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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2022

PRONOUNCED ON : 29.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.R.C.No.1103 of 2021
and
Crl.M.P.No.14128 of 2021

M.Velayutham

... Petitioner

Vs.

State, Represented by
Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance & Anti Corruption,
Chennai - 600 028.
Crime No.3/2003

... Respondent

PRAYER: Criminal Revision filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records of the impugned order dated 08.09.2021 made in Crl.M.P.No.1570 of 2015 in Spl.C.C.No.2 of 2013, on the file of the Learned Special Judge-Cum-Chief Judicial Magistrate, Chengalpet and set aside the same and consequently discharge the petitioner herein from the above mentioned criminal case.

For Petitioner : Mr.P.Dinesh kumar

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Revision has been filed to call for the records of the impugned order, dated 08.09.2021, made in Crl.M.P.No.1570 of 2015, in Spl.C.No.2 of 2013, on the file of the Special Judge cum Chief Judicial Magistrate, Chengalpet, set aside the same and consequently discharge the petitioner from the criminal case.

2. The petitioner is the fourth accused out of the 12 accused in Spl.C.No.2 of 2013, on the file of the Special Judge cum Chief Judicial Magistrate, Chengalpet. It is seen from the



final report that on receipt of the information as to the commission of the irregularities and malpractices in the purchase of lands from private land owners for the Kancheepuram Co-operative Housing Society Ltd., by the officials of the above Co-operative Housing Society and Co-operative Housing department, in connivance with the land owners for the proposed housing scheme, the accused caused a huge monetary loss to the Government. A preliminary enquiry was conducted and from the materials collected in the enquiry, a criminal case was registered on 12.08.2003, in Crime No.3/AC/2003/HQ, Head Quarters of Directorate of Vigilance and Anti- Corruption against Thiru.K.Pitchandi, formerly Minister for Housing and others, under Section 120-B r/w Sections 420, 409, 218, 468 and 471 IPC and Section 13(2) r/w 13(1) (c) & (d) of Prevention of Corruption Act, 1988.

3. After investigation, the respondent filed a final report against the petitioner and 11 other accused. The gist of the final report is that during 1999 to 2004, A1 to A12 at Kancheepuram, Chennai and other places were parties to a criminal conspiracy having agreed among themselves to commit and to abet one another in the commission of the acts in connection with the purchase of lands situated at Karai, Vedal, Semanthangal and Enathur villages in Kancheepuram Taluk for Kancheepuram Co-operative Housing Society from the private individuals A7 to A10 for the purpose of laying out of housing plots to its members at a rate far and above the guideline value/market value after manipulating/creating false market value certificates signed and issued by A5 boosting the value of the lands dishonestly or fraudulently to use the same as genuine, to frame incorrect documents thereon and to process the files and also to execute the developmental works such as levelling of lands, laying of road and construction of culvert and arch by abusing their official position with a view to obtain pecuniary advantage to themselves and thereby causing wrongful loss to the said Society and to cheat and misappropriate the funds of the Society and to commit criminal misconduct and thus, A1 to A12 have committed offences punishable under Section 120-B IPC r/w 409, 420 r/w 471 and 109 IPC and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 r/w 109 IPC.

4. The allegations in particular against this petitioner is that in pursuance of the criminal conspiracy and in the course of the same transaction during February - July 1999, A2, A3 and A4 (petitioner) fraudulently and dishonestly used the forged, false valuation certificates dated 19.02.1999 issued by A5, which they knew to be forged or false while processing the file for the purpose of forming housing lay out and thereby committed the offence of using a forged document as a genuine document,



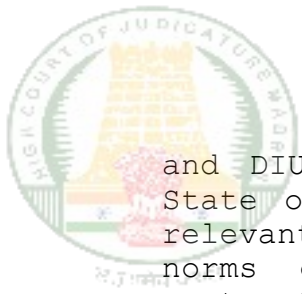
punishable under Section 468 r/w 471 IPC and he along with the other accused had facilitated the misappropriation by way of excess payments. Being a public servant, the petitioner acted in abuse of his official position and through corruption and illegal means, obtained pecuniary advantage to the tune of Rs.1,65,01,125/- to A7 to A10.

5. The petitioner filed CrI.M.P.No.1570 of 2015 under Section 239 Cr.P.C., to discharge him from Spl.C.No.2 of 2013, on the file of the Special Judge cum Chief Judicial Magistrate, Chengalpet. The Special Judge cum Chief Judicial Magistrate, Chengalpet had dismissed the petition. Challenging the said dismissal order, the present Criminal Revision is filed.

