BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 19.02.2021
Pronounced On : 26.04.2021
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P.(MD).Nos.15230 and 15282 of 2020
and
CRL.O.P.(MD)No.640 of 2021
and
CRL.M.P(MD)No.7965 & 7964 of 2020
and
CRL.MP(MD)Nos.305 and 306 of 2021

P.Subramaniam : Petitioner-A5 in CRL.O.P(MD)No.15230 of 2020
1.Renganathan
2.A.Palanisamy : Petitioners A2 & A4 in CRL.O.P(MD) No.15282/2020

Tr.N.S.Narayanan :Petitioner-A3 in CRL.O.P(MD)No.640 of 2021

Vs.

1.The Inspector of Police,
Vigilance & Anti Corruption,
1/165G, Alagar Kovil Main Road,
Race Course Colony,
Madurai - 625 002. :Respondent/ Complainant (in all petitions)

2.A.Ambrose Jayaraja : 2nd Respondent / Defacto complainant in CRL.O.P(MD)No.640 of 2021

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C, to call for the records in connection with Spl.C.No.4 of 2020 on the file of the Special Court for the Trial of Prevention of Corruption Act Cases, Madurai and quash the same in so far as the petitioners are concerned.

(in CRL.O.P.(MD).Nos.15230 and 15282 of 2020)
For Petitioner : Mr.Issac Mohanlal, Senior Counsel, for M/s.Issac Chambers.

(in CRL.O.P.(MD) .No.640 of 2021)
For Petitioner : Mr.M.Ajmal Khan, Senior Counsel, for M/s.Ajmal Associates.

(in all petitions)
For Respondent : Mr.K.K.Ramakrishnan, Additional Public Prosecutor.

COMMON ORDER

It is apt to begin this order by quoting the words of J**ustice Rohinton Fali Nariman and Navin Sinha** in the judgment reported in **(2018) 1 6 Supreme Court Cases 299, Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation :**

> " The cancer of corruption has, as we all know, eaten into the vital organs of the State. Cancer is a dreaded disease which, if not nipped in the bud in time, caused death."

2.The above original petitions are filed under Section 482 of Cr.P.C, seeking orders to quash the charge sheet in Spl.C.No.4 of 2020 on the file of the Special Court for the Trial of Prevention of Corruption Act Cases, Madurai.

3.The first respondent police registered a case in Crime No.3 of 2015 for the offences punishable under Sections 120-B, 420, 409, 420 r/w 109 IPC and 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988, against one Murugesan and others. After registration of FIR, one of the accused Sebastian has filed a petition in Crl.OP.(MD)No.16266 of 2018 under Section 482 Cr.P.C., to quash the proceedings in respect of investigation in Crime No.3 of 2015 on the file of the respondent police and the same was ordered to be dismissed vide order dated 17.09.2018. Subsequently, the said accused Sebastian has again approached this Court, under Section 482 Cr.P.C to quash the proceedings and more particularly, challenging the issuance of sanction for prosecuting him and that the same was also ordered to be dismissed vide order passed in Crl.OP(MD)No.19103 of 2019, dated 18.02.2020. The first accused Murugesan has also filed a petition in Crl.OP(MD)No.2760 of 2019, to quash the FIR in Crime No.3 of 2015 on the file of the respondent police and the same was also dismissed by this Court on 05.03.2019.

4.After completing the investigation, the first respondent police has laid the final report against the Murugesan and nine others, for the offences punishable under Sections 120-B, 420, 406, 409 r/w 109 IPC and 13(2) r/w 13(1) (c) and 13(1) (d) of Prevention of Corruption Act, 1988.

5.It is not in dispute that the charge sheet was taken on file in Spl.S.C.No.4 of 2020 on the file of the Special Court for the Trial of Prevention of Corruption Act Cases, Madurai and that the case stands posted for framing of charges.

6.The main complaint of the prosecution is that the accused, who were working in Corporation of Madurai entered into criminal conspiracy with each other and agreed to do the illegal acts by illegal means to commit the offence of cheating, criminal breach of trust so as to get pecuniary advantage for themselves and causing wrongful loss to the Government to the extent of Rs.18,41,28,623/- by not collecting the Infrastructure and Amenities charges since the year 2007 as directed in G.O.(Ms).No.191, dated 01.06.2007 and consequent orders of the Housing and Urban Development Department.

