

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022
PRONOUNCED ON : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.956 of 2021 and
Crl.M.P.No.12917 of 2021

A.Syed Ibrahim @ Bhai ... Petitioner

Vs.

1.State Rep. by,
The Superintendent of Police,
HoB/CBI/ACB/Madurai.

2.State Rep. by,
The Superintendent of Police,
HoB/CBI/SCB/Chennai.

3.The Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai.

... Respondents

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set-aside the order dated 24.09.2021 passed by the Special Court No.I For Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai in Crl.M.P.No.15471/2021 in S.C.No.34/2020 and consequently direct the Learned Judge to refer the legal questions raised by the petitioner to this Court to take final decision.

For Petitioner : Mr.A.Kalaiselvan

For Respondents: Mr.K.Srinivasan,
Special Public Prosecutor

ORDER

This Criminal Revision Case has been filed by the petitioner to set aside the order, dated 24.09.2021, made in Crl.M.P.No.15471 of 2021 in S.C.No.34 of 2020 by the learned Special Judge No.I for trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai (trial Court) and consequently, direct the learned Judge to refer the legal questions raised by the petitioner to this Court to take final decision.

2.The primary ground on which the petitioner put forth his case is that whether the Union Government Resolution No.4/31, 61-T, dated 01.04.1963, under which the Central Bureau of Investigation formed, ultra-vires Article 14 and 21 of the Constitution of India is neither decided by the High Court of Madras under which the trial Court is Subordinate nor by the Hon'ble Supreme Court of India finally. The Hon'ble Apex Court is to decide the question finally in view of the High Court of Gauhati in the case of "Sh Navendra Kumar Versus Union of India & others in W.A.No.119 of 2008, dated 06.11.2013" had quashed the notification. The Apex Court in SLPS.No.Ac/Ac/Ac of 2013, dated 09.11.2013 had stayed the order of Gauhati High Court order. In view of the same, the petitioner has filed a petition before the trial Court invoking Section 395 Cr.P.C., in Crl.M.P.No.15471 of 2021 in S.C.No.34 of 2020 and the same was dismissed, by order, dated 24.11.2021, against which the present petition.

3.The learned counsel for the petitioner submitted that the trial Court failed to consider the Union Government Resolution No.4/31, 61-T, dated 04.01.1963 cannot be considered as Indian Law under Sections 3(29) and 3(50) of General Clauses Act, 1897. The trial Court failed to consider that it has no jurisdiction or competency under Section 395 Cr.P.C., to decide legal issue regarding the maintainability of petition filed under Section 395 Cr.P.C., in Crl.M.P.No.15471 of 2021 in S.C.No.34 of 2020. Since it involves substantial question of law under Article 288 of Constitution of India and Sections 395 and 396 Cr.P.C., the trial Court ought to have referred the legal issue regarding the maintainability of petition filed under Section 395 Cr.P.C. He further submitted that the respondents 1 and 2 are not constitutionally formed Police force empowered to investigate the crime under the Code of Criminal Procedure. The Central Bureau of Investigation would not be termed as a Police force empowered to investigate the crime in as much as it has been created and constituted by a mere resolution of Ministry of Home Affairs, Government of India under their executive powers. In view of the same, the Central Bureau of Investigation is not a Police force and got no power to conduct search, seizure and investigate the crimes, submitting charge sheet, prosecuting the offenders. The creation and constitution of the Central Bureau of Investigation by the executive force is against the dictum of the Constitutional Bench in case of "Menaka Gandhi Versus Union of India reported in 1978 SCC (1) 248".

4.He further submitted that the 3rd respondent Police is not declared as Police Station under Section 2(s) of Cr.P.C., and as such the FIR registered against the accused cannot be construed as FIR and all subsequent actions taken by respondents 1 and 2 are not legally valid. The respondents 1 and 2 had no source

of power to Act under the Code of Criminal Procedure. Since there is no declaration under 2(s) of Cr.P.C., the final report filed by the respondent Police cannot be construed as a report or charge sheet filed under Section 173 Cr.P.C. Further, the trial Court has no jurisdiction to try the offence in the absence of any order under Section 2(j) of Cr.P.C., and the notification under 2(m) of Cr.P.C. Hence, he prayed for setting aside the order of the trial Court.

5.The learned Special Public Prosecutor appearing for the respondents submitted that the accused cannot invoke Section 395 Cr.P.C., and only the concerned Court can invoke the power under Section 395 Cr.P.C. If the concerned Court is subjectively satisfied that the question relating to the validity of any Act or ordinance has to be referred to High Court for the determination. In view of the same, this petition filed by the petitioner to be dismissed at the threshold. He further submitted that the case was registered on 27.11.2014 by the 2nd respondent, as per order of this Court in CrI.O.P.No.7994 of 2014, dated 09.10.2014. Originally, the case in Crime No.19 of 2012 was registered by the 3rd respondent for offence under Sections 341 and 302 IPC, after completion of investigation, final report was filed before the learned V Metropolitan Magistrate, Egmore, Chennai on 30.03.2012 as against A1 to A10 and taken on file as P.R.C.No.131 of 2012. Since the defacto complainant was not satisfied with the investigation conducted by the 3rd respondent Police, he filed CrI.O.P.No.7994 of 2014 before this Court, wherein this Court finding that the investigation is not proper and the grievance of the defacto complainant to be real, in the interest of justice, this Court transferred the investigation to the file of the Central Bureau of Investigation. The Central Bureau of Investigation on completion of investigation filed the final report before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai against A1 to A12, for offence under Section 120(b) r/w 341, 342, 149, 150 and 302 of IPC. After that, the accused have been filing petitions one by one and thereby, stalled the progress of the trial.

