



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD).No.581 of 2019

V.Muthuirulandi

..Revision Petitioner/Complainant

Vs.

1.Kandasamy

formerly Works Manager,
TANSI Foundry, Pettai,
Tirunelveli,
Now - Foreman Grade - I,
TANSI Furniture Works, Pudukottai.

2.N.T.Chellaswamy,

Formerly Workshop Manager Incharge,
TANSI Foundry & Engineering Works,
Pettai, Tirunelveli - 10.

3.P.Kalavathy,

Workshop Manager Incharge,
TANSI Foundry & Engineering Works,
Pettai, Tirunelveli - 10.

..Respondents/Accused Nos.1 to 3

PRAYER: Criminal Revision Case, filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P.No.136 of 2019 dated 29.04.2019 in Cr.M.P.No.845 of 2018 on the file of the learned Special Judge, Vigilance and Anti Corruption Court, Madurai and to set aside the same.

For Petitioner : Mr.M.Padmavathy

For Respondents : No Appearance

ORDER

This Criminal Revision case is filed as against the order passed by the learned Special Judge, Special Court for Vigilance and Anticorruption Cases, Madurai in Cr.M.P.No.136 of 2019, dated 29.04.2019.

2.The complaint in Cr.M.P.No.136 of 2019 was filed by the petitioner under Section 190(1)(b) of Cr.P.C and as per Section 5 of the Prevention of Corruption Act, 1988. By the said complaint, the petitioner sought for a relief to hold an enquiry under Section 202 Cr.P.C. or for an order of investigation under Section 156 (3) of Cr.P.C.

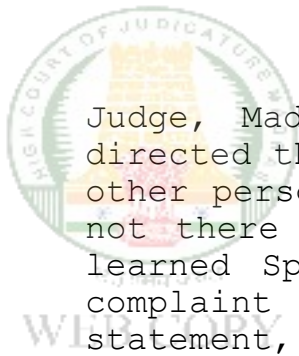
3.The revision petitioner/complainant was working as Foreman Grade-I and also as Manager of TANSI Foundry and Engineering Works,
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Tirunelveli during the year 2014-2015. The respondents 1 and 2 were working as Work Managers, TANSI Division, at Tirunelveli, between 07.03.2015 and 22.07.2015 and between 23.07.2015 and 31.03.2016 respectively. The respondent No.3 was the Works Manager of the said concern from 01.04.2016. The gist of the petitioner's complaint is that the TANSI Foundry and Engineering Works, Tirunelveli got orders for production of 75 transformers to the Tamilnadu Electricity Board on 27.11.2015. The transformers were also made ready and 55 transformers were delivered on 30.01.2015 and the remaining 20 transformers were delivered on 17.03.2015. Therefore, the entire order has been completed as on 17.03.2015 under Job No.30/14-15. Subsequent to that, the first respondent drew some raw materials from the stores by preparing a Bogus Job Card to an extent of Rs.61,391/- for the aforesaid completed transformers and handed it over the same to the second respondent on 22.07.2015, who in turn handed it over to the third respondent on 01.04.2016 and those raw materials were sold at Madurai and thereby the respondents by creating the said Bogus Job Cards, after the despatch of the entire transformers to the Tamilnadu Electricity Board, swindled the amount to the tune of Rs.61,391/-.

4.The petitioner lodged a complaint to the Managing Director, TANSI Foundry and Engineering Works, Tirunelveli and one Mr.R.Arun was appointed to conduct an enquiry on 05.05.2017. However, there was no progress in the enquiry. Not even a disciplinary proceeding was contemplated as against the erring officials and therefore, he approached this Court by filing a petition in W.P.(MD).No.4002/2018, which was disposed of by this Court by order dated 26.02.2018 with an observation that taking a disciplinary proceedings against an employee must be left to the discretion of the employer and a fellow employee will have no locus standi. Thereafter, the revision petitioner lodged a complaint to the Director of Vigilance and Anticorruption Department, Chennai on 16.04.2018 and the Director of Vigilance and Anticorruption, in petition No.4248/2018/Mic.TI dated 25.04.2018 observing that there is no specific offence under Prevention of Corruption Act, forwarded the petition to the Managing Director TANSI, Chennai for necessary action. Even then, there was no action and therefore, the revision petitioner/complainant filed the above complaint under Section 191(b) of Cr.P.C before the Special Court for Vigilance and Anticorruption on 10.10.2018.

5.The sworn statement of the petitioner/complainant was recorded by the Special Court on 14.12.2018 and through him, twelve documents were also marked as Ex.P1 to Ex.P12. But, the learned Special Judge dismissed the complaint filed by the petitioner in Cr.M.P.No.136 of 2019 and aggrieved over the same, the present revision case is filed on the ground that the learned Judge after considering the statements of the complainant and also the material documents placed on record, without ordering for an enquiry or investigation under Section 202 Cr.P.C. summarily rejected the



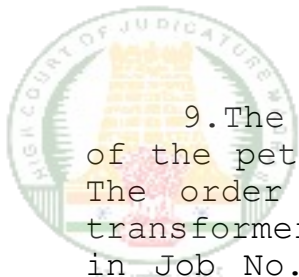
Judge, Madurai ought to have conducted an enquiry by himself or directed the investigation to be made by a police officer or by such other person as he deems fit for the purpose of deciding whether or not there are sufficient grounds for further proceeding. But the learned Special Judge, without referring to the averments in the complaint and the documents marked in respect of his sworn statement, has dismissed the complaint summarily.

