

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020
PRONOUNCED ON : 08.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.1207 of 2020
and
Crl.M.P.Nos.8412 & 8413 of 2020

Sri Hari ..Petitioner/Accused No.4

Vs.

State represented by
The Additional Superintendent of Police,
CBI (ACB), Chennai. ..Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 23.07.2020 passed in Crl.M.P.No.2244 of 2019 in Spl.C.C.No.2 of 2019 on the file of the Special Court, Puducherry.

For petitioner : Mr.R.Natarajan
For respondent : Mr.K.Srinivasan
Special Public Prosecutor

O R D E R

This criminal revision petition has been filed seeking to set aside the order dated 23.07.2020 passed in Crl.M.P.No.2244 of 2019 in Spl.C.C.No.2 of 2019 on the file of the Special Court, Puducherry.

2. The facts in brief are as under:

2.1 One Rathina Subramanian gave a complaint dated 11.02.2011 to the Central Bureau of Investigation (for brevity "the CBI") alleging that the Chairman, Secretary and other officers of the Puducherry Housing Board (for short "the PHB"), purchased lands in R.S.Nos.31/6 & 32/1 at an exorbitant rate in violation of rules and had caused pecuniary advantage to the sellers, who were known to them.

2.2 Since no action was taken by the CBI, the said Rathina Subramaniam filed Crl.O.P.No.5969 of 2011 under Section 482 Cr.P.C., for a direction to the CBI to register an FIR on his complaint.

2.3. This Court, by order dated 27.11.2014 in CrI.O.P.No.5969 of 2011, found that there are prima facie materials in the complaint disclosing the commission of cognizable offences and hence, issued a direction to the CBI to register a case and conduct investigation.

2.4 Pursuant thereto, based on the complaint of the said Rathina Subramaniam, the CBI registered a case in Crime No.9 of 2015 on 27.02.2015 for the offences under Sections 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for brevity "the PC Act") against 13 persons named in the complaint. These 13 persons are Angalane (A1/Ex-Chairman of the PHB and M.L.A.), Kuppusamy (A2/Ex-Secretary of the PHB), Ashoka Ramasekar (A3/Executive Engineer of the PHB), Sri Hari (A4/Ex-Administrative Officer of the PHB), Periyasami (A5/Assistant in the PHB), Mohan Raj Elango (A6/Retd. Assistant), Dinakaran (A7/Legal Superintendent), Subramanian (A8/Office Manager), Tamilarasan (A.9/Programmer), Iswarane (A.10/Junior Engineer), Ravi (A.11/Assistant Engineer), Chandrasekaran (A.12/Assistant Engineer) and Viswalingam (A.13/P.A. to Chairman).

2.5 After completing the investigation, the CBI filed charge sheet in Spl.C.C.No.2 of 2019 before the Special Court, Puducherry under Sections 120-B r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of the PC Act against (A1/Ex-Chairman of the PHB and M.L.A.), Kuppusamy (A2/ Ex-Secretary of the PHB), Ashoka Ramasekar (A3/Executive Engineer of the PHB), Sri Hari (A4/Ex-Administrative Officer of the PHB), Periyasami (A5/Assistant in the PHB), Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9). In this case, Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) are the owners of the lands, from whom, the subject lands were purchased at exorbitant rates, higher than the guideline value prescribed by the Registration Department.

2.6 It may be pertinent to state here that though 13 officials of the PHB were named as accused in the FIR, the names of accused 6 to 13 named in the FIR were dropped in the final report.

2.7 Sri Hari (A4) appeared before the trial Court and filed CrI.M.P.No.2244 of 2019 in Special C.C.No.2 of 2019 under Section 239 Cr.P.C., for discharging him from the prosecution, which has been dismissed by the trial Court on 23.07.2020. Challenging the said order of dismissal, Sri Hari (A4) has preferred the present criminal revision under Section 397 r/w 401 Cr.P.C.

3 Heard Mr.R.Natarajan, learned counsel for Sri Hari (A4)/petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the CBI/respondent.

