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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Cr1.O.P.No.10331 of 2021

and

Cr1.M.P.No.6231 of 2021

R.Geetha

...Petitioner/2nd Accused

Vs.

1. The State

Represented by the Inspector of Police,
Vigilance and Anti-Corruption Wing,
Namakkal District.

...1st Respondent

2. Sekar @ G.Gunasekaran

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to F.I.R.No.02/AC/2020 on the file of the 1st respondent, namely, the Inspector of Police, Vigilance and Anti-Corruption, Namakkal and quash the F.I.R.No.02/AC/2020 as against the petitioner herein under Section 482 Cr.P.C.

For Petitioner : Mr.Nithyaesh Natraj

For R1 : Mr.E.Raj Thilak

Counsel for Government of Tamil Nadu
(Cr1. Side)

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to F.I.R.No.02/AC/2020 on the file of the 1st respondent, viz., the Inspector of Police, Vigilance and Anti-Corruption, Namakkal, and quash the same as against the petitioner herein.

2.The petitioner has been charged under Section 7(a) of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as "PC Act" for brevity), wherein, the petitioner has been implicated as 2nd accused for demand and acceptance of illegal gratification from the 2nd respondent/de facto complainant.



3.The factual matrix of the case is as follows :

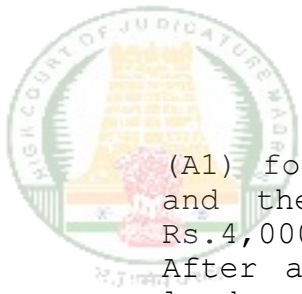
3.1.The 2nd respondent/de facto complainant, along with his neighbour one Sundar, had purchased 5 cents of land from one Gunavathy. The understanding between the 2nd respondent/de facto complainant and the said Sundar is that, each of them owned 2 ½ cents of land each. By separate registered sale deeds, the 2nd respondent/de facto complainant and his neighbour purchased the property on 24.06.2020. After expiry of one week from the date of registration, the 2nd respondent/de facto complainant and his neighbour had approached one Logambal (A1), Village Administrative Officer (hereinafter referred to as "VAO" for brevity) of Veerannampalayam Village, along with necessary documents, for effecting name change in their patta. Logambal (A1) had allegedly demanded a sum of Rs.4,000/- each as bribe for sub-dividing the property and granting patta. Thereafter, the 2nd respondent/de facto complainant was allegedly informed by the VAO (A1) that she will make arrangements for grant of patta, but informed them to pay Rs.4,000/- each, once the file is made ready.

3.2.The petitioner is the Village Assistant of Veerannampalayam Village, working under the VAO (A1). According to her, she was not aware of the alleged bribe demanded by the VAO (A1) nor was she involved in any of the negotiations between the 2nd respondent/de facto complainant and the VAO (A1).

3.3.On 07.10.2020, around 10.30 a.m., the 2nd respondent/de facto complainant received a call from his neighbour Sundar, informing him that the said Logambal, VAO (A1) had called and informed him that their patta was ready. The 2nd respondent/de facto complainant contacted the VAO (A1) through mobile phone and she had informed him to come and meet her in the office. The 2nd respondent/de facto complainant, on the same day, around 12.30 p.m., went to meet the VAO (A1) in her office and she informed him that the file had been sent to Survey Section and she had allegedly demanded a bribe of Rs.4,000/- for passing an order changing the name in the patta.

3.4.Not willing to pay the bribe, the 2nd respondent/de facto complainant lodged a complaint before the authorities of Vigilance and Anti-Corruption Wing, Dindigul, and after receiving the complaint, an FIR came to be registered against the said Logamabal, VAO (A1) under Section 7(a) of the PC Act, 1988.

3.5.Subsequent to the registration of FIR, on 08.10.2020, the Police had arrested the said Logambal (A1) by handing over the marked notes and on the next day, by way of Arrest Memo,



(A1) for change of patta and submitted the necessary documents, and the VAO (A1) received the documents and demanded them Rs.4,000/- each for making sub-division and granting patta. After a month, the VAO (A1) along with Surveyor, surveyed the land. However, thereafter, the 2nd respondent/de facto complainant could not meet the VAO because of Covid-19 Pandemic. Prior to 20 days of the complaint, the 2nd respondent/de facto complainant met the VAO (A1) and enquired about the patta transfer order and she had informed him that, once the file is ready, she will call him. The VAO (A1) told him to get patta by paying Rs.4,000/- each. Sundar, who is the co-owner, called the 2nd respondent/de facto complainant on 07.10.2020 over phone and informed that the VAO had called him and informed that the patta is ready and she asked him to bring Rs.4,000/- each. On the same day, at 12.00 hours, the 2nd respondent/de facto complainant contacted the VAO (A1) through phone and she informed him to come and meet her in the office. The 2nd respondent/de facto complainant went to meet the VAO (A1) at her office and asked about the order for change of patta, for which, she replied that the file was ready in Survey Section and she also informed him that she would get the order for change of patta only if they give Rs.4,000/- each. The 2nd respondent/de facto complainant was not willing to pay the bribe amount and he lodged a complaint and a trap was set up.

