



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE THIRU JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.6122 of 2022
and CrI.M.P.No.3421 of 2022

Manivannan

...Petitioner/Accused 1

vs

The State of Tamil Nadu
rep by Inspector of Police
Pallipalayam Police Station,
(formerly Erumapatty Police Station)
Vigilance and Anti-Corruption Branch,
Namakkal District
Crime No.2/AC/2015

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in Spl.C.C.No.88 of 2017 on the file of Special Judge-cum-Chief Judicial Magistrate, Namakkal and quash the same.

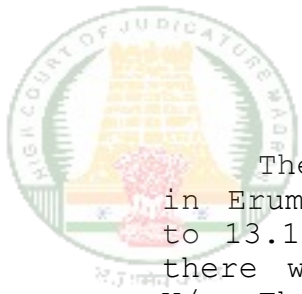
For Petitioner	:	Mr.M.Manigopi
For Respondent	:	Mr.E.Raj Thilak Addl.Public Prosecutor

O R D E R

This petition is filed to quash the proceedings pending in Spl.C.C.No.88 of 2017 on the file of Special Judge-cum-Chief Judicial Magistrate, Namakkal.

2. The case came to be registered on the basis of the first information report in Cr.No.2/AC/2015 dated 19.02.2015 for the offences punishable under sections 120(b), 193, 465, 468, 471 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the petitioner and one Tmt.A.Vimala, Sub Inspector of Police. The petitioner is A.1 in this case.

3. The allegations against the petitioner and the co-accused are as follows:-



The petitioner and the co-accused Tmt.A.Vimala were working in Erumpatti Police Station, Namakkal District from 21.02.2014 to 13.10.2014. On 06.03.2014 at 11.00 hrs at Palapatti village, there was a scuffle between two families viz., Tmt.Tamilmani, W/o Thangaraj and Tmt.Mariyayi, W/o Eswaran, as a result, Tmt.Tamilmani, her son Senthilkumar and Kandasamy, F/o Mariyayi sustained injuries. They were taken for treatment in the hospital.

4. On 09.03.2014, Manivannan, the petitioner herein, being the Head Constable of Erumapatti Police Station obtained a complaint from Tmt.Tamilmani regarding the assault made by the other party, on which, a hurt case had to be registered on the complaint of Tmt.Tamilmani against Tmt.Mariyayi, Vinoth and Kandasamy of the same village. Instead, the petitioner and the co-accused connived with each other with intent to minimize the section of law and alter the overt act of the accused. Tmt.A.Vimala/A.2 altered the original complaint statement of Tmt.Tamilmani with her own handwriting to minimize the section of law and the actual overt act of the accused in order to leave the actual accused involved in the assault from the clutches of law. The petitioner/A1 received a sum of Rs.3,000/- as illegal gratification from Thangaraj, husband of the complainant and Tmt.A.Vimala/A.2 instructed the petitioner/A.1 to prepare a new incorrect statement, forging the signature of Tmt.Tamilmani and incorporating the alterations made by Tmt.A.Vimala/A.2. Petitioner did as instructed by A.2. Thereafter, A.2 registered a case in Cr.No.87 of 2014 for the offence punishable under sections 294-B, 323 IPC dated 19.03.2014 on the basis of forged incorrect statement for ulterior motive best known to them, by abusing their official position as public servant, without any public interest. The aforesaid acts of accused are punishable under sections 120-B, 193, 465, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5. After investigation, the respondent filed final report against the petitioner and the co-accused Tmt.A.Vimala for the offences punishable under sections 193, 465, 468, 471 r/w 109 IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Again an altered final report has been filed against the petitioner for the offences punishable under sections 193, 465, 468 and 471 IPC and against Tmt.A.Vimala/A.2 for the offences punishable under sections 193, 465, 468, 471 r/w 109 IPC and under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Challenging the taking cognizance of the case, the present quash petition has been filed.

6. Learned counsel for the petitioner submits that when the first information report was registered on 19.03.2014, the petitioner was not at all on duty in the police station. In support of his submission, he produced the copy of General Diary Extract to show that he was not on duty on 19.03.2014 and also submits that there is no specific allegation against the



petitioner that he received money for altering the sections and the allegations are made only against Tmt.A.Vimala/A.2. It is further submitted that repeated allegations are made only against the co-accused that she made corrections in the original complaint of Tmt.Tamilmani and there is nothing to suggest that the petitioner in anyway has involved in the alleged corrections. Therefore, he prays that the proceedings against the petitioner are to be quashed.

