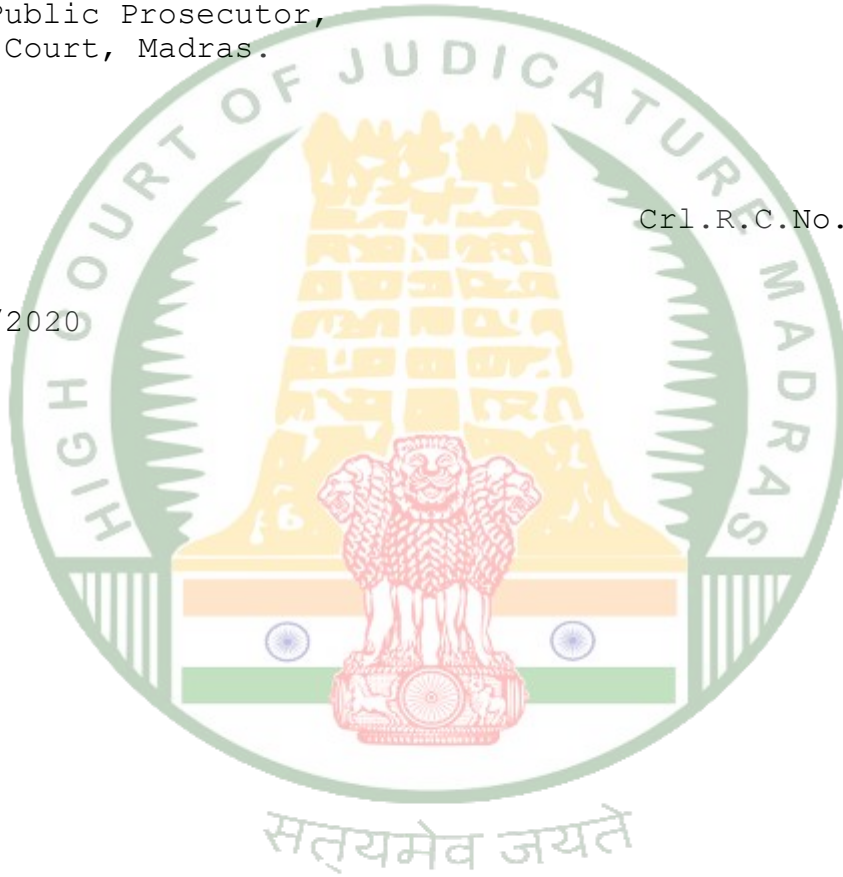
Sub Assistant Registrar

To

- 1 The Special Judge,
for Cases under the Prevention of Corruption Act,
Villupuram.
- 2 The Inspector of Police,
Vigilance and Anti-Corruption,
Villupuram.
- 3 The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.966 of 2020

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