

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No. 26472 of 2014
MP Nos.1 & 2 of 2014

1.M/s VGN Developers Pvt. Ltd.,
rep by Mr.Mahadevan
15, Wallace garde, II street,
Nungambakkam, Chennai - 06.

2.Mr.V.N.Devadoss

3.Mr.D.Pratish ..Petitioners/ Accused

Vs.

The Tamilnadu Pollution Control Board,
Rep. by its District Enviornmental Engineer,
Josephine Sahayarani,
D/o. M.Jesurajan,
Sriperumbudur @ Padappai,
Chennai 601 301.

..Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to the case in CC.No.5 of 2014 on the file of the learned Judicial Magistrate, Sriperumbudur and quah the same.

For Petitioners : Mr. C.P.Palanichamy
For Respondent : Rita Chandrasekaran

ORDER

This criminal original petition has been filed seeking to call for the records pertaining to the case in CC.No.5 of 2014 on the file of the learned Judicial Magistrate, Sriperumbudur and quash the same.

2.The case of the complainant is that the first accused is running a company under the name and style of M/s VGN Developers Pvt. Ltd. incorporated as per the provisions of the Companies

Act, 1956, and it is involved in the construction of building/project/area development and township. The second and third accused are the Chairman and the Managing Director of the first accused company and the fourth accused is the authorized representative of the first accused company and they are all directly incharge for the conduct of its business and responsible for the day-to-day affairs and administration of the first accused company.

3. In the course of its business, the first accused company commenced construction operations activities at SF Number 6/1 and 6/2 etc, at Vellanthangal Village Sriperumbudur Taluk, Kancheepuram District to develop a residential project in the name and style of " VGN Brixton" of more than 20,000 sq. metres. It is further stated that the Ministry of Environment and Forest, Government of India, vide its Environmental Impact Assessment Notification-2006, dated 14/9/2006 mandates that on and from the date of its application, the construction of new projects or activities or for expansion and modernization of existing projects and for activities listed in the schedule to its notification, the same can be done only after the Environmental Clearance from the Central Government or as the case may be the State Environment Impact Assessment Authority is obtained.

4. It is the case of the prosecution that the accused project involves construction of residential building area of more than 20,000 sq. metres and it requires prior Environmental Clearance as stipulated in the Environmental Impact Assessment Notification-2006, dated 14/9/2006, which is categorised as category-B project. As per schedule of the notification, the complainant had inspected the accused project at SF Number 6/1 and 6/2 etc, at Vellanthangal Village Sriperumbudur Taluk, Kancheepuram District and it was found that the accused, despite being aware of the aforesaid mandate, as contemplated in the Notification 2006, had constructed 20 blocks and made substantial progress on the project of VGN Brixton and Building finishing work was in progress, however, without getting any prior Environmental Permission Clearance from the State Level Environmental Impact Assessment Authority. Thus, all the accused have violated the provisions of the Notification 2006 and are guilty of having committed offence under section 51 r/w Section 61 of the Environment Protection Act-1986. Therefore, the respondent/complainant filed a complaint against the accused persons. Challenging the said complaint, the present petition has been filed by the petitioners.

5. Learned Counsel appearing for the defacto complainant submitted that the allegations made in the said complaint are based on investigation and it is evident that without obtaining

Environment Clearance Certificate for the said projects, construction activities have been carried out. Hence the said complaint was filed. However it is submitted that insofar as the second accused, already he resigned from the post of Directors on 11/7/2008 and submitted Form-32 application before the Registrar of Companies and the same was accepted. However, without considering the same, the de facto complainant proceeded with the complaint as against the second accused and, therefore, the complaint as against A2 may be quashed. But insofar as other accused are concerned they should face the trial.

6. The learned counsel appearing for the petitioners submit that though the complainant filed a complaint without any specific allegations, however, without going into the merits of the case, it would suffice, if this Court issues direction to the Trial Court to expedite the trial and complete the same as early as possible. in respect of all the accused bearing A2, against whom the complaint may be quashed. He would further submit that the appearance of the petitioners before the Trial Court may be dispensed with and would further submit that the petitioners are ready to appear as and when necessary.

7. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

8. A perusal of the materials available on record reveal that allegations have been made against the petitioners, that without obtaining environmental clearance from the appropriate authority, the petitioners have gone ahead with the construction of the building. The above allegations clearly reveal that there are triable issues, which have to be tried before the court below before a decision can be taken one way or the other. Therefore, at this juncture, it would not be right on the part of this Court to quash the complaint in the case on hand.

9. However, as admitted by the learned counsel appearing for the respondent, the 2nd accused, had resigned from the post of Director and Form 32 in this regard has been filed by the 2nd accused/2nd petitioner herein before the appropriate authority, which has been accepted by the Registrar of Companies, which shows that the 2nd petitioner had stepped down as Director of the company on and from 11.7.08 by submitting the requisite Form 32. In such view of the matter, this court is of the considered opinion that continuing the complaint as against 2nd petitioner herein would be wholly unsustainable.

10. Accordingly, for the reasons aforesaid, the petition is allowed only insofar as the 2nd accused/2nd petitioner herein,

quashing the complaint in C.C. No.5 of 2014 on the file of the Judicial Magistrate, Sriperumbudur. Insofar as the complaint as regards the other petitioners are concerned, the petition stands dismissed. However, the trial court is directed to expedite the hearing of the case and complete the trial as early as possible insofar as the other petitioners are concerned. As prayed for by the learned counsel for the petitioners, the personal appearance of the petitioners is dispensed with except for their appearance for receiving copies u/s 207 Cr.P.C., framing of charges, questioning u/s 313 Cr.P.C. and on the day of the judgment. However, the trial court, at its wisdom, may direct the appearance of the petitioners on any other day before the Court, for reasons so recorded.

11. This criminal original petition is allowed in part with the aforesaid observation and direction. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs/GLN

To

1.The Judicial Magistrate,
Sriperumbudur.

+lcc to Mr.C.P.Palanichamy, Advocate, SR.NO. 16783

Cr1.O.P.No. 26472 of 2014

VG II (CO)
KKV/23/09/2020

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