

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.7837 of 2021andCrl. M.P. No. 5170 & 5171 of 2021

V.Sabarathinam

...Petitioner

Vs.

State by the Inspector of Police
Vigilance and Anti-Corruption
Namakkal.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in Spl.C.C. No. 14/2016 on the file of the Chief Judicial Magistrate, Namakkal and quash the same in so far as the Petitioner / Second Accused herein alone is concerned.

For Petitioner : Mr. R.Sethupandian

For Respondent : Mr. S.Karthikeyan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in Spl. C.C.No.14 of 2016 on the file of the Chief Judicial Magistrate, Namakkal.

2. The case of the petitioner is that while he was working as a Co-operative Sub Registrar in the office of the Deputy Registrar (Dairying) Namakkal, he was made Special Officer of E.D.1009, Komarapalayam Milk Consumers Co-operative Society, which consist of 22 societies. The Special officer work is purely honorary service and for which, he did not receive any salary. During the period in which, he was working as a Special officer, one Thiru D.Kumar is a Former Secretary of the Society was allowed to continue in service for 21 months more than the actual date of superannuation by the petitioner herein by wantonly falsifying the date of birth as 05.03.1950 instead of

15.06.1948 in Family Benevolent Fund Subscription slip. The allegation made against the petitioner is that he created false documents and allowed D.Kumar to draw his salary for 21 months over to the tune of Rs.2,31,000/- which is a loss to the society. Therefore, the petitioner and D.Kumar was convicted for the offence punishable under Sections 120 B, IPC r/w 167, 177, 408, 409, 420, 465, 468, 471, 477(A) IPC and Section 13(2), 13(1)(c) & (d) of the Prevention of Corruption Act, 1988. An FIR No.8/AC/2010/NK came to be registered against both the accused on 25.10.2010.

3. Charges were framed and the same was filed before the Chief Judicial Magistrate Court, Namakkal in Spl.C.C.No.14 of 2016 against the petitioner and another. Aggrieved by the same, the petitioner / 2nd accused filed this criminal original petition seeking to quash the proceedings on the ground that he being a Special Officer of the society has no connection with aforesaid

activity and as such, it is a false and motivated case.

4. The learned counsel for the petitioner submitted that the petitioner has not committed any offence and he has been falsely implicated in this case. He is an straight forward and honest officer and rendered more than 33 years in Government service with unblemished service records from the period 1986 to 2019. The learned counsel for the petitioner relied upon the judgement laid down in the case of [Hindustan Lever Ltd.,Vs. Inspector of Legal Metrology] in 2009 ID ALT622 and submitted that once the charge sheet has not made out any *prima facie* commission of offence, the petitioner cannot be subjected to criminal prosecution.

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent.

6. The grounds raised by the counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

7. The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, and also of the fact that the petitioner being a retired person and senior citizen, the presence of the petitioner alone is dispensed with and he shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioner shall be present before the Court below at

the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgement.

8. Accordingly, this Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in Spl CC No.14 of 2016 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

27.04.2021

Index: Yes / No

Speaking order/Non-speaking order

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To

1. The Chief Judicial Magistrate, Namakkal
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

V.BHAVANI SUBBAROYAN.,J

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Crl.O.P.No.7837 of 2021

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