7.It is not in dispute that the first accused was in charge of the post of Chief Town Planning Officer, Madurai Corporation ; A2 was the Executive Engineer of Town Planning Section ; A3 was the Assistant Engineer (planning) ; A4 was the Assistant Executive Engineer ; A5 was the Assistant Engineer ; A6 to A8 were working as Junior Engineers (Buildings Inspection of Corporation) ; and A9 was the then Commissioner of Madurai Corporation. Three other accused D.J.Dinakaran, R.Thangavelu and P.Muthukumar were reported death. The fifth accused is the petitioner in Crl.OP(MD)No.15230 of 2020; A2 and A4 are the petitioners in Crl.OP(MD)No.15282 of 2020; and the third accused is the petitioner in Crl.OP(MD)No.640 of 2021.

8. Whether the charge sheet in Spl.S.C.No.4 of 2020 on the file of the Special Court for the Trial of Prevention of Corruption Act Cases, Madurai, as against the petitioners/ accused 2 to 5, is liable to be quashed ? is the point for consideration.

9.The main contention of the petitioners is that the petitioners are neither the superior authorities nor the decision making authorities for tax collection, that they had acted only as per the instructions of their superior/higher officials and they have no power to question the orders of the superior and that therefore, they cannot be made liable or responsible for the acts of their superior officers.

10.The learned Additional Public Prosecutor would submit that the petitioners are wholly responsible for fixing and collecting the fees prescribed by the Government from the builders / owners of the buildings before issuance of plan approval, but, they failed to implement the updated Government Orders and Circulars of Head of the Department voluntarily and causing huge revenue loss to the Government and that the duties of the petitioners and other accused are interconnected and intertwined.

11.As rightly pointed out by the learned Additional Public Prosecutor, the petitioners are not the ordinary staffs of the Corporation, but, they are the responsible Officers and as such, they cannot escape or avoid their responsibility by putting blame on their superior Officers.

12. The learned Senior Counsels appearing for the petitioners would strongly contend that the Government Order in G.O.Ms.No.191, dated 01.06.2007 and G.O.Ms.161, dated 09.09.2009 and other Government Orders and Circulars issued by the Housing and Urban Development (UD4-1) Department were not received by the Office of the Madurai Corporation and that the petitioners were not at all

aware of those Orders, Circulars and the directions for collecting the Infrastructure and Amenities (I & A) charges.

13. The learned Senior Counsels would rely on the letter written by the Commissioner of Madurai Corporation, dated 26.07.2010 to the Commissioner

of Municipal Administration, informing that they have not collected I & A charges, as the concerned Government Orders and Circulars were not received by them.

14. The learned Additional Public Prosecutor would submit that the said allegations are absolutely false, as they came to know during the investigation that the concerned Government Orders and Circulars were received by the Local Planning Authority (LPA), Madurai, who in turn sent the same to the Commissioner of Madurai Corporation by local Tapal register and more particularly, one Vijayarani, Assistant in Record Section attached to the Madurai Corporation, has received the letters and orders and acknowledged in the local tapal register.

15.The learned Additional Public Prosecutor would further contend that during the alleged period, some of the applications were sent to Local Planning Authority (LPA), Madurai for approval from the Madurai Corporation and the same were approved and collected I&A charges as per G.O.Ms.No.22 and 84 , Housing and Urban Development, dated 25.01.2008 and 08.04.2008 respectively, that the said Government Orders were cited in all the approved proceedings of LPA and the same were sent to the Madurai Corporation and that

therefore, all the accused including the petitioners knew about the Government Orders and Circulars regarding I&A charges.

16.As rightly pointed out by the learned Additional Public Prosecutor, the said plea was raised by the 9th accused Sebastien in Crl.OP(MD)No.16266 of 2018 and the same was considered and rejected by this Court.

17.The learned Additional Public Prosecutor would further contend that all the documents now relied on by the petitioners, were already perused by this Court in the earlier petitions and dismissed the same without accepting the stand of the accused and holding that *prima facie* case was made out and that though the filing of the charge sheet is change in circumstance, the grounds raised by the petitioners were the same as raised in the earlier cases.