6. The learned counsel for the petitioner submitted that the learned the Special Judge cum Chief Judicial Magistrate has not considered the charges levelled against the petitioner and the other accused in detail in the common order passed on 08.09.2021. The order is very cryptic and not a reasoned order. Therefore, it has to be necessarily set aside.

7. That apart, he submitted that the petitioner's job was just to forward the proposal as requested by the superior officer. He forwarded the proposal on 10.02.1999. An Additional information was requested with regard to the market value and he forwarded the certificate issued by the Tahsildar (A5) along with his letter dated 22.02.1999. He retired from service on 30.06.1999. His successor furnished the additional information on 14.07.1999. Sanction for purchase of land was accorded on 16.07.1999. He has no role in according the sanction order and causing any revenue loss. He just forwarded the proposal and provided the additional information sought for. When R.Rajamanickam, his successor in office, was deleted from the list of the accused, the respondent has proceeded against this petitioner. When both of them are similarly placed, deleting R.Rajamanickam and proceeding against the petitioner is illegal. At best, it can only be stated that there may be some lapses and negligent on the part of the petitioner in processing the proposal and forwarding it, but no criminal act can be made out for the alleged lapses. The prosecution has not produced any materials to show the criminal intention of the petitioner or the criminal act committed by the petitioner. Therefore, he prays for setting aside the order of the the Special Judge cum Chief Judicial Magistrate, Chengalpet and discharge him from this case.

8. In support of his case, he pressed into service, the judgments reported in 1) (1980) 3 SCC 110 Abdulla Mohammed Pagarkar Vs. State (Union Territory of Goa, Daman and DIU) and Moreshwar Hari Mahatme Vs. State (Union Territory of Goa, Daman



and DIU) 2) (1996) 10 SCC 193 C.Chenga Reddy and others Vs. State of A.P. for the proposition that the mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give raise to a strong suspicion but that cannot be held to establish the guilt of the accused. Drawing support from these judgments, the learned counsel for the petitioner reiterated that merely because the petitioner had not followed certain guidelines and violated the procedural norms, he cannot be criminally prosecuted.

9. In response, the learned Additional Public Prosecutor submitted that the valuation certificate given by the Tahsildar is not a true document. Without properly verifying the market value of the property, the petitioner, in connivance with the other accused, had forwarded the proposal leading to the purchase of the property at the price higher than the market value and caused monetary loss to the Government. A Public servant is expected to perform his duties to the best of his ability, especially, when there are procedural guidelines to be followed. The petitioner in this case has not properly followed the procedural guidelines and recommended the purchase of lands on the basis of the inflated valuation certificate given by A5 Tahsildar. He brought to the attention of this Court, the statement of the concerned witnesses and the guidelines. It is further submitted by him that there are prima facie materials available against the petitioner to frame charges against him under the relevant sections of law. Therefore, he prays for confirming the dismissal of the discharge petition and the dismissal of this petition.

10. Considered the rival submissions and perused the records.

11. It is seen from the statement of Mr.R.Vasudevan, Personal Assistant to the Registrar of Co-operative Societies (Housing) that certain procedural safeguards are made while purchasing the lands for the purpose of forming the layout. Before selecting the land, the Board of Management should consider the marketability of the proposed land, that is, it should be within the purchasing power of its members and the cost of the land should be reasonable. The land may be purchased after fruitful negotiation with the land owners. Merely accepting the rates offered by the land owners without going in for negotiation is against the interests of the members of the Society.

11.1. The Board of Management should get the following



things 1) To obtain guideline value from the Registration Department 2) To obtain Market Value Certificate for the land from the Competent Revenue Authority 3) To obtain soil certificate (fit for house site) from the Competent Authority 4) To obtain up to date Encumbrance Certificate for the proposed land 5) To get clearance certificate of any land acquisition from any Government Department from the concerned authority 6) To get legal opinion about the proper title of the proposed land from the Government Pleader.

11.2. After obtaining all the above mentioned Certificates, the Board should examine and after satisfying the above mentioned parameters, the subject must be placed before the Board of Management for a decision. The Board shall pass a resolution for the purchase of the proposed land after considering all the facts placed before it. Thereafter, the Board should send the proposal along with the resolution enclosing all necessary certificates to the concerned Deputy Registrar of Co-operative Societies with the recommendations of the concerned Co-operative Sub-Registrar (Housing).

