

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 16.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1135 of 2020

and

Crl.M.P.No.8022 of 2020

Adi Bhagavan

...Petitioner/Accused No.1

Vs.

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Detachment Crime No.10 of 2019,
Villupuram.

...Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 05.11.2020 passed in Crl.M.P.No.57 of 2020 in Special C.C.No.4 of 2020 on the file of the Special Court Villupuram for Cases under the Prevention of Corruption Act.

For Petitioner : Mr.C.B.Murali Krishnan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

सत्यमेव जयते
O R D E R

This criminal revision petition has been filed seeking to set aside the order dated 05.11.2020 passed in Crl.M.P.No.57 of 2020 in Special C.C.No.4 of 2020 on the file of the Special Court for Cases under the Prevention of Corruption Act, Villupuram.

2. It is the case of the prosecution that when the petitioner (A1) was working as Tahsildar in Gingee Taluk, he accepted a bribe of Rs.8,000/- on 19.06.2019 from one S.R.Vadivel for giving him permission to mine alluvial soil from Semmedu lake. The petitioner (A1) was caught red-handed by the

police when he received the bribe amount of Rs.8,000/- from S.R.Vadivel and handed it over to his driver Kandasamy (A2).

3. After obtaining the sanction order to prosecute the petitioner (A1) and his driver Kandasamy (A2), the police filed a final report in Special Case No.4 of 2020 in the Special Court for the cases under the Prevention of Corruption Act, Villupuram, for the offences under Sections 7 and 12 r/w 7 of the Prevention of Corruption Act, 1988, against the petitioner (A1) and his driver Kandasamy (A2), respectively.

4. The petitioner (A1) filed a petition in M.P.No.57 of 2020 in Special Case No.4 of 2020 under Section 239 Cr.P.C., for discharging him from the prosecution, which has been dismissed by the trial Court, by the impugned order dated 05.11.2020, aggrieved by which, the petitioner has filed the present revision petition under Section 397 r/w 401 Cr.P.C.

5. Heard Mr.C.B.Murali Krishnan, learned counsel for the petitioner (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

6. The learned counsel for the petitioner (A1) submitted that the petitioner (A1) had already processed the papers of the de facto complainant and there was no further task he was required to perform and therefore, there was no question of he demanding bribe.

7. A reading of the statement of the witnesses shows that the petitioner (A1) had made all the paper work ready, but, had not signed the order in favour of the de facto complainant, perhaps, because, he was waiting for the bribe amount. Hence, the above submission made by the learned counsel for the petitioner (A1) cannot be accepted.

8. The learned counsel for the petitioner further submitted that there is discrepancy in the timing, in that, the trap witnesses have stated that they went to the office of the petitioner (A1) at 4.10 p.m. on 19.06.2019 and spoke to him, but, there are clinching materials to show that the petitioner (A1) came to the office only at 5.00 p.m. on 19.06.2019.

9. In this case, the petitioner (A1) was trapped, while receiving the bribe amount on 19.06.2019 around 5.15 p.m. It is not the case of the prosecution that the petitioner (A1) was trapped prior to 5.00 p.m. Therefore, whether the trap witnesses saw the petitioner (A1) in the office at 4.00 p.m. or not is indeed insignificant.

10. The learned counsel for the petitioner took this Court through the complaint of the de facto complainant and submitted that there was no mention of demand of bribe. It is his further submission that in the complaint, the de facto complainant has stated that it was only Kandasamy (A2), who had demanded money and not the petitioner (A1).

11. This Court carefully perused the complaint. The de facto complainant has stated that prior to 13.06.2019, when he went to the office of the petitioner (A1), the petitioner's (A1) driver approached him and told him that the Tahsildar (petitioner-A1) would ask for money and he will talk to his boss and reduce the bribe amount. A further reading of the complaint shows that on 13.06.2019, the de facto complainant met the petitioner (A1) and at that time, the petitioner (A1) demanded a sum of Rs.10,000/- and after negotiation, it was reduced to Rs.8,000/- and only thereafter, the de facto complainant had gone to the police and lodged the complaint on 18.06.2019 and the petitioner (A1) was trapped on 19.06.2019. Therefore, it is clear that there are prima facie materials to show that there was demand of bribe by the petitioner (A1).

12. The learned counsel for the petitioner lastly submitted that the sanction order in respect of the petitioner (A1) and Kandasamy (A2) are identically worded and therefore, there is non-application of mind.

13. In the opinion of this Court, whether there is non-application of mind or not, is a question of fact, which has to be determined only during trial and not in the proceedings under Section 239 Cr.P.C. or Section 482 Cr.P.C., as held by the Supreme Court in Dinesh Kumar Vs. Chairman, Airport Authority of India and Another¹.

14. In the result, this criminal revision petition is dismissed with the following directions:

- The trial Court shall proceed with the trial expeditiously;
- The petitioner (A1) shall cross-examine the witnesses on the day they are examined-in-chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab²; and

¹ 2012 (1) SCC 532

² (2015) 3 SCC 220

- If the petitioner (A1) adopts any dilatory tactics, the trial Court shall remand him in judicial custody as held by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh³.

Connected CrI.M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd
To

1.The Special Judge for Cases under
the Prevention of Corruption Act, 1988,
Villupuram.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Detachment Crime No.10 of 2019,
Villupuram.

3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+1 CC to Mr.C.B.Murali Krishnan, Advocate sr 41497.

सत्यमेव जयते

CrI.R.C.No.1135 of 2020

EV(CO)
SP(21/01/2021)

WEB COPY