BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2020

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)No.3132 of 2020

1.V.Rajendran
2.M.Selvaraj
3.B.Venkatachalam
4.S.Chanderasekar
5.P.P.Rajendran
6.D.Subbaraj
7.A.Farook Ali ... Petitioners/A1 to A7

-vs-

State through the
Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Trichy.
Crime No.5 of 2015. ... Respondent/Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in relating to Special Case. No.3 of 2018 on the file of Special Court for PC Cases, Tiruchirappalli and quash the same.

For Petitioners	:	Mr.D.Rajagopal for Mr.K.S.Muthu
For Respondent	:	Mr.S.Chandrasekar, Additional Public Prosecutor.

ORDER

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

2.The petitioners herein are facing trial in Special C.No.3 of 2018, on the file of the Special Court for Prevention of Corruption Act cases, Triuchirappalli. There were totally 8 accused in this case. A8 Raju is no more, the other seven accused are before this Court. The petitioners herein were employed in various capacities in Tamil Nadu State Transport Corporation (Kumbakonam limited), Trichy Region. The occurrence had taken place during 2008-2009. The first petitioner was working as Selection Grade Assistant, the second petitioner was working as Deputy Manager (Personnel), the third petitioner was working as Deputy Manager, the fourth petitioner was working as General Manager, the fifth petitioner was working as General Manager and the sixth petitioner was also working as General Manager. The seventh petitioner was working as Financial Advisor and Chief Accounts Officer.

3. The charge against the petitioners herein is that they had abused their official position and sanctioned a sum of

Rs.2,40,606/-, towards 'meeting expenses' and 'to buy a flight tickets' to attach the then Transport Minister and his entourage, who had visited Kumbakonam on 05.11.2008, 17.12.2008, 03.01.2009, 04.02.2009, 05.05.2009 and 29.06.2009. As many as five charges have been framed against the petitioners for having allegedly committed offence under Sections 120(b),167 r/w 120(b) IPC, Section 409 r/w 120(b), Section 477A r/w 120(b) IPC and under Section 13(2) r/w 13 (1) (c) and (d) of Prevention of Corruption Act, 1988 r/w 120(b) IPC.

4.The trial in this case is yet to commence and the learned counsel appearing for the petitioners would point out that A5 and A6 in this case had earlier filed Crl.O.P.(MD)No.11484 of 2019 for quashing the proceedings and the same was allowed by this Court on 25.11.2019. The learned counsel for the petitioners would further point out that the said order is yet to be challenged by the prosecution before the Honourable Apex Court and that the case on hand deserves to be quashed for the very same reasons set out in the said order dated 25.11.2019.

5.Per contra, the learned Additional Public Prosecutor would submit that the Government is yet to take a decision on challenging the order dated 25.11.2019 passed in Crl.O.P.(MD)No.11484 of 2019 quashing the proceedings in Special Case.No.3 of 2018 on the file of the Special Court, Madurai. He would strongly contend that there are *prima facie* materials against the petitioners herein and that therefore, this Court would not be justified in exercising its jurisdiction under Section 482 of Cr.P.C. He called upon this Court to dismiss this criminal original petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.The case of the prosecution is that the petitioners committed the offence in question by sanctioning a sum of Rs.2,40,606/- for purchase of the flight tickets for the Transport Minister and his personal security officer.

8.The learned Additional Public Prosecutor drew my attention to the statement recorded under Section 161 of Cr.P.C wherein, the then Transport Minister had stated that he had spent his personal funds for undertaking official visits and that he does not remember to have availed the Corporation funds for buying the flight tickets. It is not in dispute that the Transport Minister visited Kumbakonam for official visits on 05.11.2008, 17.12.2008, 03.01.2009, 04.02.2009, 05.05.2009 and 29.06.2009.

9.The specific allegation of the prosecution is that the accused/officials could not have sanctioned the travel bills. In any event, sanctioning had been made on the strength of photo copies of the flight ticket and that the accused did not bother to secure the boarding pass. In other words, a charge of the prosecution is two fold. Firstly, the expenditure itself could not have been sanctioned and secondly, the accused did not really verify, if the Minister had actually travelled on the tickets purchased by the Corporation.

10.Before considering the contentions of the learned Additional Public Prosecutor, I must note that the FIR in Crime No.5 of 2015 came to be registered on the file of the respondent only on 09.06.2015. In other words, in respect of an occurrence that had taken place way back in 2008-2009, the registration of the FIR took place only on 09.06.2015. It may not be out of place to mention that there was change in the political dispensation in the year 2011 itself. There was a full fledged investigation undertaken in this regard and the conclusion was that there was no material to prosecute the officials. In fact, the appropriate investigating authority of the Government conducted investigation and he only recommended initiating department action against the accused officials. The Government accepted the recommendation and decided to initiate departmental action. G.O.(2D) No.22, Transport Department, dated 27.08.2012 was also issued in this regard. But then one Mr.Govindaraj, who was the employee of the corporation filed Crl.O.P(MD)No.7847 of 2015 for directing the police to register FIR, based on his complaint dated 11.04.2015. In the said criminal original petition, counter affidavit was filed by the Inspector of Police, Vigilance and Anticorruption, Trichirappalli and it was subsequently stated that the evidence gathered by the Investigating Officer was not sufficient to prove the guilt of the accused beyond reasonable doubt. But then vide order dated 03.06.2015, a learned Judge of this Court issued a direction for registration of case and investigate the matter in accordance with law. That is how this stale issue got resurrected and final report came to be filed and the same was also taken on file by the Court below.

