IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 19.04.2022	ORDERS PRONOUNCED ON 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.5794 OF 2022

D.Dhanavel
... Petitioner/1st Accused

Vs.

1. The Additional Superintendent of Police
Special Investigation Cell
Vigilance and Anti-Corruption
Chennai – 600 016.
... 1st Respondent/Complainant
2. N.Rathinakumar
... 2nd Respondent/Defacto Complainant

This Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the respondent police to call for the records in Crime No.2 of 2017 on the file of the Additional Superintendent of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Chennai-16 and quash the same.

For Petitioner	:	M/s.Thenmozhi R.
For Respondent-1	:	Mr.E.Raj Thilak Additional Public Prosecutor
For Respondent-2	:	No appearance

ORDER

This petition is filed to call for the records in Crime No.2 of 2017 on the file of Additional Superintendent of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Chennai and quash the same.

2. A First Information Report was registered on the basis of the complaint given by defacto complainant dated 23.07.2014. The allegations made in the complaint, in brief, are as follows:-

The defacto complainant's junior mother Tmt.Parvathiammal is the sole owner of the property of her father-in-law Tr.Narian. Tr.Narian purchased the property through a sale deed on 12.08.1942 registered as document No.1200/1942 in Sembiam SRO. Tr.Narian executed a Will in respect of 18000 sq.ft of land in favour of Tmt.Parvathi. Tr.Narian died in 1970 and thereafter, Tmt.Parvathi became the owner and revenue records are available in her name. In 1988, she was forcibly removed from the land by hooligans. She gave a complaint at Thirumangalam Police Station. The accused are powerful persons with money and political patronage. They created documents as if Parvathi sold the property to others. A Power of Attorney Deed was alleged to have been executed by Parvathi in favour of Mohan. This is forged document. The Power of Attorney Deed was executed by impersonation. Subsequent alienations have been made. The accused in the case, knowing fully well that the vendors had no proper title, purchased the properties. Therefore, the complaint was given. On the basis of the complaint, First Information Report in Crime No.171 of 2016 for the offences under Sections 419, 420, 468 & 471 of IPC and Section 3(I), (IV) & (XV) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 was registered. After investigation, a final report was filed stating that there are no materials to support the allegations made in the complaint and therefore, the complaint was closed as 'mistake of fact'.

3. The defacto complainant had again given a complaint against the Investigating Officer Tr.D.Dhanavel, Assistant Commissioner of Police for the closure report filed in this case. The sum and substance of the allegations made against the petitioner is that the petitioner demanded a sum of Rs.50,00,000/- (Rupees fifty lakhs only) for giving a honest investigation report and to proceed with the case. The conversation demanding Rs.50,00,000/- (Rupees fifty lakhs only) was recorded. Subsequently, he filed closure report on unsustainable grounds. Reasons stated in the closure report are contrary to the facts and law. Reliance of the report given by V.S.Narayana Rao, Special Public Prosecutor is not correct. Special Public Prosecutor had given two conflicting opinions. On the basis of the complaint given by the defacto complainant, First Information Report in Crime No.2/2017/AC/HQ under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 was registered against the petitioner and one C.Mani, Special Sub-Inspector. Challenging the registration of the First Information Report, this petition is filed to call for the records in Crime No.2/2017/AC/HQ and quash the same.

4. Learned counsel for the petitioner submitted that Parvathi Ammal had executed a Power of Attorney Deed in favour

of one Mohan. On the basis of the Power of Attorney Deed executed by Parvathi Ammal, he sold the property to one Lalitha Agarval and Dilip Agarval on 22.08.1988 and the sale consideration of Rs.1,24,000/- was divided among Parvathi, Gowri, Rukmani, Mohan and Ravi. After valid sale by Mohan, now the defacto complainant created documents using the name of Parvathi Ammal alleging that she executed Power of Attorney Deed and Will in his favour and creating litigations after litigations. He is unnecessarily sending complaints to various authorities. The complaint has no merits. As per thorough investigation and on the basis of opinion offered by the Special Public Prosecutor, closure report was filed stating that the complaint in Crime No.171 of 2016 suffers from the mistake of fact. Petitioner at the fag end of his retirement was suspended and harassed. He has no previous bad incidents and therefore, First Information Report against him has to be quashed.

5. In reply, learned Additional Public Prosecutor submitted that there is a rival claim made in respect of the property of Parvathi Ammal. The main issue involved in this case is that the petitioner demanded a sum of Rs.50,00,000/-, for registering the case and giving a favourable investigation report, from the defacto complainant Tr.N.Rathinakumar. When the defacto complainant Tr.N.Rathinakumar expressed his inability to pay such a huge amount, petitioner reduced the demand of illegal gratification to Rs.5,00,000/- and then to Rs.3,00,000/-. On 11.03.2016, defacto complainant along with his relative Cheran met the appellant at 11.00hrs in his office and paid Rs.3,00,000/- as advance towards illegal gratification. Then, only the First Information Report in Crime No.171 of 2016 was registered. However, First Information Report was closed as 'mistake of fact' on 30.05.2016. Petitioner informed the defacto complainant through mobile phone about the closure report stating that the documents are not sufficient to take action against the land-grabbers. He assured to return the amount received from the defacto complainant. He instructed the defacto complainant to collect the amount from the writer in his office. On the same date, defacto complainant and his relative Cheran went to the office and received a sum of Rs.75,000/- from Rajendran. Thus, learned Additional Public Prosecutor submitted that there is evidence available to prove the allegations of demand of illegal gratification, receipt of illegal gratification and return of part of illegal gratification. The investigation in this case is almost completed and pending for the prosecution sanction. Therefore, he prayed for dismissal of this petition.