6.It is further submitted that in this case, A11 and A12 filed discharge petition under Section 227 of Cr.P.C., in C.M.P.No.3271 of 2020, which was dismissed by the trial Court, against which, they preferred a revision before this Court in CrI.R.C.No.209 of 2021 and the same was dismissed by this Court on 08.06.2021 and directed the trial Court to give top priority and to conclude the trial within stipulated time preferably within a period of six months. Now, A1 has taken a turn and filed the above petition before the trial Court, on appeal now he is before this Court and thereby, successfully stalled the progress of the trial. He further contended that Article 21 of

the Constitution of India not only safeguards the rights of the accused, but also the rights of the victims, which has been confirmed in the judgment by the Hon'ble Apex Court in the case of "State West Bengal and others Versus Committee reported in 2010 (3) SCC 571". Further, the learned Special Public Prosecutor narrated the events in formation of the Central Bureau of Investigation and its powers and jurisdiction to investigate cases. The Hon'ble Apex Court and various High Courts in many cases confirmed the power and jurisdiction of the Central Bureau of Investigation to investigate the case. As regards the doubts raised by the Gauhati High Court, the Hon'ble Apex Court had stayed the judgment. The jurisdiction of the Central Bureau of Investigation extended to Union Territories and also extended to the States with the consent of the concerned State Government. Section 6 of the Delhi Special Police Establishment Act, 1946, states the consent of State Government to exercise of powers and jurisdiction. In this case, it is not in dispute that the State of Tamil Nadu had given consent to exercise powers and jurisdiction under the Delhi Special Police Establishment Act, 1946. Further more, as far as this case is concerned, this case has been investigated as per the order of this Court in CrI.O.P.No.7994 of 2014, dated 09.10.2014. Hence, the doubt caused by the petitioner is not sustainable.

7.He further submitted that the High Court of Bombay in the case of "Shirish Suresh Welling Versus Smt.Sangeeta Avinash Marathe reported in 2001(2) BOM LR 99", had held that the accused cannot invoke Section 395 Cr.P.C., and file a petition under it. In this case, the one of the accused is the former Member of Legislative Assembly and he is powerful person. In view of the same, the case is before the Special Judge No.I for trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai. By filing one petition or other by the accused, the very purpose of formation of the Special Court is defeated and the progress of the trial is stalled. Hence, he strongly opposed this petition.

8.This Court considered the rival submissions and perused materials available on record.

9.In this case, the offence is of the year 2012. Now, it is more than a decade, till date the trial is not commenced due to filing of petitions by the accused alternatively. Earlier, A11/Former Member of Legislative Assembly and A12 filed discharge petition under Section 227 of Cr.P.C., in C.M.P.No.3271 of 2020, which was dismissed by the trial Court, against which they preferred a revision before this Court in CrI.R.C.No.209 of 2021 and the same was dismissed by this Court on 08.06.2021.

10.The accused cannot invoke Section 395 Cr.P.C., and it is only the concerned Court can invoke the power under Section 395 Cr.P.C. Thus, the accused persons without any merit, filed the petition in CrI.M.P.No.15471 of 2021 in S.C.No.34 of 2020 and the same was rightly dismissed by the trial Court, by order, dated 24.09.2021, which is well reasoned and detailed one and the same is hereby confirmed. Accordingly, this Criminal Revision Case stands dismissed. The Hon'ble Apex Court as on date not questioned the formation, function and power of the Central Bureau of Investigation to investigate the cases.

11.The trial Court is reminded to the decision of the Apex Court in the case of "State of Uttar Pradesh Vesus Shamphy Nathsingh and others reported in JT 2001 (4) SC 319" and the direction of this Court in CrI.R.C.No.209 of 2021, dated 08.06.2021.

12.The trial Court is directed to conduct the trial and complete the same within a period of four months, from the date of receipt of a copy of this order. If the trial could not be completed within the time, the trial Court to inform this Court and seek extension of time. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(CS)

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Sub Assistant Registrar

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To

- 1.The Special Court No.I For Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.
- 2.The Superintendent of Police, HoB/CBI/ACB/Madurai.
- 3.The Superintendent of Police, HoB/CBI/SCB/Chennai.

- 4.The Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Public Prosecutor,
Special Public Prosecutor-CBI,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court, Madras.

ORDER IN
Crl.R.C.No.956 of 2021

CP(CO)
KM(21/02/2022)
SU(23/02/2022)