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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.4676 OF 2022

AND

CRL.M.P.NOS.2443 & 2444 OF 2022

N.M.Patturoja

... Petitioner/3rd Accused

.Vs.

1. The State: Represented by
The Inspector of Police,
Vigilance and Anti - Corruption,
Crime No.05/2016,
Vellore District.

... Respondent/Complainant

2. C.Kuppan

... Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the case against the petitioner in Spl.C.C.No.07 of 2019, in the Court of the Chief Judicial Magistrate and Special Court, Vellore in Crime No.05 of 2016 on the file of the 1st respondent.

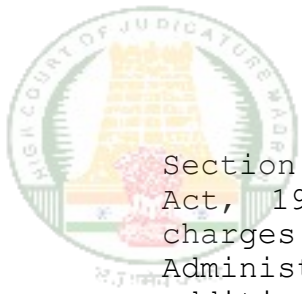
For Petitioner : Mr.R.Ravindran

For Respondent : Mr.E.Raj Thilak
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking direction to call for the records and quash the case against the petitioner in Spl.C.C.No.07 of 2019, pending on the file of the Chief Judicial Magistrate and Special Court, Vellore, in Crime No.05 of 2016.

2. The first respondent filed a final report against this petitioner and three other accused for the offences under



Section 7 & 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and under Section 477 (A) IPC r/w 109 IPC. The charges in brief are that, the first accused is the Village Administrative Officer, Nemanthapuram, who was holding the additional charge of Pinnathurai Village at Odukathur, Vellore District, the second accused is the Village Assistant, Nemanthapuram, Anaicut Taluk, Vellore District, the third accused is the Tahsildar, Social Security Scheme, Anaicut Taluk Office, Vellore District, the fourth accused is the Assistant, Anaicut Taluk Office, Vellore District and are public servants as defined under Section 2(c) of the Prevention of Corruption Act, 1988. One C.Kuppan gave an oral statement that his son in law, who worked at Chennai, expired on 18.02.2016. His daughter Padmavathi had applied for getting benefits under the Tamil Nadu Nalindhor Kudumba Nala Udhavi Thittam on 01.04.2016. When he met the first accused, he directed him to meet the second accused and the second accused gave a printed form to the defacto complainant. After filling the form, he handed it over to the second accused. The second accused told the defacto complainant that it would take some amount to get the relief amount. On 02.04.2016 and 04.04.2016, the defacto complainant met the first accused in his office and every time he met him, the first accused directed the defacto complainant to meet the second accused. The second accused demanded Rs.4,000/- on behalf of the first accused to forward the application to the Anaicut Taluk office for getting the relief amount.

3. In pursuance of the above payment, during the course of trap proceedings on 11.04.2016, when the witness C.Kuppan met the first accused, he reiterated his earlier demand and asked him to handover the bribe amount of Rs.4,000/- to the second accused. The second accused also reiterated his earlier demand and asked the bribe amount of Rs.4,000/- from the defacto complainant, then he handed over the bribe amount. In the circumstances stated above, the accused 1 and 2 have committed offences punishable under Sections 7 & 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. The third accused has been working as the Tahsildar, Social Security Scheme, Anaicut Taluk Office, Vellore District since 13.10.2014. During the year 2015-2016, she had drawn funds under the Tamil Nadu Vivasaya Thozhilalargal - Vivasagil (Samuga Paadhukappu & Nalam) Thittam - 2016. While so, in the month of April 2016, she, by abusing her official position, had instructed the fourth accused, Assistant, to tamper the entries made in Nalindhor Nivaranam Kaasolai Vazhangum Padivedu - 2015 from Sl.No.19 to 23, being maintained at the office of the Tahsildar, Social Security Scheme, Anaicut, to alter the date as 11.03.2016 instead of 01.04.2016 in the file of defacto complainant C.Kuppan. Thus, the third accused committed an offence punishable under Section 477(A) IPC. The fourth accused who has been working as an



Assistant at the Anaicut Taluk Office since 04.01.2016, as per the instructions of the third accused, tampered the entries made in the Nalindhor Vinnappa Padhivedu Sl.No.20 to 28 and also the date in Nalindhor Nivaranam Kaasolai Vazhangum Padivedu - 2015 from Sl.No.19 to 23, altered the date as 11.03.2016 instead of 01.04.2016 and thus, the fourth accused abetted the third accused in commission of offence punishable under Section 477(A) IPC r/w 109 IPC. Challenging the final report, this petition is filed.

4. The learned counsel for the petitioner submitted that there is absolutely no material to show that the petitioner who is the third accused in this case, instigated the fourth accused to alter the date in the Nalindhor Nivaranam Kaasolai Vazhangum Padivedu - 2015. There is also no material to show that at the instance of A1 and A2 this alteration was made by A3. The prosecution mainly relies on the statement of the co-accused A4 to implicate the petitioner for the offences alleged against her. The petitioner is charged only for the offence under Section 477(A) IPC. Therefore, the sanction for prosecuting the petitioner under the sections of the Prevention of Corruption Act, 1988 is illegal. There is a misjoinder of the accused in this case. For all these reasons, it is submitted by the learned counsel for the petitioner that there is absolutely no material to frame charges against the petitioner and the case against the petitioner has to be quashed.