18.It is necessary to refer the observation of this Court while dismissing the Crl.OP(MD)No.16266 of 2018 filed by the 9th accused Sebastien :

In Para No. 7 :

> " On scrutiny of the records, this Court finds that allegations found in the FIR and the material collected during the course of investigation indicates the petitioner herein and the other accused have knowingly failed to carryout the G.O passed in respect of enhanced infrastructure and amenity fees. The beneficiaries appears to be the land promoters and real estate dealers. Consequently, the State had become poorer by few crores. "

19. Though it was alleged by the accused Sebastine side that he had not committed any error or omission as he was holding the post of Commissioner for a short period, this Court after perusing the file submitted by the prosecution, has held as follows:

<u>In Para No.8 :</u>

> "....... Whereas the files produced by the respondent police containing the materials collected during investigation reveals the petitioner/Sebastien during his tenure as Commissioner, Madurai has perused 68 files and approved it. The revenue loss is estimated as Rs.9,57,80,079/-. Therefore, only on completion of investigation and filing of final report, exact role of the respective accused persons in the crime or their innocence could be ascertained."

20.After investigation, the prosecution has listed out the details of the files handled by the accused and the quantum of revenue loss caused by them. The learned Additional Public Prosecutor would submit that the loss can be categorized in two types and the first one is with respect to the persons who made constructions, but not paid I&A charges; and the second one is with respect to persons, who did not make constructions and not paid I&A charges and in the second category, it is a permanent revenue loss to the Government.

21. It is the specific case of the prosecution that the second accused had perused and signed 43 files and caused revenue loss to the tune of Rs.1,85,43,870/- by not levying and collecting I&A charges. Out of 43 files handled by the second accused, one person did not construct the building as per the plan approval and the same was spoken by L.W.213.

22.It is further case of the prosecution that the third accused had handled 29 files and caused loss to the tune of Rs.90,89,836/-; that the fourth accused had handled 54 files and caused loss of Rs.4,42,00,165/- and that the 5th accused had handled 47 files and caused loss to the tune of Rs.5,08,04,860/-. According to the prosecution, totally 5 persons did not construct the building as per the plan approval, in the files handled by the accused 3 to 5.

23.The prosecution has attributed an ulterior motive behind the actions of the accused in not collecting I&A charges. It is the case of the prosecution that the first accused Murugesan has started VELSELL REDIMIX Concrete Company at Madurai during the relevant period in the name of his wife Tmt.M.Sasikala with partnership of Tmt.A.Banumathi wife of Thiru.Arasu, the then Executive Engineer, Madurai Corporation, that the accused insisted the builders/owners of the building to purchase the ready mixed concrete from the said company instead of collecting I&A charges from the builders/owners of the buildings and thereby caused of huge loss to the Government.

24.According to the prosecution, some of the builders have given statements to the said effect and the same were recorded during the investigation under Section 161(3) Cr.P.C. Though the petitioners had denied the above allegations specifically, as rightly contended by the learned Additional Public Prosecutor, the same cannot be gone into, at this stage.

25.It is time to refer the legal position relied on by both the sides. At the beginning, it is necessary to refer the known text book for the subject, Powers of the High Courts under Section 482 Cr.P.C., authored by **Hon'ble Justice.S.Rathinavel Pandian,** for the Division Bench of the Hon'ble Apex Court, in **State of Haryana Vs. Bajan Lal** reported in **1992 Suppl.(1) SCC 335** and whereunder the Supreme Court enumerates 7 categories of cases, where the power can be exercised under Section 482 of Cr.P.C and the same are reproduced hereunder;

> “**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following
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> categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> > (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
> >
> > (2) where the allegations in the First Information Report and other materials, if any,

accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26.The learned counsel for the petitioners has relied on a decision in **Ahmad Ali Quraishi and another Vs. State of Uttar Pradesh and another** reported in **2020 (13) SCC 435**, whereunder, the Hon'ble Apex Court had held that where Criminal proceedings have been initiated with an ulterior motive due to private and personal grudge, the same would amount to an abuse of the process of the Court and the same needs to be interfered by the Court. It is necessary to refer the decision of the Hon'ble Supreme Court reported in **2016(1) SCC 348 :**

"International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics Private Limited and another.

> 13.The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court being superior Court of the State should refrain from analysing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C should not be exercised to stifle a legitimate prosecution. The power under Section 482 Cr.P.C is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon the facts and circumstances of each case.
>
> .....
>
> 25.The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C, it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial Court. The High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the Court would be justified in quashing the proceedings in the interest of justice.

