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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01/12/2022
Date of Delivery	20/12/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)Nos.669 and 816 of 2022
and
Cr1.MP(MD)Nos.8291, 8293 and 10140 of 2022

(1)Cr1.RC(MD)No.669 of 2022:-

J.Thukkaram : Petitioner/A1

Vs.

State represented by
Inspector of Police,
Vigilance and Anti Corruption,
Theni District.

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P No.987 of 2014 in Special Case No.16 of 2014 dated 21/04/2022 by the Chief Judicial Magistrate, Theni and set aside the same.

For Petitioner : Mr.D.Senthil

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



(2) Cr1.RC (MD) No.816 of 2022 :-

Periasamy

: Petitioner/A5

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Vs.

The State represented by
Inspector of Police,
Vigilance and Anti Corruption,
Theni.

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P No.4843 of 2021 in Special Case No.16 of 2014 dated 21/04/2022 by the Chief Judicial Magistrate, Theni and set aside the same.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

COMMON ORDER

Both the criminal revision have been preferred against the order of dismissal passed by the trial court.

2.The facts in brief:-

The Government of the TamilNadu launched a scheme called '**Comprehensive Wasteland Program**'. The intention of the Government is to ensure soil management, water conservation and for re-greening of the wasteland through Horticulture, Agroforestry, Medicinal plants and Fodder



species. Originally the program was to be implemented for a period of five years. For the purpose achieving the scheme, intended to give subsidy of Rs.8,500/- per Hectare including cost of the fertiliser etc., The above said scheme was implemented during the period 2004-2005 in Theni District, comprising Village Development Agency. The above said Agency had to function under the control of 8 Project implementing agencies. The above said Agency was headed by the Horticulture Development Officer.

3.Now as per the scheme, the Agricultural Development Officers had to form the village development agencies. All the officers will be the members among them two will be selected as President and Secretary. The total members were 15 to 20. So under the above said scheme, three Watershed Development Team members were reallocated and the above said members will be deputed by NGO. Honorarium was paid to the above said team members. The above said members have to work under the control of the project implementing agencies. The Joint Director of Agriculture/Project officers were provided with funds and distributed to the agricultural development officers and some time directed to the village Development Agency. Here comes the fabrication of records and falsification of accounts, etc. During the above said period, A1, who is the petitioner in Cr1.RC(MD)No.669 of 2022 namely J.Thukkaram,



worked as Assistant Director of Horticulture, Theni District between 25/06/2022 and 21/07/2005. At his request, amounts were paid to the Project Implementing Agency on various dates as detailed in the final report, in which the 5th accused namely Periasamy was also working. So during the above said period all the accused joined together with criminal conspiracy, misappropriated money viz., Rs. 14,00,971/-.

4. Investigation was undertaken and final report was filed, charging both the petitioners as noted above.

5. Now seeking discharge, these petitioners filed separate petition before the trial court. Both the petitions came to be dismissed. Against which, these revisions have been preferred.

6. The argument of the learned counsel appearing for the petitioner/A1 is that he joined duty only on 21/07/2005 and prior to his period all the recommendations were made by the respective agencies and officers. He only forwarded the bill that was prepared by the Assistant Agriculture Officer. So according to him, absolutely no duty was assigned to him in respect of the above said implementation of the scheme and sanction of the amount, selection process, follow up etc., He simply forwarded the bill as



noted above. So according to him, absolutely no materials have been collected during the course of investigation to connect this petitioner into the above said alleged misappropriation, falsification of records, etc.

7.The learned Additional Public Prosecutor would submit that this petitioner is working as Project Implementation Officer during the relevant time and as per the statement of the 5th accused namely Periyasamy, it is seen that several unknown persons were granted subsidy, even dead persons were granted subsidy. So without verifying the ground reality the above said bills have been claimed and paid. According to the learned Additional Public Prosecutor, the petitioner failed in his duty to verify the beneficiaries. According to him, he joined in the above said conspiracy and also benefited.

8.In reply to the above said argument, the learned Senior counsel appearing for the petitioner/A5 would submit that if there was any failure on the part of the petitioner in verifying the above said bills, then, only, department action will lie and launching of criminal prosecution will not lie.



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9.Regarding A1 Thukkaram, it is the case that he working in the above said scheme only for three months that is from 01/04/2005 to 04/07/2005. It has also been falsely implicated as if he joined with other accused in the criminal conspiracy. Now according to him, during the above said three months there was no sanctioning of any amount to the beneficiaries. He relieved from the post on 25/01/2015 and he handed over the charge to the successor namely Periasamy, who is A5.

10.It is his further case that during his period Rs.5,10,000/- was released to the beneficiaries on 21/05/2005. But that amount was sanctioned by the project implementing officer namely A2 in this case. On 18/07/2005 as per the case of the prosecution, Rs.10,73,000/- was released to the beneficiaries, but he was relieved on 21/07/2005 itself. Only A2 is responsible and he only transferred the amount directly to the Village Development Agencies. So that was brought to his knowledge only at the fag end of his tenure.

11.Per contra, as mentioned above, the learned Additional Public Prosecutor would submit that all the accused joined together in the criminal conspiracy, misappropriated and cheated the Government.



12. With the above said factual background and argument, now let us go to the materials that are available. Before we go into the merits that are available, and when the CD file perused, one disturbing feature came to light.