4 It is trite that even a strong suspicion is enough to frame a charge and a person can be discharged only when the charge against him is found to be groundless as held by the Supreme Court in State of Tamil Nadu Vs. Suresh Rajan¹.

5 The PHB was constituted under the Puducherry Housing Board Act, 1973 (for brevity "the PHB Act"). The PHB decided to purchase lands in Puducherry and Karaikal and accordingly, constituted a Site Selection Committee to inspect lands in Puducherry. The PHB also constituted a Price Fixation Committee, to fix the price of the lands selected by the Site Selection Committee. The Site Selection Committee inspected certain lands on 23.09.2009 and 08.10.2009 and submitted a report to the PHB.

6 The Site Selection Committee selected the lands of Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) and recommended purchase of those lands. The Price Fixation Committee fixed the price of the lands at Rs.450/- per sq. ft., whereas, the guideline value was only Rs.18/- per sq. ft. in certain survey numbers and Rs.300/- per sq. ft. in other survey numbers.

7 The allegations raised by the CBI in the charge sheet are as follows:

- The PHB paid Rs.1,75,91,040/- more than the guideline value to the lands owners viz., Sarala (A6), Lakshmi (A7) and Usha (A8); and
- As regards Asai Thambi (A9), the PHB entered into a sale agreement to purchase his land for a sale consideration of Rs.1,42,25,400/- and had paid Rs.10,000/- as advance.

8 It is the case of the CBI that under Section 61 of the PHB Act, the PHB cannot purchase lands valued at more than Rs.3 lakhs without the approval of the Government and therefore, Angalane (A1), Kuppusamy (A2), Ashoka Ramasekar (A3), Sri Hari (A.4), Periyasami (A5), Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9), entered into a conspiracy to purchase the lands of Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) at a cost of Rs.450/- per sq. ft., when the guideline values were only Rs.18/- per sq. ft. for some survey numbers and Rs.300/- per sq. ft. for other survey numbers, paid an excess amount of Rs.1,75,91,040/- to the land owners and thus, caused

1 (2014) 11 SCC 709

loss to the PHB and facilitated the land owners to get unjust gain.

9 The offence in question had taken place during 2009-2010. At that time, Angalane (A1) and Kuppusamy (A2) were the Chairman and Secretary respectively of the PHB. The other members of the PHB have not been made as accused and some of them have been cited as witnesses. The entire prosecution case is borne out by records.

10 The allegation against Sri Hari (A4) in the final report is two-fold.

i. He, along with Angalane (A1), Kuppusamy (A2) and other officials of the PHB, had discussions with the owners of the land in Kirumampakkam Village in R.S. No31/6 and 32/1, viz., Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) before 14.09.2009.

ii. The second allegation can be best explained by extracting the averments in the charge sheet verbatim.

"26. Investigation revealed that on 01.02.2010 Shri Sri Hari (A-4) and Shri Periasamy (A-5) initiated a Note dated-01.02.2010 in respect of purchase of 03 pieces of land and Kirumampakkam. In the Note they had stated that the lands comprised in RS.No.32/1 and 31/6 got verified with the assistance of Dy.Surveyor, PHB with regards to it's owners name, detailed of lands, extent, etc. Further, they had stated the report of Site Selection Committee, Pay Fixation Committee and the minutes of 111th Board meeting. They stated the amount payable to the seller including the registration charge to the land owners to be purchased as follows:.....

39.....(ii) Shri Sri Hari (A-4), the then Head of Estate wing, who held the post of Administrative Officer-cum-Junior Account Officer of PHB additionally, is well acquainted with PHB Acts, Rules, Regulations, Office orders/Instructions, Procedures and formalities to be followed while purchasing land to PHB housing project either through Land Acquisition process or by direct negotiation with the Land Owners. He knows what is to be followed while purchasing land whose value exceeding Rs.3 lakhs. Despite knowing all these rules and regulations of PHB, he along with Shri.C.Periyasamy (A-5) prepared the Note dt

01.02.2010 to purchase the land comprised in RS 31/6 & 32/1 from Smt S.Sarala (A-6), Smt R.Lakshmi (A-7),....."

