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Crl.O.P.No.19442 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.19442 of 2022
and Crl.M.P.No.12778 of 2022

Promod Kumar
Inspector General of Police,
C0603, TAISHA,
Virugambakkam,
Chennai – 600 092.

...Petitioner

Vs.

1. Additional Superintendent of Police,
Central Bureau of Investigation,
Economic Offences Wing,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.

2. The Director General of Police,
CBCID, Tamil Nadu, Chennai,
No.24, Pantheon Road,
Komaleeswaranpet,
Egmore, Chennai – 600 008.

3. The State of Tamil Nadu,
Rep. by the Inspector of Police,
Tiruppur North Police Station.

4. Karunakaran

... Respondents



Crl.O.P.No.19442 of 2022

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.2 of 2013 on the file of the Additional District Court No.II for CBI Cases, Coimbatore, and all criminal proceedings emanating therefrom and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.Arun C.Mohan

For Respondents

For R1 : Mr.R.Sankara Narayanan
Senior Counsel
For Mr.K.Srinivasan
Special Public Prosecutor for CBI

For R2 & R3 : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.2 of 2013 on the file of the learned Additional District Judge, Court No.II for CBI Cases, Coimbatore, thereby taken cognizance for the offences under Sections 120B r/w. 384, 506 (i) and 507 of IPC, and Sections 8, 10, 13(2) r/w 13(i)(d) of the Prevention of Corruption Act, 1988, as against the petitioner.



Crl.O.P.No.19442 of 2022

2. The case of the prosecution is that on 24.09.2009, the Inspector of Police, Central Crime Branch, Tirupur, suo-moto registered a FIR in Crime No.26 of 2009 for the offences under Sections 3,5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and under Section 420 of IPC as against three persons viz., Mohanraj, Kathiravan and Komalavalli. In pursuant to the registration of FIR, they approached this Court for anticipatory bail, in which this Court directed the Superintendent of Police, Tirupur, to take effect measures in disbursing the money to the depositors.

3. Thereafter, on 08.12.2009, a woman missing complaint was registered in Crime No.3068 of 2009 by the Inspector of Police, North Police Station, alleging that the said Komalavalli was missing. Thereafter, the said Komalavalli surfaced on 11.12.2009 and preferred a complaint to the Deputy Superintendent of Police, Tirupur, alleging that she was kidnapped and an amount of Rs.3 crores was extorted from her company by three police officials viz., Rajendiran, Deputy Superintendent of Police, Tirupur, V. Mohanraj, Inspector, Central Crime Branch, Tiruppur, and E.Shanmugaiah, former Inspector, Central Crime Branch, Tirupur and also one private individual viz., Annachi @ John Prabakar.



Crl.O.P.No.19442 of 2022

Subsequently, the FIR in Crime No.3068 of 2009 was altered to Sections 323, 365, 384 and 354 of IPC on 15.02.2010.

4. During the period 2008-2010, the petitioner was working as Inspector General of Police, West zone, Coimbatore, under whose jurisdiction Central Crime Branch, Tirupur falls. The allegations are very serious in nature that too against the police officials. Therefore, due to the gravity of the offence, the entire investigation has been transferred by the Director General of Police, Tamil Nadu, in Crime No.26 of 2009 from the file of the Central Crime Branch, Tirupur to Economic Officer Wing (EOW-II), Coimbatore. Thereafter, the case was re-registered as Crime No.3 of 2010 by the EOW-II, Coimbatore.

5. Similarly, the FIR registered in Crime No.3068 of 2009 on the file of the Triupur North Police Station, was transferred to CB-CID, Vellore, by the Director General of Police, by an order dated 18.03.2010. During the course of investigation, the offences were altered under Section 384, 506(i) and 307 of IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 and Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Thereafter, as per



Crl.O.P.No.19442 of 2022

the directions issued by this Court in Crl.O.P.Nos.2691 & 5356 of 2011 dated 19.04.2011, the entire investigation in Crime Nos.26 & 3068 of 2009 transferred to the file of the Central Bureau of Investigation.

6. Once again, the first respondent re-registered the cases in RC.12/E/11 and RC.13/E/11. During the investigation, they found that the petitioner abused his official position and extorted money to the tune of Rs.2.85 crores from the directors of M/s. Paazee group of companies, who are the accused in RC.12/E/11 (old Crime No.26 of 2009 on the file of the Central Crime Branch, Tirupur). Therefore, the petitioner was arrested on 02.05.2012.

7. In fact, pending investigation, the petitioner challenged the investigation done by the first respondent herein in W.P.No.21801 of 2012 before this Court, on the ground that he is a central government employee of Joint Secretary level as such prior approval under Section 6A of the Delhi Special Police Establishment Act, 1946, ought to have been obtained by the first respondent before investigating any offence under the Prevention of Corruption Act. This Court dismissed the said writ petition by an order dated 05.12.2012. Aggrieved by the same, he also



Crl.O.P.No.19442 of 2022

filed writ appeal and the same was also dismissed.

