



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 06.02.2020

JUDGMENT DELIVERED ON : 13.02.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
Crl.RC. (MD)No.718 of 2019

Srinivasan .. Petitioner / 3rd Party (Informant)

Vs.

1.State Represented by
The Inspector of Police,
Vigilance and Anticorruption
Thiruchirapalli,
Crime No.6/2015 ... Respondent / Complainant

2.Logeswari
President, Perahambi Panchayat,
Manachanallur Panchayat Union,
Trichy District.

3.Kumaresan
Formerly Assistant Engineer,
Manachanallur Panchayat Union,
Trichy District.
Now Assistant engineer,
Thogamalai Panchayat Union, Karur District.

4.Komugi Thangaraj
Formerly Overseer,
Manachanallur Panchayat Union,
Trichy District.
Now, Overseer,
Kallikudi Panchayat Union,
Madurai District. ... Respondents

*(R2 to R4 are impleaded vide order of this Court, dated 5.11.2019 in MP(MD)No.9558 of 2019 in Crl R.C(MD)No.718 of 2019)

PRAYER: Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.347 of 2019, dated 09.07.2019, on the file of the learned Special Judge for Vigilance and Anticorruption Cases, at Tiruchirappalli in Crime NO.6 of 2015, on the file of the respondent Police.

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner : Mr.Nambiselvan
For Mr.S.Ravi
For Respondent-1 : Mr.M.Chandrasekaran, APP
For Respondents : Mr.B.Jameel Arasu
(R2 and R3)
For Respondent-4 : Mr.A.Rajkumaresen

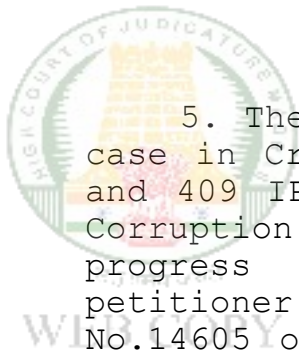
ORDER

The petitioner / 3rd party has filed this Criminal Revision Petition, seeking to set aside the order passed in Cr.M.P.No.347 of 2019, dated 09.07.2019, by the learned Special Judge for Vigilance and Anticorruption Cases, at Tiruchirappalli, accepting the closure report, closing the case in Crime No.6 of 2015, by the respondent Police, further, not considering the protest petition of the petitioner in its proper perspective.

2. This Court, by an order dated 05.11.2019 in M.P.(MD)No.9558 of 2019 in Crl.R.C(MD)No.718 of 2019, had impleaded the respondents 2 to 4; the 2nd respondent is the former President, Perahambi Panchayat, Manachanallur Panchayat Union, Trichy District; 3rd Respondent / Kumaresan is the Former Assistant Engineer, Manachanallur Panchayat Union and the 4th respondent / Komugi Thangaraj is the Formerly Overseer, Manachanallur Panchayat Union, Trichy District.

3. The brief facts is that during the year 2011, the 2nd respondent had contested and won the Local body Election and became the Village President. The said Village President, in collusion with the officials of the Panchyat, had indulged in corrupt activities, swindled public funds of several crores. The 2nd respondent, as Panchayat President of Perahambi Panchayat, without following the auction procedures, had committed irregularities in auctioning Karuvella Trees (Acacia) planted across 120 acres of land in Perakambi Panchyat Lake. Further, utilized the Panchyat funds, got from the auction, for their own benefits and thereby, caused financial loss to the Panchyat / Government.

4. Against these corrupt activities, on 01.07.2013, the petitioner had sent a complaint to the Director, Vigilance and Anticorruption. Even after the receipt of his complaint, no action was taken for a period of two years. Hence, the petitioner filed Criminal Original Petition before this Court in Crl.O.P(MD)No.8112 of 2015. This Court, by order dated 07.08.2015, allowed the Criminal Original Petition and directed the 1st respondent to look into the complaint of the petitioner, dated 01.07.2013 and proceed further, if any cognizable offence is made.



5. Thereafter, on 10.08.2015, the respondent had registered the case in Crime No.6 of 2015, against the accused under Sections 34 and 409 IPC r/w Section 13(2) r/w 13 (1)(c) of the Prevention of Corruption Act, 1988. After registration of the case, there was no progress in investigation by the 1st respondent. Hence, the petitioner preferred Criminal Original Petition in Crl.O.P.(MD) No.14605 of 2017, seeking direction to file final report in Crime No.6 of 2015.

