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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2022

PRONOUNCED ON : 15.03.2022

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THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.2572 of 2022

V.Arumugam

...Petitioner / Sole Accused

Vs.

State : rep. by its,
The Inspector of Police,
Vigilance and Anti Corruption,
Puducherry

...Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the entire records from the Inspector of Police, Puducherry, Vigilance and Anti-Corruption in FIR No.2 of 2016 and quash the same.

For Petitioner : Mr.R.Ganesan

For Respondent : Mr.Balamurugane
Public Prosecutor (Puducherry)

ORDER

This Criminal Original Petition has been filed to call for the entire records from the Inspector of Police, Puducherry, Vigilance and Anti-Corruption, in FIR No.2 of 2016 and quash the same.

2. The FIR came to be registered on the basis of the complaint of G.Kalaiselvan, dated 12.04.2016, for the offences under Sections 7, 13(1) d (ii) r/w 13(2) of Prevention of Corruption Act, 1988. It is alleged in the complaint that the defacto complainant when working as a Station House Officer of Orleanpet Police Station, received an information at 10.45 hours on 02.04.2016 that a video has been posted in Whatsapp social media network showing Mr.V.Arumugam, Sub-Inspector of Police, Orleanpet Police Station was receiving cash from a person and keeping the same in his table drawer. After seeing the video, on 03.04.2016, he submitted a report to the Superintendent of Police (East) stating that a petition was received through post



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from one M.Kumar on 01.04.2016, in which, he stated that he was working as a Supervisor under a Civil Contractor Senthilkumar and the said Senthilkumar failed to pay him for his work. On 23.02.2016, at about 9.30 hours, he went to the house of Senthilkumar along with his wife and daughter and asked for payment, for which, Senthilkumar abused them in filthy words and called him as Parayan. Therefore, he gave a complaint at PCR Cell, Puducherry, but no action was taken. An entry was made in the case diary and the Inspector of Police directed the Sub-Inspector of Police, V.Arumugam to conduct enquiry on 02.04.2016. On 02.04.2016 at about 13.30 hours, both Kumar and Senthilkumar were enquired by the Sub-Inspector of Police, V.Arumugam. During the enquiry, the said Senthilkumar agreed to settle the issue amicably and ready to pay the petitioner through the enquiry officer V.Arumugam. Senthilkumar gave Rs.30,000/- to Kumar through the Sub-Inspector of Police, V.Arumugam. The video also disclosed that the Sub-Inspector of Police, V.Arumugam was found to be receiving a sum of Rs.10,000/- from Senthilkumar to settle the issue. The Sub-Inspector of Police, V.Arumugam has not given any satisfactory reply for the receipt of an additional amount of Rs.10,000/-. Therefore, this complaint. Challenging the said FIR, this Criminal Original Petition has been filed.

3. The learned counsel for the petitioner submitted that the very case registered on the basis of the Whatsapp video is not maintainable in law. Neither Kumar nor Senthilkumar had given any complaint with regard to paying illegal gratification to the Sub-Inspector of Police, V.Arumugam. The FIR was registered on the basis of the complaint given by G.Kalaiselvan, SHO of Orleanpet police station. He has no direct knowledge about the demand or acceptance of the illegal gratification. The bribe giver should also be arrayed as an accused in this case assuming that the sum of Rs.10,000/- was paid as bribe. However, in this case, the bribe giver is not shown as an accused. Therefore, the FIR is liable to be quashed. In support of his submissions, he relied on the following judgments 1. Bhupinder Singh Patel Vs. CBI, dated 30.05.2008 and 2. Anand Kumar Mohatta and Anr. Vs. State (Govt. of Nct of Delhi), Department of Home and Anr., dated 15.11.2018.

