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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.02.2021

PRONOUNCED ON : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.2153 of 2021

and

Crl.M.P. (MD)No.1047 of 2021

P.Rajendran : Petitioner /Accused No.1
Vs.

1.State represented by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Trichy.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Trichy. Crime No. 7 of 2014. : Respondents 1 & 2/ Complainants

3.S.Palanisamy : 3rd Respondent/Defacto
Complainant

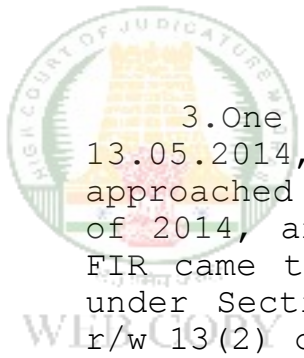
Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Spl.C.No.11 of 2018 on the file of the learned Special Court for cases under Prevention of Corruption Act, Tiruchirappali and quash the same in respect of the petitioner is concerned.

For Petitioner : Mr.T.A.Ebenezar
For Respondents : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor, for R1 & R2.
: Mr.M.Saravanan, for R3.

O R D E R

The Criminal Original Petition has been laid to quash the proceedings in Spl.C.No.11 of 2018, pending on the file of the Special Court for cases under Prevention of Corruption Act, Tiruchirappali.

2.The petitioner, who is the first accused in Spl.C.No.11 of 2018, on the file of the Special Court for cases under Prevention of Corruption Act, Tiruchirappali, in an attempt to sustain the present petition filed under Section 482 Cr.P.C, for the second time alleged to have canvassed new grounds and change in circumstances, but, at the out-set, on perusal of the records, this Court is constrained to say that the petitioner is attempting for the second time to stall the proceedings pending before the trial Court in Sp.C.No.11 of 2018, which is in part heard stage.



3. One Palanisamy gave a complaint to the first respondent on 13.05.2014, against seven persons and as there was no action, he approached this Court by filing a petition in Crl.O.P.(MD)No.10532 of 2014, and as per the directions of this Court dated 23.06.2014, FIR came to be registered in Crime No. 7 of 2014 for the offences under Sections 167, 465, 467, 471 IPC and under Section 13(1) (d) r/w 13(2) of the Prevention Corruption Act. After investigation, the first respondent has filed the final report against the three accused including the petitioner herein for the offence under Sections 120(B), 167, 201 IPC and 13(2) r/w 13(1) (d) of Prevention and Corruption Act 1988, before the Special Court for cases under the Prevention and Corruption Act, Tiruchirappali and the case was taken on file in Spl.Case No.11 of 2018. After framing of necessary charges by the Special Court, the first accused/the petitioner herein has filed a petition under Section 482 of Cr.P.C, to quash the proceedings in Spl.C.No.11 of 2018 on the file of the Special Court for cases under the Prevention and Corruption Act, Tiruchirappali, in Crl.O.P.(MD)No.11518 of 2019, and this Court has passed an order dated 06.11.2019 by holding that the grounds raised by the petitioner can only be appreciated during the trial, directed the trial Court to complete the trial within a period of one year from the date of receipt of copy of that order.

4. In the meanwhile, the defacto complainant/Palanisamy has also filed a petition under Section 482 Cr.P.C, seeking orders for further investigation of the case in Crime No.7 of 2014 and pending in Special Case No.11 of 2018 on the file of the Special Court for cases under the Prevention and Corruption Act, in Crl.O.P.(MD) No.13951 of 2019, this Court by observing that this Court has already issued a direction to the trial Court to conclude the trial within a period of one year, it would not be appropriate to order for further investigation, passed the order, dated 06.11.2019, directing that the other accused can be added as per Section 319 Cr.P.C, if the prosecution discloses the role played by the other accused and gave liberty to the defacto complainant to establish the role of the accused before the trial Court through evidence.

5. It is not in dispute that the trial before the Special Court was commenced only on 23.12.2020 and the defacto complainant/L.W.2 was examined in Chief in part, that subsequently, chief examination was completed and he was cross examined in part on behalf of the second respondent on 05.01.2021 and again on 19.01.2021 and again cross examined in part 02.02.2021 and that the case was posted to 09.02.2021 for further cross examination of P.W.1/defacto complainant.

6. The petitioner, at whose instance, this Court has directed the trial Court to complete the trial within a time frame, without making cross examination of the first witness P.W.1, has approached this Court again under Section 482 Cr.P.C, to quash the proceeding in Spl.C.No.11 of 2018 on the file of the Special Court for cases under the Prevention and Corruption Act.