6. This Court, considering the seriousness of the offence, allowed the Criminal Original Petition and directed the 1st respondent to expedite and complete the investigation and to file final report within a period of six months. Thereafter, the Investigating Officer, without issuing notice to the petitioner, had closed the case in Crime No.6 of 2015, as mistake-of-fact, on 19.01.2018 and submitted the closure report before the learned Special Judge for Vigilance and Anticorruption Cases, Tiruchirappalli.

7. The petitioner, being in the nature of informant as well as the defacto complainant in Crime No.6 of 2015, in order to contest the closure report and to file protest petition on two occasions i.e., on 24.01.2018 and 09.02.2018 filed an application before the concerned Court, seeking certified copy of the final report in Crime No.6 of 2015. The copy application was not entertained and returned by the Court concerned.

8. Thereafter, the petitioner once again preferred Crl.O.P(MD) No.8629 of 2018 before this Court. This Court, hearing the submission made on behalf of the petitioner, on 22.03.2018, directed the petitioner to make a fresh copy application for the final report, before the Special Court for Vigilance and Anti Corruption, Tiruchirappalli. On such application, copy may be furnished to the Petitioner after collecting the requisite fee. Thereafter, the petitioner was furnished with certified copy of the final report filed by the 1st respondent Police in Crime No.6 of 2015.

9. On perusal and scrutiny of the same, the petitioner filed the protest petition before the lower Court, challenging the closure report filed by the respondent Police in Crime No.6 of 2015. The protest petition filed by him has been numbered as Cr M.P.No.315 of 2018. The lower Court though examined the petitioner and after hearing the submissions of both the parties and on scrutiny, the lower Court was pleased to dismiss the protest petition filed by the petitioner, on 09.07.2015. Hence, the present Revision has been filed before this Court.

10. The petitioner submits that the petitioner bringing into light the cognizable offences committed by the 2nd respondent, along with the officials of the Panchayat, the 1st respondent was reluctant to register the case. Thereafter, the petitioner had



approached this Court for registration of the case. After registration of the case, there was no worthwhile investigation and again he approached this Court. This Court, considering the submissions and on perusal of the records produced by the petitioner, directed the 1st respondent to complete the investigation and file the charge sheet within the stipulated time. Surprisingly, though cognizable offences have been committed by the respondents 2 to 4, the first respondent had filed the closure report.

11. The 2nd respondent had committed several misconduct and misleads. One incident would prove the fact, on 16.06.2011, there was an advertisement published in daily newspaper, for the auction scheduled to be held on 01.07.2011, for cutting the Karuvella trees. Totally, 10 Tenderers participated in the auction with an EMD amount of Rs.4,00,000/- each. One R.Dharmaraj had been the highest bidder for amount of Rs.39,24,000/-. On the same day, as per the auction register, it is found that the said Dharmaraj had deposited Rs.40,00,000/-, by way of 10 Demand Drafts, each for Rs.4,00,000/-. Further, it reveals that the Demand Draft numbers of the auction participants as well as the Demand Draft deposited by R.Dharmaraj, the successful bidder are one and the same, which evidently reveal that the entire auction was not an open auction, it was a sham. All the participants were dummy persons and a cartel has been formed amongst them to cheat the Panchayat and Government funds.

12. Further, the amount of Rs.40,00,000/- was not brought into the account of the Panchayat and there had been no proper accounts maintained. These particulars were obtained by the petitioner through RTI and were submitted to the 1st respondent. The respondents had not taken any earnest steps to conduct the investigation in these aspect. Hence, the petitioner had given a complaint to the District Collector and on his complaint, an Audit Inspection Team was deputed and Rs.40,00,000/- has been credited in the account of the Perahambi Panchayat Account in Canara Bank and on 13.09.20011, the entire amount had been spent without proper maintenance of records without obtaining orders from the concerned and hence, action was taken against the 2nd respondent and others by the District Collector. Further, these aspects have not been gone into.

13. The petitioner applied through RTI Act asking for various documents, which was not immediately granted even after the petitioner paid the requisite fee. Thereafter, the petitioner after much difficulty was furnished with the documents. The investigating Agency have not looked into these aspects and on 19.01.2018 filed a closure report, as mistake-of-fact stating that A4 / Kumaresan Assistant Engineer and A5 Komugi Thangaraj, Supervisor have been been referred to departmental action.