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8. Thereafter, sanction was occurred by the Government of Tamil Nadu under Section 197(1)(b) of the Cr.P.C., for prosecution against the petitioner. The Government of India, by an order dated 10.05.2013, conveyed sanction of the President of India under Section 19(2) of the Prevention of Corruption Act, for the prosecution of the petitioner. Thereafter, The first respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.2 of 2013.

9. The learned counsel appearing for the petitioner submitted that one of the accused turned approver and only on the basis of the statement recorded from the approver, the petitioner has been implicated as an accused. Except the approver statement, no other materials are available with the prosecution. The entire prosecution is nothing but clear abuse of process of law, since the alleged kidnapping for ransom of Komalavalli which culminated in the registration of FIR in Crime No.3068 of 2009. The said Komalavalli is an accused in Crime No.26 of 2009 and she had committed the perjury while giving her statement under Section 164 of Cr.P.C.



Crl.O.P.No.19442 of 2022

WEB COPY

9.1. He further submitted that in order to prove the offence under Section 383 of IPC., the accused must intentionally put the person in fear of injury, resulting in the person so induced to deliver valuable property. Even according to the case of the prosecution, there was no threats made by the petitioner nor there was any delivery of property by Komalavalli. There was no alleged threats levelled by the petitioner and therefore, no offence under Sections 506(i) and 507 of IPC, are made out. In order to attract the offence of conspiracy, there was no meeting of mind between the petitioner and other accused persons.

9.2. Further, basic ingredients to constitute the offence under Sections 7 & 13 of the Prevention of Corruption Act, are completely missing and there is no a single allegation that the petitioner demanded any bribe or favour from the complainant or accepted any favour or bribe from the complainant. There is no single paisa recovered from the petitioner and there was no money trail linking the petitioner. Therefore, the entire prosecution is clear abuse of process of law and it is liable to be quashed.



Crl.O.P.No.19442 of 2022

10. The learned Senior Counsel appearing for the first respondent submitted that the petitioner is arrayed as accused and there are specific allegations as against the petitioner to attract the offence under Sections 120B r/w. 384, 506 (i) and 507 of IPC, and Sections 8, 10, 13(2) r/w 13(i)(d) of the Prevention of Corruption Act, 1988. In fact, the petitioner filed so many petitions challenging the very investigation by the first respondent and the same was dismissed. The petitioner challenged the transfer of investigation, and the same was also dismissed. The petitioner also filed discharge petition and the same was also dismissed by the trial Court. Only because of the petition after petition, the case is pending before the trial Court for the past ten years. After filing final report, the same has been taken cognizance in the year 2013 itself.



Crl.O.P.No.19442 of 2022

10.1. He further submitted that during the course of hearing of Crl.O.P.Nos.2691 and 5356 of 2011 filed by the victims/depositors seeking transfer of investigation of case to CBI, this Court considered the pleadings/apprehension of the depositors about the non-arrest of the accused despite cancellation of anticipatory bail by the Court. Further, this Court identified inseparable nexus and the attitude of the police in not arresting the accused even after cancellation of anticipatory bail, transferred the present case also to CBI by observing the reasons and nexus in para 4 and 6 of the order dated 19.04.2011. The said order has not been challenged so far and hence reached its finality.

10.2. This Court dismissed Crl.O.P.No.7071 of 2012 filed by the petitioner/accused seeking anticipatory bail and observed that "...his custodial interrogation will throw substantial light". Further the petitioner/accused filed writ petition in W.P.21801 of 2012 contending that he is a Joint Secretary level officer of the Central Government and prior approval under section 6A of DSPE Act was not obtained. This Court dismissed the said petition vide order dated 05.12.2012. The writ appeal filed by the petitioner/accused in W.A.No.12 of 2013 against the said order was also dismissed by this Court vide order dated 29.04.2013.



Crl.O.P.No.19442 of 2022

WEB COPY

10.3. Aggrieved by the same the petitioner filed Special Leave Petition in SLP 17999/2013 and the Hon'ble Supreme Court remanded back to this Court vide order dated 17.03.2015. This Court, in compliance of the order dated 17.03.2015 of the Hon'ble Supreme Court mentioned supra, heard the petitioner/accused and others at length and vide order dated 02.11.2021 held that transfer of investigation of subject case to CBI, the investigation conducted by CBI and charge sheet filed thereon to be in order. Against the said order, petitioner/accused filed SLP 8901 to 8904 of 2021 which were dismissed by the Hon'ble Supreme Court as withdrawn, vide order dated 19.07.2022.

10.4. In the mean time, charge sheet was filed against the petitioner/accused and others subsequent to the sanction for prosecution accorded on behalf of the President of India under Prevention of Corruption Act and on behalf of the Governor of Tamil Nadu under Criminal Procedure Code and is pending trial as C.C.2/2013 before the Special Judge for CBI Cases, Coimbatore.

