

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2835 of 2021

and

Crl.M.P.Nos.1575 and 1577 of 2021

K.Mahendran

S/o.Krishnasamy

.... Petitioner/Accused-4

Versus

The Deputy Superintendent of Police
Vigilance and Anti Corruption
Coimbatore District.

... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the case in Spl.C.C.No.3 of 2018 on the file of the learned Special Court under the Prevention of Corruption Act, Coimbatore and to Quash the same as illegal.

For Petitioner : Mr.T.Padmanabhan

For Respondent : Mr.T.Shunmuga Rajeshwaran
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the petitioner/accused to call for the records relating to the case in Spl.C.C.No.3 of 2018 on the file of the learned Special Court under the Prevention of Corruption Act, Coimbatore, and to quash the same.

2. The brief facts of the prosecution case is that during the year 2008, the Pollachi Taluk Co-operative Housing Society had passed a resolution to purchase 54 housing sites and two sites for shops situated in SF.No.75/1 and 78/1 at the Pillchinnampalayam. The allegation is that A1 to A4 had hatched the criminal conspiracy with A5 to purchase the above said land at an escalated price to cheat the society, knowing fully well that A5 is not the owner of the property, A1 to A4 decided to pay the escalated price to A5 in order to embezzle the fund of the society and thereby, committed the offence under Section 120B of IPC. The further allegation is that the cost of the said

land as per the guideline value on that particular date was between Rs.1202/- to Rs.1502/- per cent. Whereas, A1 to A5 pursuant to the criminal conspiracy, had fixed the escalated cost as Rs.51,500/- per cent. There are 18 conditions imposed by the Registrar of Co-operative Society. However, two of the conditions viz., condition No.5 that "no fund should be taken from other Societies" and condition No.7 that "it should not cause any monetary loss to the Society" were breached by the accused and thereby, committed offence under Section 109 IPC read with 13(2) read with 13(1)(c) and (d) of P.C. Act 1988. Further, A2 has created forged market value certificate, list of fictitious persons in the name of non members and thereby committed offence under Sections 167, 465, 467, 477(A), 468 and 471 read with 120(b) IPC. Hence, the complaint.

3. The learned Counsel for the petitioner would submit that the petitioner is arrayed as A4 and he was working as a Sub Registrar (Supervisor) of the Pollachi Taluk Co-operative Housing Society. He would submit that there was a proposal for 54 housing plots and two plots for shops and the proposal was raised by the Society's Special Officer one V. Balakrishnan for the said project and that the petitioner as a Supervisor, had only forwarded the recommendation on 15.11.2008. He would submit that the petitioner was under the bonafide belief that due diligence was done by the said Balakrishnan who was the Secretary of the Society. He would submit that one Shanmugavadivel/A3 had identified a land owned by one V.Rajmohan in SF.No.75/1 to an extent of 3 acres and another land of 70 cents was also identified in SF.No.78/1 owned by one Mrs.Saraswathi and Mrs. Ramani daughters of Mrs.Mayilathal and the total extent was fixed as 3.70 acres. After deducting and marking areas for common park, a plan was prepared for 56 plots out of which 54 plots were for housing and two plots were for shops and a proper approval was obtained from the Planning Authority vide Na.Ka.No.2055/2008 Ko.Ma.3 dated 22.09.2008 and a paper publication was made asking for objection if any to the said project on 02.11.2008. Since there were no objection, a mega meet of members were organized on 10.11.2008 wherein 217 members participated and a resolution was passed to that effect and taking into consideration the expenses, the land cost was calculated at Rs.51,500/- per cent. He would submit that A2/Balakrishnan, the Special Officer had entered into an agreement with A5 and paid Rs.75 lakhs for which, A5 had only delivered 27 plots worth Rs.57,78,815/- and for the balance amount of Rs.17,21,185, land was not delivered by A5 and that all this money was borrowed from 4 different Societies without the approval of the Registrar of the Co-operative Societies. As far as the petitioner is concerned, he was only a Supervisor and he had sent his recommendation for the project as a Supervising Authority. Other than that, he has no role in the conspiracy. In

fact the petitioner had made the recommendation based on the report of the Village Administrative Officer and that the petitioner should have been taken as a witness. Whereas, he has been added as an accused. He would further submit that one of the witness namely Sekar who was the formerly Deputy Registrar of the Co-operative Societies has stated that though the value of the land in S.F.No.75/1 and SF.No.78/1 were between Rs.1202/- to Rs.1502/-, on 24.10.2008, the Village Administrative Officer of Pollachi Taluk Co-operative Housing Society had given a certificate stating that the lands nearby the SF.No.75/1 and SF.No.78/1 were sold at Rs.65,000/- per cent and that there was a layout namely Vishal Garden where the lands were sold at Rs.65,000/- per cent.

4. The learned Government Advocate (Crl. Side) would vehemently oppose stating that the petitioner was working as a Sub Registrar and he was also having Supervisory Authority of the Pollachi Taluk Co-operative Housing Society. The accused had joined together and in order to defraud the Society and to make illegal gains, have inflated the price of lands which were only between Rs.1202 /- to Rs.1502/- per cent to Rs.51,500/- per cent and thereby, cheated the Society and the other members and that the case was registered based on the credible information. He would submit that there are materials to pinpoint the role of the petitioner/accused and the vital role has been played by him and that no legal grounds have been made by the petitioner to quash the proceedings. He would submit that though the statement of said Sekar says that the price of nearby land was Rs.65,000/- per cent, no documents have been produced to prove the same. He would further submit that there is a statement of L.W.27 wherein, it is stated that the alleged documents are fake and thereby, it is a matter for trial. He would further submit that the petition filed by the co-accused in Crl.O.P.No.30909 of 2019 was dismissed by this Court by order dated 20.12.2019 and this Court while dismissing the petition has held that the perusal of materials available in the case prima facie reveals that A1 to A4 entered into criminal conspiracy to commit the offence.

