

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2021

PRONOUNCED ON : 21.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.7183 OF 2021

M.Rakesh

... Petitioner/Accused 1

.Vs.

1. The State Rep. by
The Inspector of Police,
Vigilance & Anti-Corruption,
CC-III Nandanam, Now @ Alandur,
Chennai - 16.

... Respondent/Complainant

2. S.Mari

... Respondent/Defacto Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in respect of the charge sheet filed against the petitioner in C.C.No. 3 of 2021 on the file of Special Court of Vigilance and Anti Corruption, Chennai and quash the same.

For Petitioners : Mr.D.Rajagopal

For 1st Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Petition has been filed under Section 482 of the Code of Criminal Procedure seeking to call for the records with respect to the charge sheet in C.C.No. 3 of 2021 on the file of the Special Court for Vigilance and Anti Corruption cases, Chennai and to quash the same in so far as the present petitioner /A-1 is concerned.

2. Pursuant to a Vigilance report initiated by an Officer of the DVAC [Department of Vigilance and Anti Corruption], a detailed enquiry in D.E.28/2015/MED/CC-III dated 01.04.2015 was conducted against the accused M.Rakesh, Assistant and S.Nagalingam Assistant, both in the office of the Director of Medical and Rural Health Services (ESI), DMS Compount, Chennai with respect to the allegation that they had demanded and accepted Rs.2,48,000/- as illegal gratification from the complainant S.Mari to facilitate to get a transfer order for his daughter Tmt.M.Valliammal, working as staff nurse at Tiruvarur Medical College Hospital to ESI Dispensary, Nagercoil, in the year 2013. It had been stated that since the detailed enquiry substantiated the allegations, First Information Report in Crime No. 1/AC/17 had been registered on 18.05.2017 against the aforesaid two persons under Sections 7, 8 and 13(2) read with 13 (1)(d) of Prevention of Corruption Act 1988.

3. A final report was then filed alleging that M.Rakesh/petitioner/A-1 and S.Nagalingam/A-2 had committed the offences punishable under Sections 7 & 8 of PC Act 1988 and under Section 13(2) read with 13(1)(d) of PC Act 1988 and under Section 12 and 13(2) read with 13(1)(d) of PC Act 1988 read with 109 IPC. This final report had been taken cognizance by the said Court as C.C.No. 3 of 2021 for the offences under Sections 7, 8, 12, 13 (2) read with 13(1)(d) of PC Act 1988 read with 109 IPC. It has brought to knowledge of this Court that the petitioners/A-1 and A-2 had also appeared before the said Court and charges have been framed and the matter is now posted for recording of evidence on the side of the prosecution.

4. The allegations in brief are that A-1, who was working as Assistant in the office of the Director of Medical and Rural Health Services, ESI, had demanded a total sum of Rs.2,50,000/- for facilitating the transfer of a nurse Valliammal from Tiruvarur to Nagercoil. It is stated that he had received cash of Rs.1,50,000/- as initial payment and the transfer was effected by the Director of Medical and Rural Health Services. Thereafter, A-1 had demanded the balance amount of Rs.1/- lakh and Valliammal had deposited Rs.49,000/- on 22.03.2013 and another sum of Rs.49,000/- on 26.03.2013 from Canara Bank to the account of A-2, who had also withdrawn the said amount in parts on 27.03.2013, 28.03.2013, 29.03.2013 and 30.03.2013 and had also handed over the said amount to A-1. The father of Valliammal had also given a complaint in this regard. In view of those allegations, a detailed enquiry was conducted by DVAC and thereafter, First Information Report was registered and after investigation, final report had been filed which had been taken cognizance by the Special Court for Vigilance and Anti Corruption Cases, Chennai and the Court had also, after perusal of the final report framed charges against the accused including

against A-1, the present petitioner.

5. The prime contention of Mr.D.Rajagopal, learned counsel for the petitioner /A-1 is that the father of Valliammal had given a letter to the Director of Medical and Rural Health Services, ESI, Chennai, on 20.01.2014 that he had never given such a complaint regarding demand and payment of bribe amount to the accused and that he had never been to the Office at DMS Complex.

6. The learned counsel also placed relied on a purported proceedings in Na.5021/TH/AE/N2/2/2013 dated 20.01.2014, whereby based on the said letter of the father of Valliammal the Director of Medical Rural Health Service, ESI, Chennai, had dropped further action with respect to the allegation of demand and acceptance of bribe amount by the accused herein.

7. However, it is contended by Mr. E.Raj Thilak, learned Additional Public Prosecutor that the petitioner herein had originally filed W.P.No. 34170 of 2017 to quash the suspension order and the respondent had also filed a counter wherein they had stated that the reference number in the proceedings referred above, namely, 7339/THO/AE/AKO/2/2014 dated 20.01.2014 had been assigned only on 03.04.2014. When such a counter was filed in the writ petition, the petitioner herein had withdrawn the writ petition.

8. It is contended by Mr.E.Raj Thilak, learned Additional Public Prosecutor that opportunity must be granted to the prosecution to substantiate the charges.

9. I have given careful consideration to the arguments advanced by both Mr.D.Rajagopal, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the first respondent/prosecution.