6. In reply, learned counsel for the petitioner submitted that the petitioner is falsely implicated in this case without

any proper preliminary enquiry. First Information Report was closed based on the opinion of the learned Special Public Prosecutor. The issue involved between the parties is only a civil dispute. No money was recovered from the petitioner. Petitioner filed W.P.No.8920 of 2022 against his suspension and not giving permission to retire from service. On the date of alleged refund of money, petitioner was engaged in Chief Minister Bandobust duty and not in station.

7. Considered the rival submissions and perused the records.

8. The basic issue involved in this case is property owned by Parvathi Ammal, which was bequeathed to her by her uncle Tr.Narian. Admittedly, Parvathi Ammal had executed a general Power of Attorney Deed and Will in favour of the defacto complainant Thiru.Rathinakumar. Earlier, she has executed a General Power of Attorney Deed in favour of Mohan and the said Mohan sold the property in pursuance of power given to him. It appears that the dispute involved between the parties is civil dispute. However, the specific allegation made against the petitioner is that he demanded Rs.50,00,000/- from the defacto complainant for registering First Information Report on the basis of his complaint against the purchasers/land grabbers. After negotiation, he reduced the demand of illegal gratification from Rs.50,00,000/- to Rs.5,00,000/- and finally to Rs.3,00,000/-. It is also claimed that the defacto complainant obtained loan and paid Rs.3,00,000/- to the petitioner. However, the complaint given by the defacto complainant was closed on the ground of 'mistake of fact'. When questioned about this, petitioner agreed to return the money received as illegal gratification and directed to collect it from the writer in his office. However, instead of returning Rs.3,00,000/-, a sum of Rs.75,000/- was returned. In this back drop, the Crime No.2/2017/AC/HQ under Sections 7, 13(2) r/w.13 (1)(d) of Prevention of Corruption Act, 1988 was registered.

9. It is seen from the submission of the learned Additional Public Prosecutor and the statements of witnesses that witnesses Mr.N.Rathinakumar and Mr.Cheran mention about the facts leading to giving the complaint, payment of Rs.3,00,000/- as illegal gratification to the petitioner and then return of Rs.75,000/-. The date of payment of Rs.3,00,000/- was on 11.02.2016. The return of Rs.75,000/- was on 03.06.2016. For the payment of Rs.3,00,000/-, only the evidence of defacto complainant and Cheran are available. Mr.S.Kalaivanan, driver of Cheran stated that Rs.75,000/- was handed over on 03.06.2016

by a person working in the Office of Assistant Commissioner of Police. After counting, that person was informed that there is a shortage in the amount and that person asked them to contact Assistant Commissioner of Police. Mr.Ashokkumar gave statement about lending Rs.3,00,000/- to Mr.Rathinakumar. The statement of Tmt.Lalitha, Woman Head Constable shows that on 24.06.2016, petitioner went to lunch. Mr.Panneerselvam, Head Constable contacted her through phone and asked her to take a cover from the table of the petitioner and give it to Mr.Rajendran. As directed, she took the cover and give it to Mr.Rajendran. Mr.Panneerselvam gave a statement that the petitioner contacted him on 24.06.2016 and asked him to hand over a white cover kept in his drawer to Mr.Rathinakumar and Mr.Cheran. Since Mr.Panneerselvam was in his house for lunch, he told him that he would make arrangements to hand over the cover with the help of the persons present in the office. Then he requested Tmt.Lalitha, Woman Head Constable to take the white cover from the petitioner's table and give it to Mr.Rajendran. He also intimated Mr.Rajendran and Mr.Rajendran told him that he would hand over the cover to Mr.Rathinakumar and Mr.Cheran. Then, he came to know that Mr.Rajendran handed over the money to Mr.Rathinakumar and Mr.Cheran. The statement of Mr.Rajendran also shows that Tmt.Lalitha handed over the white cover to him, he met Mr.Rathinakumar and Mr.Cheran in a Scarpio Car and handed over the cover. They asked him how much the money was in the cover, he told them that there was Rs.75,000/- in the cover.

10. From the statements given by the aforesaid police official witnesses, who are working along with the petitioner, it is clear that a sum of Rs.75,000/- was returned to the defacto complainant Mr.Rathinakumar. This amount, according to learned Additional Public Prosecutor, represents a part of the bribe amount Rs.3,00,000/- paid to petitioner for registration of criminal complaint and favourable investigation. From the perusal of records, the statement of witnesses, it shows that there is a prima facie case made out against the petitioner for investigating the case under Prevention of Corruption Act and file final report. The disputed question of facts cannot be decided in a petition filed under Section 482 Cr.P.C. When the materials placed in this case are read, taking them as true, there is a prima facie case made against the petitioner to take cognizance of the offence under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 and proceed further in this case. In this view of the matter, this Court finds there is no merits in this petition filed to quash the proceedings in Crime No.2 of 2017 on the file of the first respondent.

11. In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Additional Superintendent of Police
Special Investigation Cell
Vigilance and Anti-Corruption
Chennai - 600 016.

2. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to M/s.Thenmozhi Shivaperumal, Advocate, S.R.No.30310

Crl.O.P.No.5794 of 2022

SSN(CO)
RLP(26/05/2022)