11.The learned Government Counsel further added that, on 08.10.2020, the trap team headed by the Inspector of Police, Vigilance and Anti-Corruption, Namakkal, went to the office of the VAO and found that the door was locked and when the 2nd respondent/de facto complainant contacted the VAO through mobile phone, she informed that she was in RI Office, Paramathi. The trap team proceeded to Paramathi. When the 2nd respondent/de facto complainant and the official witness were about to enter RI Office, the petitioner, namely, R.Geetha (Village Assistant) came out from the office and enquired the 2nd respondent/de facto complainant. The 2nd respondent/de facto complainant said that the VAO (A1) had asked him to come in respect of order for mutation of patta. The petitioner/Village Assistant (A2) asked him as to whether he had brought Rs.4,000/-, as instructed by the VAO (A1) on the previous day. The 2nd respondent/de facto complainant confirmed that he had brought the money. The petitioner went into the room of the VAO (A1) and informed her about the same and the VAO came out and replied that the order copy is ready and asked further whether he had brought the money as demanded by her earlier. When the 2nd respondent/de facto complainant attempted to take out the amount, the VAO (A1) directed him to give it to the petitioner (A2). The petitioner herein (A2) received the amount, counted it on both hands and said that Rs.4,000/- is there. On the instructions of VAO (A1), the petitioner put it in the hand bag of the VAO (A1).



14.This Court gave its anxious consideration to the rival submissions and perused the entire materials available on record.

15.The alleged offence is demand and acceptance of bribe under Section 7(a) of the PC Act. Hence, in order to exercise jurisdiction under Section 482 Cr.P.C., this Court has to find out whether there is a prima facie case against the petitioner.

16.On going through the averments made in the complaint, it is seen that the 2nd respondent/de facto complainant and his friend Sundar had purchased a property to an extent of 5 cents at Pallakadu at Veerannampalayam Village, viz., 2 ½ cents each, and the sale was registered vide two separate sale deeds, one in the name of the 2nd respondent/de facto complainant and the other in the name of wife of the said Sundar. After one week, they went to meet Logambal, VAO (A1) seeking for name change in patta. Further, the VAO (A1) stated that the same has to be sub-divided and then separate patta has to be provided and for that, Rs.4,000/- is required and the same can be paid at the time when she informs them. After one month, the said Logambal (A1) and Surveyor measured the land. Since the 2nd respondent/de facto complainant went out of station for his business of transporting tomatoes and due to Covid-19 Pandemic, he could not meet the VAO (A1) immediately. However, he used to make enquiries with the said Sundar, then and there. 20 days prior to the date of complaint, the 2nd respondent/de facto complainant went to meet the said Logambal (A1) and asked about the issuance of patta, for which, the VAO replied that their file is not ready and once the file is ready, she will inform Sundar and further, asked him to arrange for Rs.4,000/-, as demanded by her earlier. On 07.10.2020, at about 10.30 a.m., Sundar called him over phone and stated that the patta has been made ready and the VAO informed him to pay Rs.4,000/- and then get the said order. On the same day, at 12.30 p.m., he went to the office of the VAO, however, the VAO replied that the file is ready with Survey Section and if they pay Rs.4,000/- each, as demanded earlier, the order of change of patta will be made ready. The 2nd respondent/de facto complainant did not want to pay the said amount and hence, he gave a written complaint to the Inspector of Police (Vigilance) on 08.10.2020.

17.The Inspector of Police, received the complaint of the 2nd respondent/de facto complainant on 08.10.2020 at 11.15 hours and made confidential enquiry about the genuiness of the complaint and found the same to be genuine and the integrity and antecedents of the accused was also verified and he registered a case in Namakkal V&AC Crime No.2/AC/2020, for the offence under Section 7(a) of the PC Act, after getting oral concurrence from the DVAC, Chennai.



18.The complaint was taken cognizance by the Vigilance and Anti-Corruption Wing and they proceeded to lay a trap. After laying a trap, the 2nd respondent/de facto complainant went to the office of the VAO (A1), met the VAO and enquired about the patta transfer and she demanded Rs.4,000/- and as per the instructions of the VAO (A1), he paid the amount of Rs.4,000/- to this petitioner (A2) and on the further instructions of VAO, the petitioner (A2) kept it in the hand bag of A1.

19.The above fact can also be seen from the statement made by the VAO (A1), wherein, she has stated that she asked her assistant Geetha (A2) to get Rs.4,000/- given by the 2nd respondent/de facto complainant and keep it in her hand bag.