<https://hcservices.courts.gov.in/hcservices/> respondent filed a counter and also produced the

copy of the Bank statement of the Panchayat. The 1st respondent had conducted a detailed enquiry, examined 117 witnesses and collected 21 documents and after thorough enquiry, submitted a report to the Secretary to the Government stating that no corruption allegation has been made against the 2nd respondent. The Government, after scrutiny and analysis, had issued G.O.(D)No.167, Rural Development and Panchayat Raj (PR4) Department, dated 09.04.2018, recommending to drop the case as against the 2nd respondent and others. On the basis of the said G.O., the Investigating Officer has filed the final report as "Mistake-of-fact".

15. The petitioner had filed a protest petition in Cr M.P.No.347 of 2018 and after hearing the petitioner and the 1st respondent, the Special Court had dismissed the protest petition of the petitioner. It is pertinent to mention that the 2nd respondent won the Panchayat election for two terms ie., in the year 2006-2011 and 2011-2016, contesting against the rival candidates, who are sisters of the petitioner viz., Shanthi and Chitra. Hence, to wreck vengeance, the petitioner has filed the frivolous complaint against the 2nd respondents and others before all forums. The complaint of the petitioner is motivated and no *prima facie* case is made out. The Accounts of the Panchayat had been verified and scrutinized and no irregularities has been found. On the complaint of the petitioner to the then District Collector, for some period, the 2nd respondent's signing authority was suspended thereafter, on coming to know about the falsity of the complaint, the 2nd respondent's signing power was restored.

16. The estimation for removal of Karuvela trees were obtained from the Forest Department on 09.06.2011, the Village Panchayat Council convened a meeting and Resolution No.135 was passed to auction Karuvel trees on the said water body on 01.07.2011. Further, in presence of Block Development Officer, the Public auction was conducted on 01.07.2011 and the trees were auctioned for a sum of Rs.39,24,000/-, in favour of one Dharamaraj, on 11.07.2011. The council through its Resolution No.162 resolve to confirm the said auction. The auction has been done in accordance with the rules and in the presence of the competent authority. The auction amount was deposited in the Panchayat Account.

17. Further, from the copy of the Bank Statement, Statement of Account of the Panchyat Union it is seen that on 06.07.2011, the amount of Rs.40,00,000/- had been deposited and further submitted that due to personal political vendetta, the petitioner's sister having lost in the election against the 2nd respondent with an ulterior motive to wreck vengeance, the petitioner has filed one case after another and hence, it would amount to abuse of process of law and prayed to dismiss the petition of the petitioner.

arguments of the learned counsel for the 2nd respondent.

19. The 1st respondent / the Deputy Superintendent of Police, Vigilance and Anticorruption had filed a counter and submitted that the contention of the petitioner before the trial Court may be taken as part and parcel of the counter here. On registration of the case, investigation had been conducted. The case came to be registered against the R2/A1, R3/A4 and R3/A5 and one Venketraman and Selvakumar. The said Venkatraman and Selvakumar are no more. The case as against the 2nd respondent had been closed as mistake of fact and hence, as against the respondents 3 and 4, departmental action has been recommended against them.

20. In this case, 117 witnesses have been examined, statements have been recorded and 21 documents have been collected. Thereafter, on detailed examination of the witnesses, it was found that the 2nd respondent had been holding the post of President for the period of 10 years and the petitioner had animosity against the 2nd respondent, since the petitioner's sister had contest and lost the election against the 2nd respondent, the petitioner sent the complaint to the Director of Vigilance and Anticorruption on 01.07.2003 and making the above said allegation. Thereafter, the complaint received from the petitioner has been forwarded to the Secretary to Government, Rural and Panchayat Raj, Secretariate, Chennai, for necessary action at their end, vide DVAC Letter No.4995/2013/PUB/TR, dated 12.09.2013. The petitioner thereafter had approached this Court.

21. On the orders of this Court, the Director of Vigilance and Anticorruption registered a Preliminary Enquiry in PE259/2015/RDP/HQ, on 10.08.2015, and conducted preliminary enquiry and sent final report to DVAC in which the *prima face* case made out to register the regular case and a regular case came to be registered in Crime No.6 of 2015 under Sections 34, and 409 of IPC., and Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988, and the investigation was carried out by the Inspector and thereafter, the Deputy Superintendent of Police, V& AC, Trichy. On completion of investigation, draft final report was sent to the Vigilance Commissioner through the Director of Vigilance and Anticorruption on 02.03.2016, for further action, as per Vigilance Manual.

22. In the meanwhile, the petitioner again approached this Court, seeking to complete the investigation. The Government accorded sanction for the report recommended by the Investigating Officer in its G.O(D)No.167, Rural Development and Panchayat Raj (PR4) Department, dated 09.04.2018. Thereafter, a final report, dropping further action against the 2nd respondent and recommended departmental action against the respondents 3 and 4, was filed on 19.01.2018 before the Special Court for Prevention of Corruption Act, Trichy. The petitioner had filed the protest petition



detailed analysis had given a well reasoned order dismissing the protest petition.

