



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P (MD)No.13391 of 2020

and

CrI.M.P. (MD)Nos.6151 and 6154 of 2020

WEB COPY

D.Vijayakumar

... Petitioner

Vs

1.The State Rep. by its

The Deputy Superintendent of Police,

Vigilance & Anti Corruption,

Virudhunagar.

... 1st Respondent/Complainant

(Crime No.1/2014)

2.Dr.M.Patchirajan

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the case in Spl.C.No.5/2015 on the file of the Special Court for Prevention of Corruption Act cases, Tirunelveli and quash the same as illegal as far as the petitioner is concerned.

For Petitioner : Mr.J.Jeykumaran

For R1

: Mr.A.Robinson

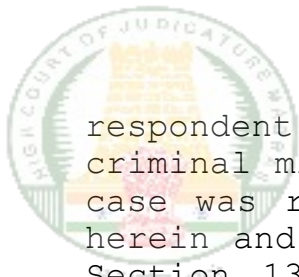
Government Advocate (CrI.side)

ORDER

Heard the learned counsel on either side.

2.This Criminal Original Petition has been filed for quashing the proceedings in Special Case No.5 of 2015 on the file of the Special Court for Prevention of Corruption Act Cases, Tirunelveli. In the said case, the petitioner is figuring as first accused.

3.The case of the prosecution is that one Radha Krishnan had transaction with one Dr.Murugesan. According to Radha Krishnan, Dr.Murugesan had to pay him a sum of Rs.36,52,250/-. The said Dr.Murugesan was not settling the amount. Therefore, the said Radha Krishnan and the petitioner Vijayakumar, who was working as Inspector of Police, Perumalpuram Police Station, Tirunelveli City, entered into a conspiracy for the purpose of recovering the said amount from the defacto complainant Murugesan. Pursuant to the said conspiracy, Crime No.43 of 2013 was registered and Dr.Murugesan was brought to the station and a compromise was arrived at under coercive circumstances. Thereafter, Crime No.43 of 2013 was closed as 'action dropped'. The son of Dr.Murugesan namely the second



respondent herein Dr.M.Patchirajan lodged a complaint alleging criminal misconduct on the part of the petitioner herein. The said case was registered as Crime No.1 of 2014 by the first respondent herein and final report was filed. Cognizance of the offence under Section 13(1)(d) of Prevention of Corruption Act was taken. To quash the same, this criminal original petition has been filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. He would point out that the criminal case was registered based on direction under Section 156(3) of Cr.P.C., and that there is absolutely nothing on record to indicate that the petitioner had obtained illegal gratification from the said Radha Krishnan. The petitioner had also not demanded any money from the defacto complainant herein or his father. According to the petitioner's counsel, the said Radha Krishnan lodged a complaint and since the direction under Section 156(3) of Cr.P.C., has been issued, the petitioner was an obligation to register an FIIR. But before the matter could proceed to its logical conclusion, the matter had been amicably settled between the parties. Therefore, the case was closed as 'action dropped'. The petitioner ought not to be made to face the criminal trial for having discharged his statutory duty. He, therefore, wanted this Court to quash the impugned proceedings as an abuse of process.

5.As rightly pointed out by the learned Government Advocate and also the learned counsel for the defacto complainant, there are two accused in this case. The petitioner is shown as A1 and the other accused was the defacto complainant in Crime No.43 of 2013. The second accused Radha Krishnan took out discharge application and the same was also allowed. Questioning the discharge order, the State as well as the second respondent filed criminal revision cases before this Bench. Vide order dated 29.11.2019 in CrI.R.C.Nos.514 and 849 of 2019, the discharge order was set aside and the revision cases were allowed.

6.The learned counsel for the respondents drew my attention to Page No.22 of the said order. It has been categorically observed that there are *prima facie* materials available. Obviously, this Court cannot lose sight of the said observations. When it was found that there are *prima facie* materials against A2-Radha Krishna, it obviously, implicates the petitioner also. The case of the petitioner is entangled with that of Radha Krishnan, like Siamese twins.

7. That apart, considering the contentions of the petitioner would amount to undertaking a factual investigation. I am afraid that while exercising my jurisdiction under Section 482 of Cr.P.C., I cannot do so. The parameters for quashing the criminal proceedings are fairly well settled. The case of the prosecution will have to be taken at its face value.



8.The learned Government Advocate (CrI.side) would point out that when Radha krishnan lodged a complaint against Dr.Murugesan before the Assistant Commissioner of Police, the same was enquired into and after getting the legal opinion, it was closed as the transaction appeared to be civil in nature. In fact, Radha Krishnan had made two attempts before the Assistant Commissioner of Police, CCB. The learned Government Advocate(CrI.side) took me through the statement of Dr.Murugesan, enclosed at Page No.27 of the type set. Dr.Murugesan had stated that the petitioner herein had threatened him that if the issue was not settled, he would be remanded. Therefore, Dr.Murugesan was left with no other option but to call upon his son the Defacto complainant herein to bring the documents and ensure that the issue is settled.

9.A reading of the statement of Dr.Murugesan indicates that the petitioner had threatened him to settle the issue. If this allegation is taken at its face value, this allegation definitely constitutes the commission of an offence under the Prevention of Corruption Act. The statement of the Assistant Commissioner of Police who had enquired into Radha Krishnan's complaint on the earlier occasion, has also been enclosed in the typed set. Therefore, the veracity of these statements will have to be tested in the cross examination. At this stage, it would not be possible for this Court to come to the conclusion that the petitioner is innocent. The petitioner has to necessarily establish his case only in the trial. Therefore, leaving open the petitioner's defence, this criminal original petition is dismissed. However, taking into account the facts of the case, the personal appearance of the petitioner before the Court below is dispensed with. The petitioner has to appear only on those occasions, when his appearance is absolutely imperative and necessary. I make it clear that the disposal of this quash petition will not cast any cloud on the petitioner's defence in the trial. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judge, SPL Court for PC Act Cases,
Tirunelveli.
- 2.The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (11.01.2021) 4P 4C