WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.2686/2021 & Crl.MP.No.1473/2021

[Video Conferencing]

N.Viswanathan ...Petitioner/Accused No.2

Versus

The State of Tamil Nadu
Represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Kanchipuram. ... Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to Cr.No.2/AC/2021/KM dated 18.01.2021 on the file of the Respondent and and quash the same.

For Petitioner : Mr.P.Pugazh Gandhi for
Mrs.P.T.Ramadevi

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(1) The present petition has been filed under Section 482 Cr.P.C., questioning the further pendency of the FIR in Crime No.2/AC/2021/KM registered on 18.01.2021 by the respondent / Inspector of Police, Vigilance and Anti Corruption in Kanchipura, for the alleged offences u/s.120 [b], 420 and 409 IPC and also under Section 13[3] read with 13[1][c] and [d] of the Prevention of Corruption Act, 1988.

(2) The present petitioner is A2.

(3) Mr.P.Pugazh Gandhi, learned counsel for the petitioner stated that the petitioner was Municipal Commissioner, Tiruvallur Municipality at the relevant period.

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

WEB COPY

(4) Even before examining the facts of the case, let me examine what 'public duty' has been defined as in the Prevention of Corruption Act, 1988.

(5) 'Public Duty' has been defined in Section 2[b] of the Prevention of Corruption Act, and it is as follows:-

> ''2[b]:-public servant means a duty in the discharge of which the State, the public or the community at large has an interest.
>
> Explanation:- In this Clause, ''State'' includes a corporation, established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act,1956 [1 of 1956].''

(6) It is very clear that every public servant has a duty to discharge in which the State has an interest, the community at large has an interest and the public at large have an interest.

(7) The instant FIR had been registered pursuant to a Vigilance Report that the approvals for construction of 9 buildings had been granted by the petitioner herein/A2 and thre had been deviations from the approved plan in their construction.

(8) It is pointed out by the learned counsel for the petitioner that the papers are put up to the petitioner herein for final approval. The petitioner herein is not called upon to verify any other aspect. After the papers are put up, the petitioner herein/A2 had granted approval. Prior to coming to the desk of the petitioner herein/A2, the papers had gone through various channels. At any rate, a building plan is put up only if it is in accordance with the rules. The petitioner herein/A2 may either confirm it or may put up any other remark with respect to the plan.

(9) In the instant case, the petitioner herein/A2 had approved the plans. Thereafter, construction commenced. The thrust of the allegations in the FIR is that the petitioner herein/A2 and A1 who was formerly Town Planning Inspector at Tiruvallur Municipality, did not inspect the buildings during the period when they were being constructed and therefore, did not question or did not check any deviations in the construction of the buildings at the time when they were constructed. Since the buildings were not checked at the time when they were constructed, the buildings which came up, were with deviations.

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

WEB COPY

(10) A3 to A7 are Revenue Assistants and Revenue Inspectors. It is claimed that they alone have a duty to inspect the building after they are constructed to determine whether there are any deviations from the approved plans.

(11) The further specific allegation in the FIR is that A3 to A7 did not note down the deviations even though they had the approved plans with them and had the buildings in front of them and still did not point out the deviations. They determined the propety tax on the basis of the approved plan and not on the actual area constructed.

(12) The learned counsel for the petitioner stated that substantial culpability rests only with A3 to A7 since they had not pointed out the deviations of the buildings which had been constructed. He stated that the role of the petitioner herein/A2 stops with grant of approval and that the petitioner herein/A2 had granted approval in accordance with the Rules and Regulations. If the builders had constructed the buildings deviating from the approved plan, then the primary responsibility is thrust upon the Revenue Inspectors and the Revenue Assistants who a specific duty cast upon them to make regular inspections and to bring to task any constructor who constructs the building deviating from the approved plan.

(13) It is the grievance expressed by the learned counsel for the petitioner herein/A2 herein that the petitioner herein/A2 has been unnecessarily dragged as an accused in the FIR. He neither had any intention to encourage the builders to put up buildings deviating from the plans approved nor was he instrumental in ensuring that such buildings are constructed without any deviations.

(14) A Status Report had been filed on behalf of the respondent wherein it had been stated that the present petitioner herein/A2 had colluded with A1 and had deliberately failed to take action against the owners of the building at the time of the construction of the 9 buildings. Therefore, the thrust of allegation in the FIR is not after completion of the building, but during the course of construction.

(15) It is alleged that during the course of construction, there was a duty cast upon the present petitioner herein/A2 and incidentally, also on A1 to examine whether the buildings were actually been constructed in accordance with the plans which have been approved. Whether that was part of the duties allotted to the present petitioner herein/A2 or not, is an issue on fact.

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

WEB COPY

(16) I would give the benefit to the present petitioner herein/A2 to put forth his particular explanation in that regard before the Investigating Officer and he can also call upon the Investigating Officer to seek for necessary response from the petitioner herein/A2 on this particular aspect and thereafter, to take a considered decision, whether to still include the petitioner herein in the array of accused in the Final Report or to drop the present petitioner herein from the array of accused in the Final Report. That is a decision which the Investigating Officer alone has to take.

(17) Culpability or otherwise would depend on the nature of the approvals granted, on the nature of deviations made and whether the deviations were visible to the naked eye and could have been prevented at the time when constructions were going on. It also depends on an overall examination of the duties of the present petitioner/A2/Municipal Commissioner. These are all aspects which any Investigating Officer would naturally examine while conducting investigation on the allegations in the FIR.

(18) The learned Additional Public Prosecutor states that the investigation has not even commenced.

(19) Therefore, let the investigation commence. Let it proceed and during the course of investigation, let a fair opportunity be given to the petitioner herein/A2, particularly with respect to his duties and examine whether he has a specific role to examine during the course of construction, any building, for which, he had given his approval and thereafter, let the Investigating Officer take a considered decision as aforesaid. I am confident that fair play will come into effect in the course of investigation and the petitioner herein/A2 will be afforded sufficient opportunity and his explanation appropriately considered.

(20) I am not prepared to quash the FIR rather, give the aforesaid directions to the Investigating Officer.

(21) In the result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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

WEB COPY

AP

To

1.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanchipuram.

2.The Public Prosecutor
High Court, Madras.

+1cc to Ms.P.T.Ramadevi, Advocate Sr No.51333

Crl.OP.No.2686/2021

AK-II (CO)
PR (22/10/2021)

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