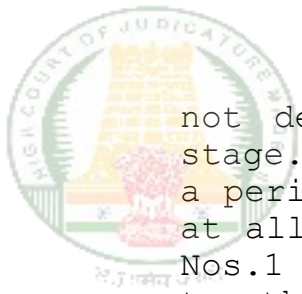


7.It is evident from the records that this Court has initially returned the present petition, questioning the maintainability of the second quash petition in view of the order passed by this Court, in Crl.O.P(MD)No.11518 of 2018, dated 06.11.2019, the petitioner has re-presented, stating that "since the grounds raised in the present petition are entirely different with the earlier quash petition and fresh cause, the present petition is maintainable." No doubt, the learned counsel for the petitioner, at the very beginning of his arguments has relied on the decision of Hon'ble Supreme Court in **ABC 2019 (III) 67 SC, Anil Khadkiwala Vs. State (Government of NCT of Delhi) and another**, and argued that though the petitioner's previous application for quashing the final report was dismissed, the second application for quashing the same is perfectly maintainable. In the case before the Hon'ble Supreme Court, which was filed under Section 138 of Negotiable Instruments Act, the Appellant/second accused, who was the Director of the first accused company has filed an application for quashing the case as against him, on the ground that he had already resigned from the company before the issuance of the cheques in dispute, that the said application was dismissed by the Court on the the ground that the cheques were issued under the signatures of the appellant that the appellant therein has again filed a fresh application under Section 482 Cr.P.C, the High Court after noticing the reliance of Form-32 issued by the Registrar of Companies in proof of resignation of the appellant prior to the issuance of the cheques, ordered notice and that subsequently, after holding that the second application for quashing the complaint was not maintainable, dismissed the same. When that order was challenged, the Hon'ble Supreme Court, by observing that there was a difference naturally between the earlier application and the subsequent one, inasmuch as the statutory Form-32 did not fall for consideration by the Court earlier and that since the factum of resignation is not in dispute between the parties, the subsequent application, cannot be said to a repeat application squarely on the same facts and circumstances.

8.The Hon'ble Supreme Court has cited another decision reported in **AIR 1975 SC 1002, Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and others**, and the relevant passage is extracted hereunder;

"8.In Mohan Singh (supra), it was held that a successive application under Section 482, Cr.P.C, under changed circumstances was maintainable and the dismissal of the earlier application was no bar to the same, observing:

"... Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561 A of the Cr.P.C to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was



not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos.1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos.1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos.1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years"

9.Considering the above, it is very much clear that the petitioner in order to sustain the second application is duty bound to show new grounds or changed circumstances. No doubt, the petitioner has been alleging continuously that he has raised new grounds and shown fresh cause.

10. I have perused the present petition as well as the earlier petition filed under Section 482 Cr.P.C. In both the petitions, the petitioner has raised the grounds of attack, on the basis of the decision of Hon'ble Supreme Court in **State of Haryana and others vs. Ch.Bajana Lal and ors**, reported in **AIR 1992 SC 604**. In the earlier petition, he has dealt with the statement of the witnesses recorded under Section 161(3) of Cr.P.C and alleged that they are not sufficient to attract the offences with which the petitioner was charged with. In the present petition, he has dealt with the Sections of law with which the petitioner was charged and alleged that no offences could be made out.



11. On perusal of both the petitions, it is clearly evident, that the petitioner has raised the same grounds that were taken in the earlier petition, but in a different way with different words and the basic ground of attack is one and the same. Regarding the changed circumstances, there is one change in circumstances that when the earlier petition was pending, trial was not commenced before the trial Court and that even after specific directions of this Court, the trial was not completed. Though this Court has issued direction on 06.11.2019, the trial was commenced on 23.01.2020. But it is pertinent to note that due to Covid-19 and consequent lock-down declared by the Central and State Governments, the Courts not only in Tamil Nadu, all the Courts in the entire Country were not functioning physically for most part of the year 2020. No doubt, the Courts were functioning virtually, but virtual hearing was found effective only for the final hearing cases and not for the examination of the witnesses and that too in the cases relating to Vigilance and Anti Corruption, where witnesses are being cross examined at length. Hence the trial Court was also not in a position to proceed with the trial and as such, no one can be blamed as it is beyond our control and can only be considered as an Act of god. Simply because, the trial was not completed as per the direction of this Court, it cannot be said that the petitioner is entitled to take advantage of the same.