5. Heard the learned Counsels on either side and perused the materials on record.

6. The Hon'ble Apex Court in Skoda Auto Volkswagen India Private Limited Vs. State of Uttar Pradesh reported in 2020 SCC online 958 in paragraph 41 has held as follows;

"41. It is needless to point out that ever since the decision of the Privy Council in King Emperor V. Khwaja Nazir Ahmed, the law is well settled that Courts would not thwart any investigation. It is

only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in State of Haryana v. Bhajan Lal the power of quashing should be exercised very sparingly and with circumspection and that to in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In S.M.Datta v. State of Gujarat, this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M.Datta (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."

7. The above decision of the Hon'ble Supreme Court makes it clear that this Court can exercise the extra-ordinary powers under Section 482 Cr.P.C either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge does not disclose a cognizable offence to make out a case against the accused and uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive to wreck vengeance on the accused due to private and personal grudge, then the Court can interfere with the proceedings.

8. Now coming to the case on hand, perusal of the statements and the materials on record disclose that the petitioner has entered into conspiracy with the other accused for the purchase of house plots for the members of the Society and they have hiked the prices exorbitantly and cheated the Society as well as the members of the Society. Therefore, this court is of the opinion that it is unsafe to quash the proceedings at this juncture invoking inherent powers under Section 482 Cr.P.C.

Further, the grounds raised by the petitioner are factual in nature and no legal grounds for quashing has been raised by the petitioner.

9. In view of the above, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed. However, it is made clear that the trial Court shall proceed independently on the merits of the issue without in anyway being influenced by any observations that have been made by this Court in disposing the petition.

10. At this juncture, the learned Counsel for the petitioner would submit that the entire case of the prosecution is borne out by document and thereby the personal appearance of the petitioner may not be required for all hearings and would pray that the personal appearance of the petitioner may be dispensed with before the trial Court.

11. Accepting the said submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that he shall be present on the first day of appearance, on the date fixed for receiving the copies, initial questioning, reply to charges and questioning under Section 313 of Cr.P.C., and at the time of passing judgment and whenever insisted upon by the trial court for the progress of trial.

12. The petitioner is further directed to give an undertaking in the form of an affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing him will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event his presence is insisted by the trial judge for the purpose of identification or for the progress of trial. If the petitioner adopts any dilatorial tactics, it is open to the trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of the Hon'ble Supreme Court of India, in State of Uttar Pradesh Vs. Shambunath Singh, reported in 2001 (4) SCC 667.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

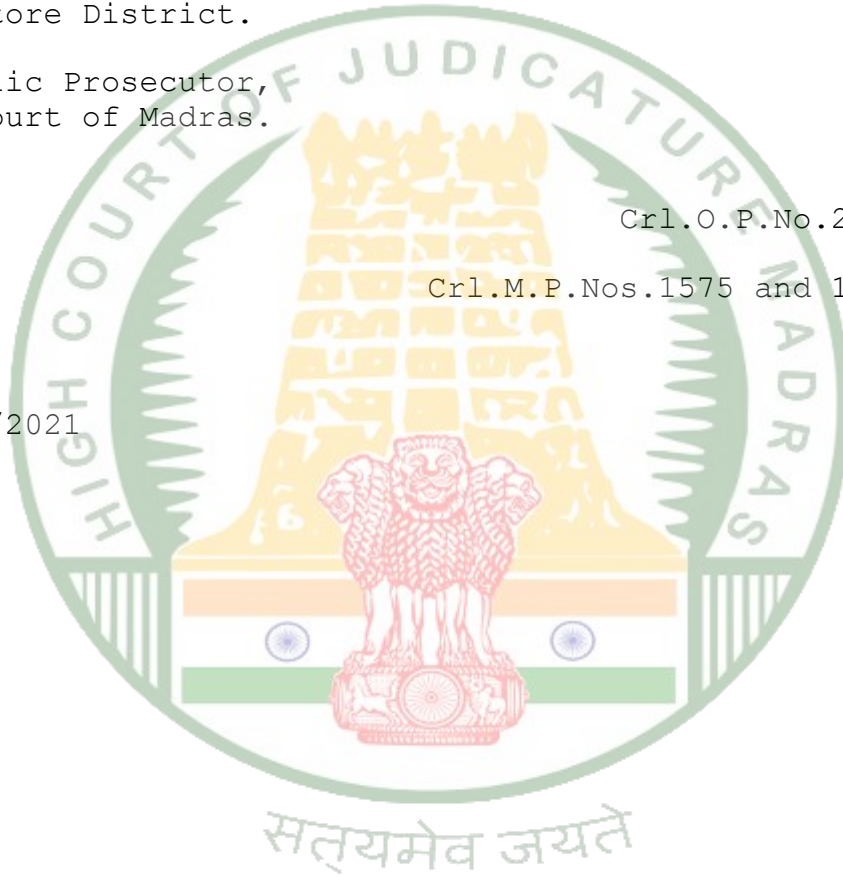
ksa-2

To

- 1.The Special Judge,
Special Court for cases under the Prevention of
Corruption Act, Coimbatore.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Coimbatore District.
- 3.The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.2835 of 2021
and
Crl.M.P.Nos.1575 and 1577 of 2021

BS(CO)
srg 15/03/2021



WEB COPY