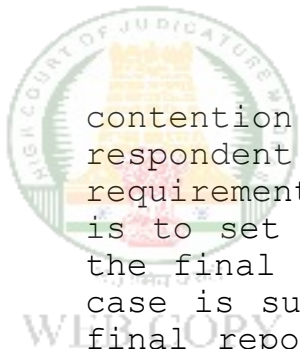
23. From the investigation it is found that the auction for Karuvella trees was properly conducted as per the auction Rule and the bid amount was paid by one R.Dharamaraj on the day itself to the auction conducted and it was deposited to the account of Village Panchayat, on 05.07.2011. Tender Notice was produced and as per the condition No.11, the successful tenderer had to pay the entire tender amount immediately. Hence, the successful bidders had collected the Demand Draft from the co-bidders after paying them had deposited. The persons who had handed over the Demand Drafts have stated about they receiving the amount for their Demand Draft. Further, the Statement of Bank Account had been produced from which it is seen that the tender amount had been deposited in the Bank account of the Panchayat. Further, the Government has passed G.O.No.167, dated 09.04.2018 recommending dropping of further action against the 2nd respondent. Thereafter only closure report has been filed, which has been accepted by the learned Special Judge. The Special Judge had given a well reasoned order, which need not be interfered with.

24. I have heard the submissions made on either side and perused the materials on record.

25. Considering the rival submissions and on perusal of the materials it is seen that initially a preliminary enquiry had been conducted, thereafter, after registration of the case, detailed enquiry had been conducted, 117 witnesses have been examined and 21 documents have been collected. During investigation, the witnesses have been examined, statements have been recorded, which were produced. On perusal of the statement, it is seen that each and every aspect of investigation has been meticulously followed. The main grievance of the petitioner that the tender amount has not been deposited in the account of the Panchayat is not true as could be seen from the Bank statement of the Panchayat.

26. Likewise, the tender process had been conducted as per the procedures. The tender notice proceedings and resolution prior to tender and after the tender have been perused. The successful tenderer as well as the other tenderers, who have handed over to the successful tenderer, their statements have been recorded. Further, the investigation report had been sent to the Director of Vigilance and Anticorruption, who forwarded the same to the Vigilance Commissioner, thereafter, to the Secretary to Government, Rural Development, Panchayat Raj, who issued G.O.167, dated 09.04.2018, thereafter, the closure report has been filed.

27. The trial Court, received the protest petition and on enquiry found that the petitioner had not produced any list of witnesses and the documents to be marked, except for the document which he had collected in RTI, which documents have already been collected, studied and analyzed by the 1st respondent. Other than



contention of the petitioner had already been investigated by the 1st respondent and finding that the protest petition does not fulfil the requirements of the complaint. The prayer in the protest petition is to set aside the final report and allow the application against the final report and it is found that the protest petition in this case is summing up of the objections of the petitioner against the final report and no material or witnesses are produced other than what had been already examined and investigated by the first respondent. The fulcrum of the petitioner's contention is regard to non deposit of Tender amount in the Panchayat account and the deposit had been made by the 2nd respondent in an unknown account, on the investigation and by the statements and documents collected it is proved that Rs.40,00,000/- has been deposited in the Panchayat account and properly accounted for. If the petitioner has other grievances, the petitioner is at liberty to approach the ombudsman, as per the Panchayat Act.

28. In view of the same, the trial Court had dismissed the protest petition, giving liberty to the petitioner to proceed against the accused, if the petitioner got sufficient materials by way of a private complaint. This Court finds no reason to interfere with the finding of the trial Court. In view of the same, this Criminal Revision is dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

1.The Special Judge for Vigilance and Anticorruption Cases,
at Tiruchirappalli

2.The Inspector of Police,
Vigilance and Anticorruption
Thiruchirapalli,

3. The Record Clerk, (2 copies)
Criminal Section(Records)
Madurai Bench of Madras High Court,
Madurai

+1 CC to Mr.A.RAJKUMAR SEN, Advocate (SR-6071[F] dated 13/02/2020)

+1 CC to Mr.B.JAMEEL ARASU, Advocate (SR-6275[F] dated 14/02/2020)

JUDGMENT MADE IN

Crl.RC. (MD) No.718 of 2019

13.02.2020

VB(21.02.2020) 8P 7C