Thus, the sum and substance of the second allegation against Sri Hari (A4) is that he had prepared an Office Note dated 01.02.2010, in which, he had not referred to Section 61 of the PHB Act, under which, the PHB cannot make any purchase beyond Rs.3 lakhs without the approval of the Government.

11 The learned counsel for Sri Hari (A4) made the following submissions:

- (a) Sri Hari (A4) was neither a member of the Site Selection Committee nor a member of the Price Fixation Committee and that he joined PHB only on 16.09.2009, whereas, the lands were identified even prior to that.
- (b) Sri Hari (A4) had nothing to do with the 111th meeting that was held on 05.11.2009, in which, the members of the PHB resolved to purchase the lands in question by enhancing the financial power of the Board from Rs.3 lakhs to Rs.10 lakhs.
- (c) After the PHB passed such a resolution, the files came to Sri Hari (A4) and he prepared the office note dated 01.02.2010 and sent it for approval to the other officials;
- (d) Except the allegation that Sri Hari (A4) prepared the office note dated 01.02.2010 without referring to Section 61 of the PHB Act, there is no other material to show that Sri Hari (A4) had obtained any pecuniary advantage in the purchase; and
- (e) This Court has quashed the prosecution against Ashoka Ramasekar (A3) in CrI.O.P.No.24653 of 2019 on 10.01.2020 and the case of Sri Hari (A4) is in pari materia with that of Ashoka Ramasekar (A3).

12 Refuting the aforesaid submissions, Mr.K.Srinivasan, learned Special Public Prosecutor for CBI submitted as follows:

- (a) Sri Hari (A4) had accompanied Angalane (A1) and Kuppusamy (A2) for the negotiation with the land owners;
- (b) Sri Hari (A4) ought to have referred to Section 61 of the PHB Act, while preparing the office note dated 01.02.2010;
- (c) Sri Hari (A4) should have resisted the move of the PHB, like how the witness Gnanamuthu (L.W.9), the then Financial Advisor and Chief Accounts Officer resisted the move; and
- (d) The case against Ashoka Ramasekar (A3) was quashed on a different ground by this Court and the reasonings therein would not apply to Sri Hari (A4).

13 This Court gave its anxious consideration to the rival submissions.

14 In the opinion of this Court, the case of Ashoka Ramasekar (A3) was quashed by this Court on certain grounds, which are not per se available for Sri Hari (A4) and hence, this Court is not placing reliance on the order dated 10.01.2020 in Crl.O.P.No.24653 of 2019.

15 A complete reading of the charge sheet and the accompanying documents, including the statements of the witnesses, does not disclose that Sri Hari (A4) had obtained any pecuniary advantage in the deal. Of course, that cannot be a reason to hold that he was not involved in the offence, because, under Section 13 of the PC Act, if a person abuses his official position and paves the way for another person to get an advantage, the former can be prosecuted.

16 As regards the first allegation that Sri Hari (A4) accompanied Angalane (A1), Kuppusamy (A2) and other officials of the PHB for identifying the lands and holding discussions with the land owners, Document No.6 filed by the CBI clearly shows that Sri Hari (A4) was working as Junior Accounts Officer in Puducherry Institute of Post-Matric Technical Education and by order dated 16.09.2009 passed by the Government of Puducherry, he was sent on deputation as Divisional Accountant to the PHB from the forenoon of 16.09.2009 (see office order dated 25.09.2009 - Document No.6 series) and after he joined as Divisional Accountant, he was made as Administrative and Development Officer in the PHB with effect from 25.09.2009 (see office order dated 05.10.2009 - Document No.6 series), whereas, Document No.8 series shows that even prior to 14.09.2009, the Secretary, Executive Engineer and other staff of the PHB had gone to Kirumampakkam Village for identifying the lands and have had informal negotiations with the land owners. This is evident from the Office Note dated 14.09.2009 prepared by Gnanamuthu (L.W.9). Two prosecution witnesses, viz., Gnanamuthu (L.W.9) and Parthiban (L.W.10) have stated in their statements recorded under Section 161(3) Cr.P.C. that Sri Hari (A4) had accompanied Angalane (A1) and Kuppusamy (A2) along with the other officials to Kirumampakkam Village for identifying the lands. However, these two witnesses have not stated the date on which, this exercise was undertaken. On the contrary, a reading of the Office Note dated 14.09.2009 prepared by Gnanamuthu (L.W.9) unequivocally shows that the site in question was inspected prior to 14.09.2009. It may be essential to extract the relevant portion of the Office Note dated 14.09.2009:

"3. In this connection, it is submitted that the site in question were inspected by the Secretary (PHB), Executive Engineer (PHB), Development Officer (PHB) along with Deputy Surveyor other staff of Puducherry Housing Board. It is found that the lands

are suitable for Housing Scheme. Since these lands are abutting to Kirumampakkam Main Road and having proper approach/access to enter the lands and also these lands are situated away from one km. from Cuddalore - Puducherry Main Road."

17 To sum up, Sri Hari (A4) was sent on deputation from Puducherry Institute of Post-Matric Technical Education to the PHB only in the afternoon of 16.09.2009, whereas, the informal selection of the site was done much prior to 14.09.2009. It may be pertinent to state here that Gnanamuthu (L.W.9) was the Administrative and Development Officer of the PHB as on 14.09.2009 and not Sri Hari (A4). Therefore, the first allegation against Sri Hari (A4) has no legs to stand.

18 Coming to the second allegation, it is evident from the materials filed by the CBI that the officials of the PHB had gone to Kirumampakkam Village prior to 14.09.2009 and had identified the lands in S.Nos.31/6 and 32/1 owned by Lakshmi (A7), Usha (A8) and Rajendran (L.W.2). Thereafter, the Site Selection Committee was constituted. The Site Selection Committee had Angalane (A1), Dr. Frankalin Laltinkhuma, I.A.S., Sai Subramanian, K.R. Prakash, K. Mookaiah, A. Jayabalan and S.Kuppusamy (A2) as its members. The Site Selection Committee inspected the land on 23.09.2009 at 3.30 p.m. as could be seen from the proceedings filed as Document No.8 series. The Site Selection Committee formally selected the lands in S. Nos.31/6 and 32/1 belonging to Lakshmi (A.7), Usha (A.8) and Rajendran (L.W.2). Thereafter, the PHB constituted the Price Fixation Committee comprising Angalane (A.1), Rajasekhar, Manohar, Ramaradjou and Kuppusamy (A.2) to fix the price for the lands. The Price Fixation Committee fixed the price at Rs.450/- per sq. ft. On 05.11.2009, the Board of the PHB met and passed several resolutions, the relevant of which is as under:

"Item No.5/111

Enhancement of financial powers for purchase of land - Amendment to Section 61 of the PHB Act, 1973 - Approval of the Board - Sought for reference to Government.

The Board was informed that the powers of the Board for acquisition of land was enhanced from Rs.10,000/- to Rs.3,00,000/- in the year 1980, and thereafter no amendment has been done to enhance the said powers.

While considering this proposal, the entire matter has been discussed in detail. Two Committees, viz., Site Selection Committee and Price Fixation Committee, vet the proposal before

purchase and after that the matter will be placed before the Board for approval. Indeed, the composition of both the Committees to decide on the suitability of the land for purchase and to finalise the sale consideration to the land owners are sufficiently represented by a cross section of the officers of the administration of Puducherry with District Collector and Chief Town Planner invariably present in both the Committees. The Board mobilizes the funds either from its own internal sources or by availing term loans from banks/financial institutions in order to source land. On an average view, the cost of a plot comes to around Rs.15.00 to Rs.20.00 lakhs. The power now vested with the Board is only Rs.3.00 lakhs, which is not rational in view of the prevailing trends in the land market.