11.As rightly pointed out by the learned counsel appearing for the petitioners, the Management of Tamil Nadu Transport Corporation (Kumbakonam limited), Trichy Region delegated the powers to the Managing Director authorizing him to sanction fees and travelling allowance, etc, without any limit subject to provision made in the budget. He had likewise been authorised to sanction expenditure on entertainment at the expense of the corporation either during the visit of important persons to Kumbakonam or during the visit of Managing Directors or Officers outside Kumbakonam subject to the expenditure in this regard being restricted to the budget provisions.

12.The copy of the minutes of such delegation has been enclosed in the typed set of papers. In this case, Raju/A8 was the then Managing Director, during the relevant time, admitted and sanctioned the impugned expenditure. It is also stated that the Board had also ratified its decision.

13.I am of the view that not much of importance can be attached to the statement of the then Minister recorded under Section 161 of Cr.P.C. The then Minister was examined only in the year 2017, that is after almost 11 years after the occurrence had taken place. His statement is also rather general in nature. He only states that he does not remember to have availed the hospitality of the corporation.

14.I posed a specific question to the learned Additional Public Prosecutor as to whether the prosecution verified with the concerned Airport as to whether the Minister and his entourage travelled on the tickets purchased by the Corporation. The learned Additional Public Prosecutor stated that when they made such a verification with the Airport Authority, they were informed that the records will not be maintained beyond two years. This may be the misfortune of the prosecution. But the misfortune of the prosecution can never become the misfortune of the defence.

15.I carefully went through the final report and also the charges framed by the Court below. Nowhere has it been alleged that the Minister did not travel on the strength of the flight ticket in question. In fact, the burden is cast on the accused. The accused have been charged with having not verified as to whether the travel in fact took place.

16.It is not the case of the prosecution that the Transport Minister did not undertake any official visit during the relevant dates along with the security officers. It is not the case of the prosecution that the persons concerned did not undertake the flight travel in question. This being so, none of the ingredients of the offences with which the petitioners have been charged can be said to be made out. To charge a person for having the committed offence under Section 477(A) IPC, there must be some *prima facie* material to show that there was falsification on record. In this case, nowhere, has it been alleged that there has been any tampering of the figures. The prosecution does not dispute the basic facts. Even according to them, the expenditure in question was duly sanctioned and the same has been duly entered in the relevant vouchers. When it is not the case of the prosecution that there has been falsification of the records, I fail to understand as to how the charge under Section 477 (A) IPC will lie.

17. The other charge against the petitioners is that they committed the offence under Section 167 of IPC. The said offence can be said to be made out if an incorrect document has been made with an intention to cause injury to any person. In the case on hand, there is no such preparing of any incorrect record. In any event, there is no question of causing any injury to any person. Hence, the

offence under Section 167 IPC is not at all made out.

18. The Prosecution admits that powers have been delegated to the Managing Director to sanction expenditure on entertainments at the expense of the Corporation either during the visits of important persons to Kumbakonam subject to the expenditure in the regard being restricted to budget provision. It cannot be in dispute that the Transport Minister is an important person. When he undertakes an official visit, he would be accompanied by his security officers. Hence, the Managing Director had sanctioned the expenses in question. The same was duly approved by the Board also. The moneys in question had gone towards purchase of flight tickets. They were not pocketed by the accused herein. Therefore, the question of criminal breach of trust does not arise. The offence under Section 409 IPC is not at all made out.

19.This Court would be justified in quashing the proceedings if it comes to the conclusion that the contentions of the impugned prosecution would amount to an abuse of legal process. This Court had already given a finding that even *prima facie* material to attract the offences in question are absent in this case. There are totally eight accused in this case, out of them two had earlier moved this Court for quashing the proceedings and the same was also allowed. One full year has gone by. But the respondent has not chosen to challenge the same. When at the instance of two of the co-accused the impugned proceedings have been quashed as far as their concerned, there is absolutely no justification in keeping the prosecution alive as far as the petitioners are concerned.

20.The petitioners are identically placed. It is worth repeating that the stand of the investigation itself originally was that the case on hand does not deserve criminal prosecution. Only on account of the petition filed by a deserted employee, a direction came to be issued and that has formed the foundation for the impugned prosecution. The proceedings in Special Case No.3 of 2018, on the file of the Special Court for Prevention of Corruption Act cases, Tiruchirappalli, stand quashed

21.This Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (RTI Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das/skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

To

1.The Special Judge for Prevention of Corruption Act cases,
Tiruchirappalli.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing, Trichy.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s K.S.Muthu,Advocate,in SR.No.19503.

CRL.O.P.(MD)No.3132 of 2020
06.10.2020

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