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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.14577 of 2020

and

Crl.M.P. (MD)No.6870 of 2020

G.Gomathi Sankar

... Petitioner/Sole Accused

Vs

1.State Rep. by the
Inspector of Police,
Vigilance and Anti Corruption,
Thoothukudi Detachment.
(Crime No.5 of 2019)

... 1st Respondent/Complainant

2.R.Balamurugan

... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the complaint in Special Case No.2 of 2020 on the file of the Chief Judicial Magistrate cum Special Judge, Thoothukudi and quash the same as illegal.

For Petitioner : Mr.Shankar Shanmugam
for Mr.B.Ramkumar Adityan

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

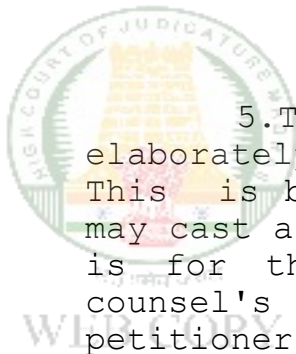
ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the first respondent.

2.This Criminal Original Petition has been filed to quash the Special Case No.2 of 2020 on the file of the Chief Judicial Magistrate cum Special Judge, Thoothukudi.

3.The petitioner is figuring as the sole accused in the said case. Cognizance had been taken for the offence under Section 7(a) of the Prevention of Corruption Act, 1988 as amended in the year 2018. The petitioner is in the cadre of Deputy Tashildar.

4.The petitioner's counsel states that the second respondent had falsely implicated him. The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds.



5. Though the learned counsel for the petitioner argued elaborately, I consciously refrain from meeting these contentions. This is because, any finding given by this Court in this petition may cast a shadow on the defence of the petitioner in the trial. It is for this reason that I decline to answer the petitioner's counsel's contentions point by point. For instance, the petitioner's counsel would point out that the petitioner is not competent to grant the licence for conducting money lender business, for which, the second respondent is said to have submitted an application. He would draw my attention to the fact that it is only the jurisdictional Tashildar who can receive the application and grant license. The petitioner being a Deputy Thasildar is not competent to grant license.

6. The learned Government Advocate (crl.side) relied on the decision of the Hon'ble Supreme Court reported in **(2007) 7 SCC 625 (Girja Prasad (dead) by Lrs vs. State of Madhya Pradesh)**. In the said case, it was held as follows :

"22. It was, therefore, of no consequence whether the accused had accepted the amount for and on behalf of Ramnarain Rajoria-PW 4. Once it is proved that he accepted the amount of Rs. 200/-, he cannot escape from criminal liability on a specious ground that he was made 'scapegoat' or was merely 'innocent carrier'. It was also immaterial whether the accused was or was not in a position to oblige the complainant by preventing or delaying his suspension. The case of the prosecution was that the complainant was asked to pay an amount of Rs. 500/- by the accused and the said amount had been accepted by him in two installments, Rs. 300/- at Dindori and Rs. 200/- at Jabalpur where trap was successful."

7. The ratio laid down by the Hon'ble Supreme Court squarely supports the stand of the prosecution. What the prosecution has to show is that the accused made an illegal demand and that there was acceptance of the same. In the case on hand, the learned Government Advocate (Crl.side) states that the phenolphthalein test proved positive and that the bribe amount was kept in the pant pocket. The defacto complainant had also made a specific allegation against the petitioner herein. The case of the petitioner will have to be tested only in a regular trial. Therefore, I am not in a position to go into the factual aspects, while exercising my jurisdiction under Section 482 of Cr.P.C. Therefore, leaving open all the contentions and defences of the petitioner, this criminal original petition is dismissed.

8. However, the personal appearance of the petitioner before the Court below is dispensed with. The petitioner has to appear only on those occasions, when his presence is necessary and imperative. On all other occasions, the Court below will permit the petitioner to be represented by his counsel. I also clarify that the dismissal of this petition will not be construed as casting any aspersion on the petitioner's defences.



9. With this observation, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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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

1. The Chief Judicial Magistrate cum Special Judge, Thoothukudi.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Thoothukudi Detachment.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.14577 of 2020

11.12.2020

NA (CO)

NR (23/12/2020) 3P : 4C