With these observations, the Board has accorded approval for the enhancement of powers of the Board to purchase land by direct negotiation by increasing the monetary ceiling from Rs.3.00 lakhs to Rs.10.00 crores and proposals exceeding Rs.10.00 crores can be referred to the Government for approval. The Board further allowed powers to the Chairman, PHB up to Rs.1.00 crore in each case."

19 These resolutions have been filed by the CBI as part of the relied upon documents under Section 207 Cr.P.C. A reading of the resolution extracted above clearly shows that the members of the PHB were aware of the fact that under Section 61 of the PHB Act, they had no power to make any purchase beyond Rs.3 lakhs without the approval of the Government. Nevertheless, they decided to enhance their financial powers from Rs.3 lakhs to Rs.10 lakhs and have cleared the purchase of the lands in question from Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9).

20 Whether the members of the PHB had the power to suo motu enhance their financial powers, is the moot question and is the subject matter of the criminal imputations against Angalane (A1/Ex-Chairman of the PHB and M.L.A.) and Kuppusamy (A2/Ex-Secretary of the PHB). Therefore, this Court cannot go into this question now and the matter should be left to the trial Court to decide.

21 After the Board passed such a resolution, when the papers came to the section, where, Sri Hari (A.4) was working,

he prepared the impugned office note dated 01.02.2010 and sent it to his higher officials for appropriate orders. Just because one of his colleagues, viz., Gnanamuthu (L.W.9) raised objections by citing Section 61 of the PHB Act, one cannot say that Sri Hari (A4) also should have raised such an objection and his failure to object leads to the inference that he was part of the conspiracy with the Chairman and the Secretary of the PHB to purchase the lands of Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) in violation of Section 61.

22 A reading of the statement of Gnanamuthu (L.W.9) shows that when the office note dated 01.02.2010 came to him, he refused to sign it, for which, he was threatened by Angalane (A1); however, he left the office without signing the office note, after he received a telegram that his father was sick.

23 In the 111th meeting, the PHB officials had passed the resolution increasing their financial powers to make purchases from Rs.3 lakhs to Rs.10 lakhs and also resolved to purchase the lands of Sarala (A6), Lakshmi (A7), Usha (A8) and Asai Thambi (A9) for certain prices. Sri Hari (A.4) being the ministerial officer in the PHB, merely initiated the office note dated 01.02.2010 based the resolution passed by the PHB in its 111th meeting on 05.11.2009.

24 In C.Chenga Reddy & Others vs. State of A.P.², the Supreme Court has held that actions of an accused in breach of codal provisions, by themselves, will not amount to criminal offence though the State would have suffered financially.

25 In this case, the failure of Sri Hari (A4) to refer to Section 61 of the PHB Act cannot be said to be fatal, inasmuch as, the PHB members were conscious of Section 61 of the PHB Act, which is apparent from the resolution that was passed by them, which has been extracted above.

26 Finally, Mr.Srinivasan took this Court through the statement of Rathina Subramaniam (L.W.16) and submitted that Sri Hari (A4) had also shared the booty with the other accused. Rathina Subramaniam (L.W.16) was the whistle-blower, on whose complaint, the FIR came to be registered against 13 officials of the PHB and after investigation, the CBI dropped the case against 8 officials, as aforesaid. The statement of Rathina Subramanyam (L.W.16) on this aspect reads as follows:

"In this regard, I am to state that the ex-Chairman Shri.P.Angalane had constituted the committee of Site Selection and Price Fixation without prior approval of the Board and not yet published in the official gazette and also not to get prior approval of

the Government for the purchase of the land. In this, I and the Union office bearers came to know that the excess amount paid to the land owners have been distributed to the officials those who were involved in the land purchase." (emphasis supplied)

Rathina Subramanyam (L.W.16) was the Union leader of the PHB and on coming to know that the Chairman and Secretary of the PHB had purchased the lands at an exorbitant rate, he had set the criminal law in motion. His statement only shows that he and the Union office bearers came to know that the excess amount was shared by the officials of the PHB. This is purely hearsay and it will amount to travesty of justice, if an official is made to face trial on this vague statement.