6.The learned counsel for the petitioner also relied upon the following Judgments in support of his contentions.

- i)Madathil Marakar Haji Vs. Vakkom B.Purushothaman and others by the Kerala High Court.
- ii)Vijay Dhanuka etc., Vs. Najima Mamtaj etc., by the Honourable Supreme Court and
- (iii) National Bank of Oman Vs. Barakara Abdul Aziz by the Honourable Supreme Court.

7.In this revision petition, notice was ordered to the respondents in the year 2019 and the Court notice was also served on second and third respondents. But the Court notice was not served to the first respondent. Pursuant to the orders of this Court, the revision petitioner has also taken out a private notice to the respondents and also filed a proof affidavit. The name of the respondents are also printed in the cause list, but, even then, there is no representation for the respondents. Therefore, this Court proceed with this revision case with the available materials.

8.The complainant has filed the above complaint with certain serious allegations that the respondents, being the officials of the TANSI Foundry and Engineering Division, Tirunelveli, during the year 2015-2016, obtained an order for 75 transformers from Tamilnadu Electricity Board and have also supplied the transformers on two dates, as 55 transformers on 30.01.2015 and remaining 20 transformers on 17.03.2015, as per the available job cards. It is the case of the complainant that even after despatching the transformers, the respondents / the then work Managers of TANSI Foundry & Engineering works, Tirunelveli, taken out raw materials from the stores with a bogus job card and cheated the TANSI Limited to an extent of Rs.61,391/-. It appears that the petitioner sent a complaint to the Managing Director of the TANSI Foundry & Engineering Works as early as on 05.05.2017 and no steps were taken so far. He also filed a writ petition before this Court and this Court by its order dated 16.04.2018, in W.P.(MD).No.4002/2018 disposed the said writ petition that it is open to the Department to initiate departmental proceedings. The complaint lodged before the Director of Vigilance and Anti Corruption was also forwarded to the TANSI Limited for necessary action at their end. Despite the same, no action was taken by TANSI and therefore, the petitioner has filed the above private complaint before the learned Special Judge under Section 200 Cr.P.C.

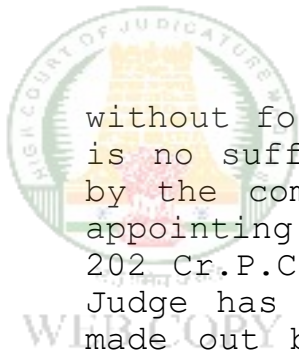


9.The learned Special Judge has also taken the sworn statement of the petitioner on 14.12.2018 and marked as many as 12 documents. The order from the Tamilnadu Electricity Board for supply of 75 transformers was marked as Ex.P1. The Job card for the production in Job No.30/14-15 was marked as Ex.P2. The delivery note and the acknowledgment for despatching of 55 transformers to the Tamilnadu electricity Board on 30.01.2015 were marked as Exs.P3 and P4. The delivery note and the acknowledgment for despatching of 20 transformers to the Tamilnadu electricity Board on 17.03.2015 were marked as Ex.P5 and P6. The bogus card 7/15-16 opened by the respondent / accused for taking out the raw materials after completing the despatch, was marked as Ex.P7. The complaint of the petitioner to the Managing Director, TANSI dated 02.04.2017 was marked as Ex.P8 and it's reminder was marked as Ex.P9, the order of this court made in W.P.(MD).No.4002 of 2018 was marked as Ex.P10. The complaint dated 16.04.2018 sent to the Vigilance Department was marked as Ex.P11 and the reply of the Director of Vigilance Department, Chennai dated 25.04.2018 was marked as Ex.P12.

10.In National Bank of Oman Vs. Barakara Abdul Aziz and another, the Honourable Supreme Court has held as follows:

"The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal Court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Cr.P.C is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

11.The learned Special Judge, taking the complaint on file in Cr.M.P.No.136 of 2019 has also examined the complainant/revision petitioner on oath and also marked the above said documents as petitioner documents. It appears that the materials placed by the revision petitioner/complainant make out a prima facie case for an enquiry under Section 202 Cr.P.C. But the learned Special Judge



without following the procedure, dismissed the complaint that there is no sufficient materials to proceed further. The offence alleged by the complainant/revision petitioner can be ascertained only by appointing an Enquiry Officer, which is also providing under section 202 Cr.P.C. But instead of invoking the same, the learned Special Judge has dismissed the complaint as no prima facie case has been made out by the complainant. Only on an enquiry or investigation under section 202 Cr.P.C, it can be ascertained whether the materials placed are sufficient to proceed with the complaint or not. It is very difficult for the petitioner to establish the offence as alleged in the complaint without an enquiry or an investigation as contemplated under Section 202 Cr.P.C. The learned Special Judge ought to have ascertained the complaint by ordering for an enquiry as contemplated under Section 202 Cr.P.C. The complaint is of very serious in nature and the revision petitioner has also produced certain materials namely Exs.P1 to P12 in support of his complaint and the truth in the complaint can be ascertained only by an investigation or an enquiry under Section 202 Cr.P.C.

12. Therefore, the revision petition is allowed with a direction to the learned Special Judge to pass an order for an enquiry or investigation by the competent authority to ascertain if there is any truth in the complaint. If it is found that the complaint is made vexatiously, it is open to the Special Court to proceed as against the complainant for malicious prosecution, in the manner known to law.

Sd/-

Assistant Registrar (CSII)

// True Copy //

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Sub Assistant Registrar(CS)

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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

The Special Judge, Vigilance and Anti Corruption Court, Madurai.

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21.09.2020

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