20.The petitioner (A2), in her statement, has stated as follows :

"Today, i.e. on 08.10.2020, I, along with VAO Mrs.Logambal, went to the office of Revenue Inspector, Paramathi and were doing our work there. Around 2.30 p.m., Mr.Sekar alias Gunasekaran came to the office of RI and was standing in the verandah over there. After seeing him, I had a word with him outside and after going inside the office premises again, I intimated the VAO Mrs.Logambal about Mr.Gunasekaran's visit. The VAO Mrs.Logambal went outside and informed Mr.Gunasekaran that his patta order was ready. At that time, Mr.Gunasekaran handed over folded money to which the VAO had asked Gunasekaran to give the folded money to me. Gunasekaran handed over the folded money to me and after receiving the money, I counted them and I informed the VAO that there was Rs.4000/-. The VAO, in turn, had asked me to keep the money in her rexin handbag. So, I kept the money in the front zip of her handbag."

21.In the Seizure Mahazar, it is stated as follows :

"The Village Assistant of Veerannampalayam Village saw the de facto complainant from inside and then came out and enquired him and he replied that the VAO had asked him to come and meet him regarding the order for change of patta, for which, the Village Assistant asked him as to whether he had brought Rs.4,000/-, as demanded yesterday by the VAO, for change of patta, and the de facto complainant replied that he had brought the same. The Village Assistant went inside and brought Logambal, VAO. He enquired the VAO as to whether the order for change of patta is ready, for which, the VAO replied that the patta transfer order is ready and asked whether he has brought the money



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which she demanded. He said that he brought the same. The VAO asked him to give the money. He took out the money coated with phenolphthalein from his shirt's left pocket and when he attempted to give it, the VAO asked him to hand over the money to the Village Assistant who was next to her, and hence, he gave the money to the Village Assistant and she received the money in her right hand and she counted it with both hands and said that Rs.4,000/- is there. The VAO asked the Village Assistant to keep the money in her hand bag and therefore, the Village Assistant took the money and went inside. Thereafter, the VAO asked the de facto complainant to go and she will collect and give the patta order from the Survey Section."

22.From a reading of the averments made in the complaint, the contents of the Seizure Mahazar, the statements of the VAO (A1) and the petitioner herein (A2), it is clear that, when the 2nd respondent/de facto complainant attempted to hand over the amount of Rs.4,000/-, as decided in the trap, the VAO (A1) immediately directed him to hand over the same to the petitioner (A2) and also directed the petitioner herein (A2), being her Assistant, to receive the same and keep it in her hand bag, and as per the said direction, the petitioner (A2) kept the money in the handbag of A1. To be noted, nowhere in the petition, the petitioner has stated that the VAO (A1) has not demanded any bribe or she has not accepted any bribe.

23.It is stated by the petitioner that her sincerity and integrity for the past 12 years was clean and she had no knowledge of demand of bribe, nor did she know that the amount was a bribe amount. However, from the materials, it could be seen that the tainted money was recovered from the bag of A1, who is the VAO, and the Phenolphthalein Test proves positive on both hand fingers of the petitioner (A2). The materials so far collected by the prosecution prima facie throws light on the fact that the petitioner (A2) at least had the knowledge that the money has been paid in relation to the grant of patta. But, the questions as to whether she had the knowledge that it was only a bribe amount or did she make any demand of bribe or did she voluntarily accept the bribe either for herself or on behalf of any other person, involves adjudication of factual aspects, which have to be proved or defended by the parties by letting in evidence before the trial Court and this Court cannot venture into the process of adjudication of facts in a petition under Section 482 Cr.P.C.

24.A perusal of the complaint lodged by the de facto complainant, statements made by VAO (A1) and the petitioner (A2), Seizure Mahazar and Recovery Mazahar, would show that the



tainted money has been demanded by A1 and received by A2. It is also seen that, only after discrete preliminary enquiry by the authorities and after finding out the genuineness and integrity of the complaint, the authorities have proceeded to lay a trap, as a result of which, they recovered the tainted money from the bag of A1, which was received by A2 with her hands.

25. For all the above reasons, this Court is of the view that the prosecution case is not based on mere suspicion, but it has been proceeded only on valid materials and there is a prima facie case against the petitioner (A2), to proceed against her.

26. That apart, the case is now in its initial stage and it is submitted by the learned Government Counsel submitted that the investigation is yet to be completed and there are some more materials to be collected to complete the investigation. That being the case, this Court is of the opinion that it is very premature to quash the FIR.

27. Further, in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.* in Crl.A.No.255 of 2019 dated 12.02.2019, the Hon'ble Supreme Court of India has held as follows:

"5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on



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behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

28. Time and again, the Hon'ble Supreme Court of India, as well as the High Courts have held that the FIR cannot be quashed unless no material is available in the FIR to probe into the said allegations. But, in the instant case on hand, as mentioned above, there is a prima facie case made out against the petitioner (A2) and there are allegations which need to be probed into. The allegations of demand and acceptance of bribe and the defence of the petitioner that she had no knowledge about the same, can be called in question and decided in the process of trial before the trial Court.

29. If at all the petitioner has got any material to defend herself, the same can be let in by way of evidence before the trial Court.

30. Therefore, this Court is not inclined to quash the FIR at the threshold and this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Namakkal District.
2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.10331 of 2021

SV-I (CO)
LS (21/09/2021)