27 In view of the above discussion, this Court is of the view that this is a fit case, in which, the accused deserves to be discharged from the prosecution as the allegations against him are indeed groundless.

28 In the result, this criminal original petition is allowed with the following directions:

- The order dated 23.07.2020 passed in CrI.M.P.No.2244 of 2019 in Spl.C.C.No.2 of 2019 on the file of the Special Court, Puducherry, is set aside;
- If the prosecution wants to examine Sri Hari (A4) as a witness in order to prove the office note dated 01.02.2010, it is always open to them to include his name in the memo of evidence, though his statement under Section 161(3) Cr.P.C. has not been recorded. It is well settled that recording of the statement under Section 161(3) Cr.P.C. is not a pre-condition for examining a person as a witness in a criminal trial; and
- It also the duty of Sri Hari (A4) to testify in the trial about the facts that are known to him to advance the cause of justice and he cannot claim any immunity from testifying in the trial.

Connected CrI.M.Ps. are closed.

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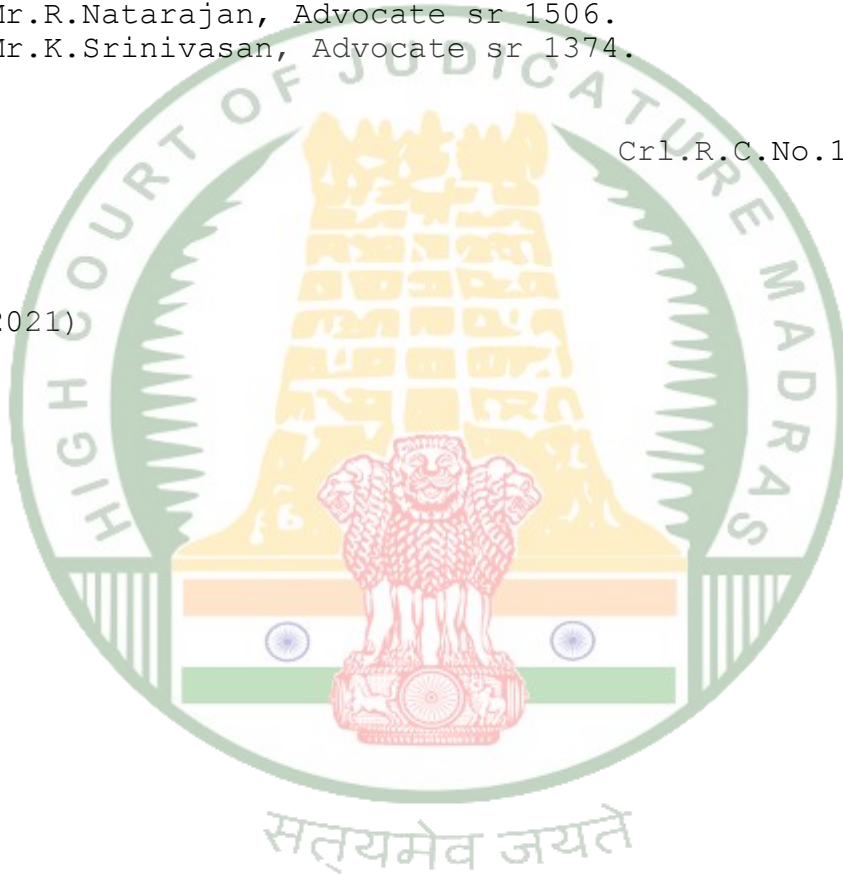
1. The Special Judge, Puducherry
2. The Additional Superintendent of Police
CBI (ACB), Chennai
3. The Public Prosecutor
Madras High Court
Chennai - 600 104

+1 CC to Mr.R.Natarajan, Advocate sr 1506.

+1 CC to Mr.K.Srinivasan, Advocate sr 1374.

Crl.R.C.No.1207 of 2020

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