7. In response, the learned Additional Public Prosecutor submits that the petitioner, at the instance of Tmt.A.Vimala/A.2 had fabricated the complaint as if the complaint was given by Tmt.Tamilmani by forging her signature. Therefore, the first final report was altered and the altered final report was filed. He also submitted that the disputed document along with the admitted signature of the petitioner were sent to Hand Writing Expert's opinion and in the Report it is opined that the signature found in the fabricated complaint of Tmt.Tamilmani is that of the petitioner. The learned Additional Public Prosecutor drew the attention of this Court to the statement of the defacto complainant with regard to payment of money, alteration of complaint for minimising the offences and also the other witnesses to show that the alteration was made only by the petitioner. He further submits that the petitioner had filed discharge petition and it was dismissed by the trial Court, against which revision was preferred in CrI.R.C.No.555 of 2021 and that was dismissed as not pressed by this Court on 17.12.2021. He further submits that there are materials available to proceed further with trial of the case against the petitioner and therefore, prays for dismissal of the petition.

8. Heard the rival submissions and perused the materials available on record.

9. Considering the facts of the case, it is clear that the specific allegation against the petitioner is that he, at the instance of A.2/Tmt.A.Vimala, prepared a new incorrect statement and forged the signature of Tmt.Tamilmani incorporating the alterations made by Tmt.A.Vimala/A.2 for minimising the gravity of the offences and thereafter, A.2 registered a case in Cr.No.87 of 2014 for the offence punishable under sections 294-B, 323 IPC dated 19.03.2014 instead of registering a hurt case against the accused. It is seen from the original complaint of Tmt.Tamilmani that serious allegations are made against the accused for causing hurt with deadly weapons.

10. Prima facie it appears that the statement was subsequently altered and a new incorrect statement was inserted in its place. It is specifically alleged that a hurt case had to be registered on the complaint of Tmt.Tamilmani against Tmt.Mariyayi, Vinoth and Kandasamy of the same village. Instead, the petitioner and the co-accused connived with each other with intent to minimize the offences and penal section of law,



altered the overt act of the accused. Mr.Senthilkumar, S/o Thangaraj had also given statement on the similar lines.

11. It is also seen from the statement of M.Devadoss, the Sub Inspector of Police that there was alteration made in the original complaint given by Tmt.Tamilmani and the alterations were made by the accused. It was reflected in the statement of P.Ramesh, Grade I Constable of Mohanur Police Station. It is seen from the Wound Certificate of Senthilkumar that he suffered fracture of right ulna middle third junction along with other injuries. Tmt.Tamilmani, defacto complainant had also sustained injuries. However, as indicated above, case was registered only for minor offences under sections 294-B and 323 IPC. The injuries mentioned in the Wound Certificate are corroborated by the statement of Doctor M.Sivakumar and Dr.R.Thanupriya.

12. The principles with regard to quash the proceedings is very much settled by the Apex Court 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 its pendency of such application before the court concerned. The High Court cannot



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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.



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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?

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



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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:

"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.



13. It is clear from the allegations made in the final report and statement of witnesses that there are grounds for presuming that the petitioner along with A.2/Tmt.A.Vimala had committed the offences alleged against them.

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14. Learned counsel for the petitioner submits that without sanction, commencement of trial is illegal. This point is left open to be tried by the trial Court. However, as there are materials available to frame charges and charges are framed against the accused, the petitioner/accused has to face the trial.

15. In view of the above, there is no merit in this petition and the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

- 1.The Special Judge-cum-Chief Judicial Magistrate,
Namakkal.
- 2.The Inspector of Police,
Pallipalayam Police Station,
(formerly Erumapatty Police Station)
Vigilance and Anti-Corruption Branch,
Namakkal District.
- 3.The Additional Public Prosecutor,High Court,
Madras.

Cr1.O.P.No.6122 of 2022

SSD (CO)
PR (30/03/2022)