11.3. The Deputy Registrar, Housing who receives the proposal should examine the proposal and after satisfying that the proposal fulfilled all necessary parameters and recommend the proposal to Registrar of Co-operative Societies (Housing). If the Deputy Registrar is not satisfied in any aspect of the proposal, he may seek clarification from the concerned Society and after satisfying himself, he should recommend the proposal. Thereafter Registrar of Co-operative Societies (Housing) should also examine the proposal in all aspects viz., whether the proposal is within the rules, procedures were properly adopted etc.

11.4. Then satisfying himself that the proposal is in order, the Registrar of Co-operative Societies (Housing) may grant permission for the proposed lay out with some conditions which are necessary for the implementation of the scheme.

12. It is seen from these guidelines that the duty cast on the Deputy Registrar of housing is onerous. He should examine the proposal and only after satisfying that the proposal fulfilled all the necessary parameters he should recommend the proposal to the Registrar of Co-operative society. If he is not satisfied in any aspect of the proposal, he may seek clarification from the concerned Society and after satisfying himself, he should recommend the proposal. The petitioner was the Deputy Registrar (Housing) at the relevant point of time. He is the one who sent the proposal on 10.02.1999 followed by the letter dated 22.02.1999 along with the valuation certificate given by A5. It is seen that the petitioner has not obtained



the guideline valuation from the Registration department, soil certificate from the competent authority, encumbrance certificate, legal opinion, clearance certificate of land acquisition from any Government department. It appears that he just forwarded the valuation certificate given by A5 showing that the market value of the land is Rs.4,000/- per cent.

13. Mr.M.Antony Xaviour, Co-operative Sub Registrar in his statement stated that the petitioner has not submitted the guideline valuation certificate, market value certificate, soil certificate, the certificate regarding any pending land acquisition proceedings, encumbrance certificate, along with the proposal. When he was asked to provide further information, he sent only the xerox copy of the valuation certificate given by A5 Tahsildar. He has not sent the guideline valuation certificate from the Sub Registrar.

14. Tmt.N.M.Saradha, Assistant in the Office of the Joint Registrar of Co-operative Society reiterated the statement of M.Antony Xaviour that the petitioner had not sent the required certificates along with the proposal. It is seen from the statement of A.Ramasamy, Tahsildar, Kancheepuram that there are no records available in the Kancheepuram Taluk Office that A5 had given any certificate regarding the market value of the property prior to 19.02.1999. The perusal of the records for the period 19.02.1999 to 26.02.1999 shows that the Tahsildar Ganesan has not sent any certificates regarding the market value of the land in Karai, Vedal, Semanthangal and Enathur villages. Mr.J.Uthrakumar in his statement has stated about paying Rs.10,000/- as bribe for getting the valuation certificate from Tahsildar Ganesan.

15. The aforesaid statements of the witnesses clearly show that the petitioner, who was entrusted with the job of examining the proposal, for satisfying himself that the proposal fulfilled all necessary parameters, has not done his duty properly and was willfully responsible along with the other accused for causing monetary loss to the Government and wrongful and illegal gain to A7 to 10. It cannot be termed as mere procedural lapse committed by the petitioner. He is the person responsible for ensuring the proposal is in order. He has even the powers to seek clarification from the concerned Society, if he is not satisfied with any aspect of the proposal. When such a power is given, he is expected to act in prudent, responsible and cautious manner, which he has not done. Therefore, this Court is of the considered view that the judgments relied upon by the counsel for the petitioner are not applicable to the facts and circumstances of this case.

16. It is true that the Special Judge cum Chief Judicial



Magistrate has not considered the grounds raised by the petitioner in the discharge petition and passed a cryptic and not a reasoned order. However, now the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor produced the relevant statement of the witnesses and materials for the consideration of this Court. This Court, on considering the materials produced by the counsel appearing for the parties, is of the considered view that there are materials available against the petitioner for framing charges as indicated in the final report. It is also informed by the learned Additional Public Prosecutor that charges had already been framed by the trial Court and the case is pending for trial. Thus, this Court finds that this is not a fit case for reversing the order of the Special Judge cum Chief Judicial Magistrate and accordingly, the order of the Special Judge cum Chief Judicial Magistrate, Chengalpet in Crl.M.P.No.1570 of 2015 in Spl.C.C.No.2 of 2013 is confirmed and this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Judge-Cum-Chief Judicial Magistrate,
Chengalpet. Kancheepuram District.
2. The Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance & Anti Corruption,
Chennai - 600 028.
3. The Public prosecutor,
High Court, Madras.

+1cc to Mr.P.Dinesh kumar, Advocate, S.R.No.21300

CRL.R.C.No.1103 of 2021 and
Crl.M.P.No.14128 of 2021

MT(CO)
CT 11/04/2022