27.The Hon'ble Supreme Court in the above case, by holding that the allegations in the complaint therein do not constitute the offence and continuation of the criminal proceedings is not just and proper, has quashed the proceedings.

28.The learned Additional Public Prosecutor has relied on a decision reported in **2019 (10) SCC 686, Central Bureau of Investigation Vs. Arvind Khanna** and argued that the defence of the accused is to be tested only at the trial and not at this stage.

> "17.After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the

respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent Court, is completely incorrect and uncalled for."

29.The Hon'ble Apex Court in the judgment reported in **2019(4) SCC 351 in Devendra Prasan Singh Vs. State of Bihar and another,** relied by the learned Additional Public Prosecutor, has held that the High Court while hearing the application under Section 482 Cr.P.C., had no jurisdiction to appreciate the statement of witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out against the respondent and that the same could be done only in trial, while deciding the issues on the merits or /and by appellate Court while deciding the appeal arising out of final order passed by the trial Court, but not in Section 482 Cr.P.C proceedings. It is necessary to refer the following passages in the judgment of the Hon'ble Supreme Court in **Amit Kapoor Vs. Ramesh Chander and another** reported in **(2012) 9 SCC 460 :**

"27. 13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie.*

27.16.... Where the factual foundation for an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

30.It is settled law that the High Court is having power and jurisdiction to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue, would be abuse of process of the Court or that the ends of justice required that the proceedings are to be quashed and that this Court while exercising the power under Section 482 Cr.P.C does not function as a Court of Appeal or Revisional Court.

31.It is pertinent to note that though the inherent jurisdiction under the said Section is very wide, it has to be exercised sparingly, carefully and with caution and that the same is to be exercised *exdebito justitiae* to do real and substantial justice for the administration of which alone, Courts exist. More over, The inherent power should not be exercised to stifle a legitimate prosecution.

32. In the case on hand, according to the prosecution, during the course of investigation, they have examined 250 witnesses and collected more than 300 documents and the same would reveal the involvement of the accused including the petitioners in causing the wrongful loss to the Government by not collecting the I&A charges as per Government Orders and Circulars issued. No doubt, the petitioners have taken a stand that after coming to know about the Government Orders and the subsequent Circulars, they have collected a sum of Rs.9,50,32,275/- and they have also taken steps to collect the remaining amount Rs.4,02,89,457/-.

33.The learned Additional Public Prosecutor would submit that the Hon'ble Supreme Court had repeatedly held that the Corruption cases can not be quashed by taking into account the subsequent event of payment or collection of any amount due to the Government and that the subsequent payment or collection would not absolve their criminal liability. Whatever it is, considering the charges levelled against the petitioners and the materials and evidence collected therefor, the present case is not a fit case for quashing the charge sheet.

34.No doubt, the petitioners have been attempting to show that the ingredients of the provisions of law, with which, they are charged, are not made out. As already pointed out, according to the prosecution, the petitioners are the alleged beneficiaries in not collecting the I&A charges. The power under Section 482 of Cr.P.C cannot be exercised, where the allegations are required to be proved in a Court of law. More over, at this stage, it is not necessary for the prosecution to show *prima facie* materials for each of the ingredients for the legal provisions with which accused are charged.

35.More over, as rightly contended by the learned Additional Public Prosecutor, it is for the trial Court to apply its judicial mind to the materials placed before it and to decide as to whether a *prima facie* case has been made out against the accused. While framing the charges, the Court is neither required nor obliged to weigh the evidence on record and charge is to be framed, if a *prima facie* case is made out against the accused. Hence, this Court has no other option, but to say that it is for the Special Court to decide as to whether the charges are to be framed or not, upon considering the materials produced. Consequently, this Court concludes that the Criminal Original Petitions are devoid of merits and the same are liable to be dismissed.

36.In the result, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

das

To

1.The Special Judge,
Special Court for the Trial of Prevention of Corruption Act Cases,
Madurai.

2.The Inspector of Police,
Vigilance & Anti Corruption,
1/165G, Alagar Kovil Main Road,
Race Course Colony,
Madurai - 625 002.

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

+2 CC to M/s.K.Ragatheesh Kumar, Advocate (SR-17698 & 17699[F] dated 27/04/2021)

+1 CC to M/s Ajmal Associates, Advocate (SR-17835 dated 28/04/2021)

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