13. CrI.OP(MD)No.9465, 9466 and 12306 of 2013 were filed before this court by A5 namely Periyasamy, A6, A7, A26, A8 to A12, A20, to A25, A13 to A19 separately. All the three matters were heard together and a common order was passed on 13/06/2015 and all the petitions were dismissed. For better appreciation let us take the case of Periyasamy at that time of moving the above said CrI.OP(MD)No.12306 of 2013.

14. Para 15 is extracted hereunder for better understanding:-

"5.1. Insofar as A-5/petitioner in CrI.O.P(MD)No.12306 of 2013 is concerned, he has taken the additional charge of the implementing agency only on 21.07.2005, whereas the period of the alleged misappropriation, etc. is relating to the period from 2004-2005 and during that period, the petitioner/A-5 has no role to play. The petitioner/A-5 made a recommendation based on the resolution passed by the Village Development



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Association to the Project Director and other officials and since he has followed the procedural formalities scrupulously, the ingredients of the offence have not been made out. The petitioner/A-5 did not select the list of beneficiaries and he merely recommended the list of claims based on the resolution passed by the Village Development Association."

15. Let us compare this contention with now raised. I find no change of facts and grounds. Even filing of these criminal original petitions, were not brought to the notice of the trial court, at that time of moving discharge petition. There is no observation in this regard in the trial court order.

16. Now let us go to the final observation of this court in the above said criminal original petitions. Para 14 to 16 is relevant for extraction:-

"14. The explanation offered by the petitioners that the revenue records continue to stand in the names of the persons who are no more and since they continue to be in possession as their legal representatives by virtue of the testamentary or intestate succession having enjoyed the benefits, cannot be accepted at this stage.



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15.As laid down in the above said decision of the Honourable Supreme Court, the trial Court while framing the charges, is to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out and it would depend upon the facts of each case and the Court at the time of framing the charge, cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting the trial.

16.In the light of the factual aspects coupled with the ratio laid down in the above said decision, this Court is not justified in quashing the charge sheet against these petitioners, as the points urged by the respective learned Counsel for the petitioners, have to be thrashed out during the course of the trial."

17.This is the clear observation by this court to the effect that it is not a fittest case to quash the proceedings and more particularly, all those things that have been raised by the petitioners can be tried at the time of trial process.

18.The above said Periyasamy was not satisfied with the above said, filed SLP before the Hon'ble Supreme Court



in SLA No.Crime No.1883 of 2016 and that was dismissed on 29/02/2016. So far as other accused are concerned, no other information is available.

19.Again A5-Periyasamy has filed petition seeking discharge on the very same ground. So the conduct on the part of the above said Periyasamy-A5 cannot be approved, it is a clear case of abuse of process of court. As observed by this court and confirmed by the Hon'ble Supreme Court, the trial ought to have been proceeded. But the accused persons have indulged in dragging on the proceedings by filing petition one after another. That is the allegation made by the learned Additional Public Prosecutor at the time of argument. It is also found to be correct on record.

20.Now let us to a step further, to see whether any material is available on record to connect A5 in this matter. Even though it may not be proper on the part of this court to venture into the document in the light of the above said observation made by this court in the above said criminal original petitions to set right the records right, let us go to the materials on 16/10/2005, the above said Periyasamy has written a letter to the Joint Director. He requested him to release Rs.4,97,421/- to pay the subsidy and honorarium under the above said scheme. That was based upon the recommendation made by the Project Officer. So



that recommendation is only on the basis of the Project Officer recommendation. He has written a letter. After his transfer only the above said cheques have been issued by the Project Officer. Now it is seen that the material is available on record to show that on the basis of the recommendation made by A2, he addressed the Joint Director for release of the funds and in turn funds was also released.

21.As pointed out by this court in the above said criminal original petitions, whether this will amount to participation in the criminal conspiracy is a matter for consideration during the time of trial. I find absolutely no reason to interfere with the order passed by the trial court.

22.Now in so far as A1 Thukkaram is concerned, it is seen that he has not participated in the above said proceedings viz., CrI.OP(MD)Nos.5665 of 2013 batch. But on perusal of the records shows that CrI.M.P No.841 of 2013 was filed by him seeking discharge. Originally the case is tried by the Special Court for Prevention of Corruption Act, Madurai and later, it was transferred to Special Court, Theni. Even though the petitioner has not mentioned anything about the above said petition in the grounds. Now whatever it may be what equally applies to A5, applies to



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A1 also and he is the predecessor of the Periasamy. As mentioned earlier, what applies to A5 equally applies to A1 also. Even in the grounds of the revision, he has stated that recommendation were made by the officers. On that basis, he made request to sanction the amount. So it is a matter for consideration by the trial court. The trial must be proceeded to its own logical conclusion, whether criminal conspiracy involved or not.

23. So I find no reason to interfere the order that was passed by the trial court in both the matters. Accordingly, these revisions are **dismissed**. Since the offence of the year 2014, now we are in 2022, there shall be a direction to the trial court to expedite the trial process and complete the same within a period six months from the date of receipt of a copy of this order, since it has been stated that some of the accused are now more than 75 years. Consequently, connected Miscellaneous Petitions are closed.

20/12/2022

Index: Yes/No
Internet: Yes/No
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To,

- 1.The Judicial Magistrate,
Theni,
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.RC(MD)Nos.669 and 816 of 2022

20/12/2022