10. It is a fact that the present petitioner/A-1 was working as Assistant in the office of Director of Medical and Rural Health Service, ESI, Chennai. It is a fact that L.Valliammal, a nurse was posted at Tiruvarur. It is a fact that the Director of Medical and Rural Health Service, ESI, had transferred her to Nagercoil. It is the contention of the prosecution that the petitioner herein had demanded a sum of RS.2,50,000/- to facilitate such transfer. It is the further allegation that a sum of Rs.1/- lakh had been received in cash and thereafter, the transfer orders from Tiruvarur to Nagercoil had been passed. It is the further contention that subsequently two separate amounts of Rs.49,000/- had been transferred to the Bank account of A-2 by Valliammal. It is the further allegation that A-2 had withdrawn the amounts on four separate dates and

had paid them to A-1. The petitioner themselves refer to a letter said to have been given by the father of Valliammal that he had not actually given any complaint of demand of bribery. Based on the said letter, the Director, Medical and Rural Health Services, Chennai had also issued a proceedings on 20.01.2014 dropping further action against the petitioner herein. It is only natural that the Director would write such a letter because he is an Officer, who had transferred Valliammal from Tiruvarur to Nagercoil. He will naturally support A-1. The said transfer is alleged to have been passed only after receipt of the initial bribe amount of Rs.1,50,000/-. It is pointed out by the prosecution that the proceedings No. 7449 had been actually assigned only on 30.04.2014, whereas in the letter produced as a document before the Court, the Director had used such proceedings number in the proceedings dated 20.01.2014. These are issues to be taken up and determined after trial.

11. There are also allegations that there has been direct bank transfers from the account of Valliammal to the account of A-2 and subsequently withdrawn by A-2. Naturally, these aspects will have to be examined further by a Court of law since they amount to cognizable offence. There may be no connection between Valliammal and A-2 but there is every nexus between A-2 and A-1.

12. I would brush aside the letter of the father of the Valliammal. He should be permitted to adduce evidence before the Court and thereafter, his statement can be tested during cross examination and the evidence can be analysed by the learned Judge during the course of his Judgment. The contentions raised by the learned counsel for the petitioner are therefore rejected by me.

13. The originals of the proceedings of the Director and the letter of the father of the Valliammal had been produced before this Court. But it is not for this Court to pass an order of acquittal against the present petitioner herein. It is for the petitioner to establish that he is entitled for acquittal and such entitlement can be established only during the course of trial.

14. In M/s.Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others [2021 SCC Online 315], the Hon'ble Supreme Court had very categorically held that the High Court should be very circumspect in quashing the First Information Report/complaint and should not enter into a discussion on the veracity or correctness of the allegations. In the instant case, charges have also been framed. The petitioner herein are facing trial. I am confident that the learned Judge would afford every opportunity to cross examine the witnesses.

15. The learned counsel for the petitioner had relied on CDJ 2001 MHC 5920 [R.Gunalan & Another Vs. The state by Deputy Superintendent of Police, Vigilance and Anti Corruption Department] wherein a learned Single Judge of this Court had examined an appeal filed questioning conviction.

16. In the instant case, the learned counsel seeks to quash the calendar case and certainly the dimensions under which such an application should be viewed are totally different.

17. The learned counsel also relied on (2005) 12 SCC 576 [Union of India through Inspector, CBI Vs. Purnandu Biswas], wherein again, the Hon'ble Supreme Court had examined acquittal by the High Court of the respondent therein.

18. In the instant case, there has been an allegation of payment of money and immediate transfer of Vallilammal from Tiruvarur to Namakkal. Thereafter, there has been transfer of Rs.49,000/- on two occasions from the bank account of Valliammal to the Bank account of A-2 and subsequent withdrawal by A-2. Therefore, the facts in the instant case are totally different and more particularly this petition has been filed to quash the calendar case under Section 482 Cr.P.C., and not to examine the evidence on record.

19. The learned counsel for the petitioner also relied on (2017) 8 SCC 136 [Mukhtiar Singh Vs. State of Punjab]. In the said case again, the Hon'ble Supreme Court had examined conviction of the appellant by the High Court and had set aside such conviction owing to the fact that the prosecution had not prove the charges levelled against the accused beyond all reasonable doubt.

20. In the instant case, charges have been framed and the prosecution has been invited to let in evidence to prove the charges. The facts are certainly distinguishable.

21. In view of the above observations, this Criminal Original Petition is dismissed.

22. Even though the order has been passed addressing the issues raised by the learned counsel for the petitioner, the petitioner is always at liberty to raise all the issues again

during the course of trial.

23. The observations made in the course of this order is only for the limited purpose to examining the issues raised in this particular Criminal Original Petition and certainly should not bear on the mind of the trial Judge during the course of trial and final adjudication.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Special Court of Vigilance
& Anti Corruption,
Chennai.
2. The Inspector of Police,
Vigilance & Anti Corruption,
CC-III Nandanam, Now @ Alandur,
Chennai - 16.
3. The Public Prosecutor,
High Court,
Madras - 104.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.54304

CRL.O.P.NO.7183 OF 2021

SSV(CO)
PBS/02/11/2021