4. In reply, the learned Public Prosecutor submitted that the petitioner had already filed a quash petition in CrI.O.P.No.24502 of 2016 and it was dismissed on 08.02.2017. Investigation in this case is still not completed. When the investigation is pending, the petitioner cannot file a second quash petition. Filing of the second quash petition amounts to reviewing the earlier decision of this Court, which is impermissible in law. The investigation is completed and the final report is pending for sanction and approval. Once



sanction is granted and final report is approved, it would be presented before the Court concerned. Therefore, he prayed for dismissal of this petition. In support of his submissions, he relied on the following judgment in Crl.OP.SR.Nos.24609 and 24615 of 2015, Mr.Sitaram Goel 1. Mr.Manoj Goel 2. Mr. Mukesh Goel, Vs. 1. State represented by The Inspector of Police, CCB Team - IV, EDF-II, Chennai. 2.M/s. Gimpex Limited Rep. by its Authorized Signatory, Mr.S.Uma Shankar, Company Secretary, 282, Linghi Chetty Street, Chennai - 600 001 .

5. Considered the rival submissions and perused the records.

6. Based on the complaint averments and the submissions of the parties, it is seen that the allegations against the petitioner is that to resolve the issue between Kumar and Senthilkumar, he had got an illegal gratification of Rs.10,000/-. That was videographed and widely circulated. Apparently an offence is made out against the petitioner for prosecution under Sections 7, 13(1) d (ii) r/w 13(2) of Prevention of Corruption Act, 1988.

7. The petitioner had on an earlier occasion filed a petition in Crl.O.P.No.24502 of 2016 for quashing the FIR. This Court, considering the factual and legal position in extenso dismissed the abovesaid petition. As already pointed out by the learned counsel for the respondent that filing of a second quash petition is nothing but asking the Court to review its earlier decision. The principles governing the quashing of the FIR is very well settled in the case State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp(1) SCC 335, the same is also reiterated in the case of Anand Kumar Mohatta and Anr. Vs. State (Govt. of Nct of Delhi), Department of Home and Anr., dated 15.11.2018 and the principles are extracted 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 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



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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 FIR 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



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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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

8. The learned counsel for the petitioner relied on the judgment of Bhupinder Singh Patel Vs. CBI, dated 30.05.2008 for the proposition that the persons undertaking string operations are also liable to be prosecuted for abetment of offences. It is observed in the judgment that,

43.It must be understood that in order to change a system, one needs to work within the system. What makes our democracy a reality is the adherence to the Rule of law and the enforcement of accountability of the wielders of power. No institution is perfect and thus it is the duty of every citizen to strengthen these institutions and remove anomalies and shortcomings, if any, in their functioning rather than weaken them so as to restore the confidence in the institutions of democracy.

47.It may be noted that whenever a person lodges a complaint with the police that he has been asked to give bribe which he is not willing to give, his statement is recorded. Upon the registration of FIR investigation is taken up and if so required, the trap is laid. It is during this investigation and the trial, the complainant is required to make such statement and on such statements, he cannot be prosecuted for the offence of abetment under the Act. Section 24 of the Act, does not envisage blanket protection to the bribe-giver, under all circumstances. The immunity for the bribe-giver is provided where he is unwilling



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to pay illegal gratification to a public servant and approaches the police agency, in order to get the public servant trapped while accepting the bribe.

48. The petitioners were neither police officers nor were authorized by anyone to carry out any investigation, therefore, it cannot be held that they were conducting any "proceedings" under the Code. The basic requisites for applicability of Section 24 are not made out and therefore the plea raised by the accused including accused No. 4 & 5 that they are entitled to seek protection under the aforesaid section does not hold good. It cannot be lost sight of that the petitioners had made two previous attempts to bribe the public servant but on some pretext, could not succeed and it was purportedly their third attempt to do the same yet in none of the instances the matter was reported to any lawful authority. Instead they made every effort to conceal their identity and evade contact with investigating agency. I am further constrained to observe that the petitioners could not have assumed the role of a knight in the shining armour seeking to reform the society completely ignoring the legal methodology laid out for necessary corrective measures including of detection more so when the action of the petitioners/accused is not on account of any altruistic motives but is a self serving one.

49. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B IPC.

9. Reading of the judgment shows that the persons involved in the string operations in offering bribe to bribe takers are also liable to be charged for the offences under the Sections of IPC and Prevention of Corruption Act. In the case cited above, the accused 3 to 6, involved in string operation and videographed the incident, were charged for the offences under Section 12 of Prevention of Corruption Act r/w Section 120 (b) IPC for conspiring with one another. Their motive was to offer bribe and humiliate the first accused. The framing of charges against them for the offences aforesaid was confirmed by the Delhi High Court.



10. The learned counsel for the petitioner submitted that in the case before hand, the persons offering the money and the persons who recorded the receipt of the money by the petitioner are not shown as accused. They have to be necessarily added as an accused in this case. It is no doubt that in the cases referred and relied by the learned counsel for the petitioner, it is observed that the persons engaged in string operations could not have assumed the role of a knight in the shining armour seeking to reform the society completely ignoring the legal methodology laid out for necessary corrective measures including of detection, more so when the action of the petitioners/accused is not on account of any altruistic motives but is a self serving one. In the case before hand, the final report is not filed, it is for the respondent police to decide whether to add the person who offered the bribe and the person who recorded the receipt of bribe money by the petitioner as an accused.

11. At the moment, we are concerned about quashing the FIR against the petitioner. When a similar issue came up before this Court, at the time of numbering a second quash petition, this Court in Crl.OP.SR.Nos.24609 and 24615 of 2015 (Mr.Sitaram Goel 1. Mr.Manoj Goel 2. Mr. Mukesh Goel, Vs. 1. State represented by The Inspector of Police, CCB Team - IV, EDF-II, Chennai. 2.M/s. Gimpex Limited Rep. by its Authorized Signatory, Mr.S.Uma Shankar, Company Secretary, 282, Linghi Chetty Street, Chennai - 600 001) observed as follows:

12. This Court has no quarrel with the proposition laid down in the aforesaid Hon'ble Supreme Court's judgments that a second quash application is not completely out of purview and that, in certain circumstances, this Court has the power to entertain a second quash application. In Simrikhia Vs Dolley Mukharjee [1990] 2 SCC 437, the Hon'ble Supreme Court has held that the inherent jurisdiction of the High Court cannot be invoked to over ride the bar of review under Section 362 Cr.P.C.

13. Of course, as held by the Hon'ble Supreme Court in SMS Pharmaceuticals Ltd. case, that the Supreme Court has not laid down an inexorable rule of law in Simrikhia's case, that a second quash application is not maintainable at all circumstances. The facts obtaining in Simrikhia's case is similar to the facts obtaining in the case on hand.

14. If this Court is to entertain the second quash application on the grounds raised by the accused, it will virtually amount to



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review of the earlier order passed in Crl.OP.No.9250 of 2013, which is not permissible in the teeth of Section 362 Cr.P.C. Therefore, the objection raised by the Registry is upheld and this Court holds that the present quash petitions are not maintainable.

12. It is clear from this order that though a second quash petition is not completely out of purview, in the facts and circumstances of the case where the first quash petition was dismissed after considering all the points raised by the learned counsel for the petitioner, filing of this second quash petition is nothing but seeking a review of the order passed in the earlier quash petition in Crl.O.P.No.24502 of 2016, which is impermissible in law.

13. The FIR allegations make out a clear case for prosecution under Sections 7, 13(1) d (ii) r/w 13(2) of Prevention of Corruption Act, 1988 against the petitioner. Draft final report is said to be pending for approval. This Court is of the considered view that this petition has no merits and it is liable to be dismissed. In fine, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1.The Inspector of Police,
Vigilance and Anti Corruption,
Puducherry.

2.The Public Prosecutor (Puducherry),
High Court, Madras.

+1cc to Mr.M.Mahendra Babu, Advocate Sr.No.17367

CRL.O.P.No.2572 of 2022

GPL (CO)
RVM(28/03/2022)