10.5. He also relied upon the judgment reported in **(2008) 3 SCC**



Crl.O.P.No.19442 of 2022

542 in the case of *Divine Retreat Centre Vs. State of Kerala & Ors.*, in which the Hon'ble Supreme Court laid down three circumstances under which inherent jurisdiction of the High Court can be exercised as (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court and (iii) to otherwise to secure the ends of justice. None of the above requirements has been attracted in the present case. There is no order of the Court which is sought to be given effect to by the petitioner/accused. On the contrary, if the present petition is dismissed it can give effect to the earlier orders of this Court. This Court, atleast on four occasions considered the averments of the petitioner/accused and came to the conclusion that there is no merit.

10.6. Further, Hon'ble Supreme Court considered the averments of the petitioner once and remanded the matter back to this Hon'ble Court and on the second occasion dismissed the petitions as withdrawn. The prayers and pleadings of the petitioner/accused have been considered by the Constitutional Courts on multiple occasions and hence there is no abuse of the process of the court. Due to the above reasons, it cannot be contended that there was no other means to secure justice. Hence, there is no merit in the present petition seeking to invoke inherent powers of this



Crl.O.P.No.19442 of 2022

Court.

WEB COPY

11. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

12. On perusal of records, two cases ordered to be investigated by the first respondent. After completion of investigation in RC.12/E/11 and RC.13/E/11, they filed final reports. In one case, the trial Court already delivered the judgment convicting the accused. In another case viz., the present case is still pending without even framing any charges. The petitioner and other accused filed petition after petition and went up to the Hon'ble Supreme Court of India and all the petitions were dismissed. In fact, before the trial Court also the petitioner filed discharge petition and the same was also dismissed.

13. On perusal of the confession statement of one E.Shanmugaiah, who turned approver from accused revealed that he has explained various incidents including those which was undertaken by him at the instance of the petitioner as well as the role played by him. It is both inculpatory as also mentions the role played by the co-accused. It is



CrI.O.P.No.19442 of 2022

also corroborated with the confession statement made by another accused. Though it is settled law that confession statement alone cannot be sole ground to convict the accused, in the case on hand, there is sufficient corroborative materials in the form of documents, statement of witnesses, recovery of money, confessional statement, approver statement etc.

14. Mere reading of the charge sheet shows several instances of extortion of money for the purpose of ensuring that the accused who were already convicted by the trial Court, have safe passage from the case and without repaying the money due to the depositors. The allegations of wrongful confinement and the same is supported by the statement of various witnesses recorded under Section 161 of Cr.P.C.

15. That apart, there are sufficient materials to show demand of money by the public servants acting on behalf of the petitioner on the promise that the accused in the connected case, who is the defacto complainant in the present case need not return money to the depositors. The amount was delivered and accepted in pursuance of such demand, criminal conspiracy by way of extortion. These instances constitute



Crl.O.P.No.19442 of 2022

offences punishable under Sections 8, 10 & 13(2) r/e 13(1)(d) of the Prevention of Corruption Act.

16. Further demand of illegal gratification has been proved by the witnesses and approvers, including the date, time, place of delivery of money and the amount so delivered. Out of such illegal gratification, Rs.25 lakhs has been recovered from one of the accused. Therefore, the grounds raised by the petitioner cannot be appreciated by this Court that too under Section 482 of Cr.P.C. Further this petition has been filed after the period of nine years from the date on which the trial Court has taken cognizance in C.C.No.2 of 2013. It is also seen from the records, the petitioner filed so many petitions as against each charge challenging its constitutional authority upto the Hon'ble Supreme Court of India. Finally, the petitioner also filed petition to discharge and the same was also dismissed by the trial Court.

17. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-



WEB COPY



Crl.O.P.No.19442 of 2022

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

18. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not



sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

19. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence



WEB COPY



Crl.O.P.No.19442 of 2022

available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to the case on hand and the present petition has been filed only to drag the proceedings and nothing else.

20. In fact, the grounds raised by the petitioner in this petition,



Crl.O.P.No.19442 of 2022

already raised in so many petitions while challenging the transfer of investigation on the file of the first respondent and also challenging the sanction occurred for prosecution against the petitioner. This Court by an common order dated 02.11.2021, passed in W.P.Nos.21801 of 2012 & 17856 of 2015, Crl.O.P.Nos.5356 & 2691 of 2011, Crl.O.P.No.13904 of 2015 and Crl.O.P.No.1661 of 2016, dismissed the petitions filed by the petitioners and confirmed the transfer of investigation to the file of the first respondent and also subsequent investigation done by the first respondent.

21. In view of the above discussion, this Court finds no ground to quash the entire proceedings. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

28.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts

To



Crl.O.P.No.19442 of 2022

1. The Additional Superintendent of Police,
Central Bureau of Investigation,
Economic Offences Wing,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
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CBCID, Tamil Nadu, Chennai,
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WEB COPY



Crl.O.P.No.19442 of 2022

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Crl.O.P.No.19442 of 2022
and Crl.M.P.No.12778 of 2022

28.11.2023