12. At this juncture, it is necessary to refer the decision of Hon'ble Supreme Court relied by the learned Additional Public Prosecutor reported in **(2020) 12 Supreme Court Cases 588;**

State of Madhya Pradesh Vs. Yogendra Singh Jadon and another.

"5. We find that the High Court has examined the entire issue as to whether the offence under Sections 420 and 120-B IPC is made out or not at pre-trial stage. The respondents are beneficiary of the grant of cash credit limit when their father was the President of the Bank. The power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in Court of law. The manner in which loan was advanced without any proper documents and the fact that the respondents are beneficiary of benevolence of their father prima facie disclose an offence under Sections 420 and 120-B IPC. It maybe stated that other officials of the Bank have been charge-sheeted for an offence under Sections 13(1) (d) and 13 (2) of the Act. The charge under Section 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the respondents may be liable with the aid of Section 120-B IPC.

6. Consequently, we find that the order of the High Court quashing the charges against the respondents is not



sustainable in law and the same is set aside. The appeal is allowed. It shall be open to the respondents to take such other action as may be available to them in accordance with law."

13.It is pertinent to mention that this Court in its earlier order has specifically observed that the grounds raised by the petitioner can be appreciated only during the trial.

14.The rule of inherent powers has its source in the maxim "Quando lex aliquid alicui concedit, concedere videtur id sine quo ipsa esse non potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The inherent power under Section 482 Cr.P.C is intended to prevent the abuse of process of the Court and to secure the ends of justice. Generally, High Courts are not expected to interfere at an interlocutory stage of criminal proceedings in a Subordinate Court, but High Court is under an obligation to interfere, if there is harassment of any person by illegal prosecution and it would do so when there are any exceptional or extraordinary reasons for doing so. The Hon'ble Supreme Court in **Madhu Limaye Vs. State of Maharashtra**, reported in (1997) 4 SCC 551, has held that the power under Section 482 of Cr.P.C should be exercised sparingly to prevent abuse of process of Court or otherwise to secure the ends of justice.

15.It is settled law that even though the inherent jurisdiction of the High Court under Section 482 of Cr.P.C is very wide, it has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself and that it is to be exercised ex-debito justitiae to do real and substantial justice for the administration of which alone, Courts exist. Hon'ble Supreme Court in **State of Bihar and another Vs. K.J.D.Singh**, reported in 1993 (41) BLJR 1401 has held that the inherent power under Section 482 Cr.P.C has to be exercised for the ends of justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial and in the case of **Janata Dal vs. H.S.Chowdhary**, reported in AIR 1993 SC 892, has deprecated the practice of staying criminal trials and the police investigations except in exceptional cases.

16.In the case on hand, the prosecution has specifically alleged that the petitioner, who was previously working as Zonal Tahsildar, Thiruverumbur, the second accused Revenue Inspector, Navalpattu Firka, Thiruverumbur and the third accused Village Administrative Officer, Sooriyur Village, Thiruverumbur Taluk, conspired together, wantonly and intentionally concealed the files in the Taluk Office Trichy, that without following the prescribed procedures have deliberately and wantonly deleted some names and added some other names and that they have adopted corrupt and



illegal means and abused their official position for the pecuniary advantage for themselves and committed criminal misconduct.

17.As rightly contended by the learned Additional Public Prosecutor, the grounds or the reasons now assigned by the petitioner's side are only matter of trial and the same cannot be gone into at this stage. As already pointed out, the learned trial Judge, after framing the necessary charges has commenced the trial. It is pertinent to note that though P.W.1/ the defacto complainant was subjected to cross examination by the second accused, the petitioner/first accused has not chosen to come forward for cross examining P.W.1. The main grievance of the petitioner is that though he attained superannuation, he was not allowed to retire from service and he was also not given the retirement benefits.

18.Considering the entire facts and circumstances of the case, this Court is of the view that the trial Court is to be directed to complete the trial within a period of six months. Accordingly, the trial Court is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order and both parties are directed to extend their fullest cooperation for the disposal of the case within the time stipulated.

19.With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

Das

To:

- 1.The Judge,
Special Court for cases
under Prevention of Corruption Act,
Tiruchirappali.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Trichy.
- 3.The Inspector of Police,
Vigilance and Anti Corruption,
Trichy.



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.A.EBENEZER, Advocate (SR-7123[F] dated 25/02/2021)

order made in
Crl.O.P. (MD)No.2153 of 2021
and
Crl.M.P. (MD)No.1047 of 2021
24.02.2021

VB (05.03.2021) 8P 7C