5. In response, the learned Additional Public Prosecutor submitted that the petitioner is the custodian of Nalindhor Nivaranam Kaasolai Vazhangum Padivedu - 2015. An alteration of date has been made in the Register from 11.03.2016 instead of 01.04.2016 to show that the application by the defacto complainant which was given on 01.04.2016 was received on 11.03.2016, so as to bring the application within the eligibility criteria for receiving the benefits during the financial year 2015-16. It is clearly stated by the witness M.Vatchala, Revenue Inspector that she received the application on 01.04.2016 and the date was corrected in the Register as 11.03.2016 from 01.04.2016. He also referred to the statement of the trap laying officer that during the course of his investigation, he found this change when the Register was under the custody of the petitioner. He also submitted that the District Collector who sanctioned the prosecution of the petitioner has also considered all the relevant materials and records and found that there was indeed a change/alteration on the date of receipt of the application. Thus, he submitted that there are materials available to frame appropriate charges against the petitioner and in fact, he submitted that the trial Court had framed charges against the petitioner and he prayed for dismissal of this petition.



6. Considered the rival submissions and perused the records.

7. It is not in dispute that the petitioner, who is the third accused is the person responsible for and the custodian of the Register Nalindhor Nivaranam Kaasolai Vazhangum Padivedu - 2015. It is seen from the records that there is a change from Sl.No.19 to 23 and the date of the application given by the defacto complainant C.Kuppan was altered as 11.03.2016 instead of 01.04.2016 in the register. The statement of M.Vatchala, Revenue Inspector reinforces that this alteration was actually made, because she was the one who received the application on 01.04.2016 with date and her initial in the application. It is pertinent to refer the judgment reported in 2022 Live Law (SC) 110 (Veena Mittal vs State of Uttar Pradesh & Ors), wherein, the relevant portion is extracted hereunder:

" 6..... It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash....."

In the case of Umesh Kumar vs State of Andhra Pradesh and another reported in (2013) 10 SCC 591, the Hon'ble Supreme Court in paragraphs No.20 to 26, has held as follows:-

20. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during



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its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

(Vide: Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors., AIR 1998 SC 128; Ashok Chaturvedi & Ors. v. Shitulh Chanchani & Anr. AIR 1998 SC 2796; G. Sagar Suri & Anr. v. State of U.P. & Ors., AIR 2000 SC 754; and Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors., (2011) 12 SCC 437)

21. In Rajiv Thapar v Madan Lal Kapoor, 2013 (3) SCC 330, this Court while dealing with the issue held as follows:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?



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30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In *State of Bihar v. P.P. Sharma & Anr.*, AIR 1991 SC 1260, this Court dealt with an issue of whether an application under Section 482 Cr.P.C. For quashing the charge sheet should be entertained before cognizance is taken by a criminal court and held as under:-

"68... Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still born child. Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained...

.. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the chargesheets and the First Information Report." (Emphasis added)

23. The issue of malafides looses its significance if there is a substance in the allegation made in complaint moved with malice. In *Sheo Nandan Paswan v. State of Bihar & Ors.*, AIR 1987 SC 877, this Court held as under:

"16. ...It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or complainant."

24. In *Parkash Singh Badal v. State of Punjab & Ors.*, AIR 2007 SC 1274, this Court held as under:



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"74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."

25. In State of A.P. v. Goloconda Linga Swamy & Anr., AIR 2004 SC 3967, this Court held as under:

"8.... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding." (See also: K. Karunakaran v. State of Kerala, (2007) 1 SCC 59).

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal."

8. The proposition relating to quashing is very well settled in the judgment reported in the case of Umesh Kumar vs State of Andhra Pradesh and another reported in (2013) 10 SCC 591. Only when the materials produced by the prosecution, after consideration of its face value, did not make out any charges against the petitioner, the prosecution can be quashed. Irrespective of the claim regarding reliance on the statement of the co accused, sanction proceedings, there are materials in the form of Register, in the form of statement of M.Vatchala available to show that there is a change/alteration on the date of receipt of the application given by the defacto complainant, which the petitioner is liable to explain. This is enough to frame charges against the petitioner under the appropriate provisions of law under IPC. The technical objections raised by the learned counsel for the petitioner with regard to the aspects of getting sanction, where it is not necessary, misjoinder of the accused, is left open to be decided by the trial Court.

9. This Court on considering the fact that there are sufficient materials to frame charges against the petitioner and in fact charges have already been framed concludes that this



petition cannot be entertained and this criminal original petition is dismissed. The learned Chief Judicial Magistrate cum Special Judge, Vellore is directed to dispose of the case as expeditiously as possible. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
and Special Court,
Vellore.
2. The Inspector of Police,
Vigilance and Anti - Corruption,
Vellore District,
3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.R.Ravindran, Advocate, S.R.No.21226

CRL.O.P.NO.4676 OF 2022

SJ(CO)
PBS/19/04/2022