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W.P.No.7388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE MR. Dr.G.JAYACHANDRAN, J.,

W.P.No.7388 of 2023
and WMP.Nos.7471, 7472 & 7473 of 2023

1.C.Gunasekaran
2.K.Pari

... Petitioners

Vs.

1.The Government of Tamil Nadu
Rep by its Secretary,
Public Works (E1) Department,
Secretariat, Chennai – 9.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Mayiladuthurai, Mayiladuthurai District.

3.S.Manoharan
4.The Director of Vigilance and Anti Corruption,
Collector's Nagar, Alandur, Chennai – 16.

5.M.Bhakthavachalam

...Respondents

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for records on the file of first respondent relating to the issue of impugned G.O (2D) No.13 Public Works (E1) Department dated 19.02.2021 and from the file



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of the Assistant Sessions Judge/Chief Judicial Magistrate Court, Nagapattinam in respect of SPL.CC.No.2 of 2022 and to quash the same in so far as the petitioners are concerned and consequently to direct the first respondent to initiate appropriate action including criminal actions against the second respondent and the concerned then incumbent officers of the other respondents responsible for the inclusion of the names of the petitioners in the charge sheet culminated into the impugned Spl.CC.No.02 of 2022 on the file of the Trial Court for the offences they committed under Section 195 and 19 of IPC.

For Petitioner : Mr.N.Subramaniyan

For Respondents 2 to 4 : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

This writ Petition has been filed to quash the charges framed against the petitioners, who are facing trial for the offences under Sections 420, 409, 465, 467, 471 r/w 120-B IPC and Section 13(2) r/w 13(1)(c) of PC Act, 1988 on the file of the Assistant Sessions Judge/Chief Judicial Magistrate Court, Nagapattinam.

2. The petitioners are the Junior Engineer and Assistant Executive Engineer respectively in PWD who are in-charge of supervising the work carried on the Kollidam (Coleron) River Right Bank from LS 138.20 Km to 150.20 Km



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in Sirkali Taulk of Nagapattinam District under Flood Management Programme

of 11th Five Year Plan. A case was registered against them that they have written the boosted measurements in Measurement books and prepared bills by forgery in respect of Groyne Nos.I & III in Flood Protection. After investigation, final report was laid against four public servants and one private individual by name Manoharan/ the contractor. The Trial Court after perusing the documents and report of the investigation, has framed charges as mentioned above.

3. The learned counsel appearing for the petitioners submitted that it is alleged by the prosecution that the petitioners have written boosted measurements and the same does not tally with the entry made in the abstract of the Super Check Measurement made by the Assistant Divisional Engineer Supervisor Highways. The report/statement of the team of Assistant Divisional Engineer in charge of Highways and Divisional Engineer does not mention the page numbers of the M-book in which the petitioners have signed in the Super Check Measurement Book. These petitioners who were in charge of the construction only up to the basement level and thereafter they were not in-charge of supervising the work at filter bed level and above, whereas, substantial boosted measurements were found and noted during the super check



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only on the normal layer level and further. At that time of construction of

normal layer level, the petitioners were not in charge of the said work.

4. The learned Additional Public Prosecutor submitted that the first petitioner is responsible for 100% check of the work and the second petitioner is responsible for 70% check of the work. The contract was given to A5 between 2011 and 2012. The Contractor was paid a sum of Rs.16,55,34,903/- in 8 parts based on the recommendation of these two petitioners and other two accused persons who were in charge at the relevant point of time. The petitioners, who had role in the conspiracy cannot seek discharge from prosecution since there are sufficient material available and if proved, they will be convicted for the offences charged. The Trial Court after examining documents had rightly framed charges including offences of conspiracy and misconduct under PC Act.

5. The learned counsel appearing for the petitioners furnished statements recorded under Section 161 Cr.P.C., of the witnesses and the representation given by the petitioners during the course of investigation and the Super Check Measurement. The record produced by the learned counsel for the petitioners reveals that the first petitioner was in charge of the project till



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24.11.2012 and the second petitioner was in charge of the project till

08.08.2011. During their tenure, payments have been given based on the measurements made by them. Entry in the M-book though few cannot be looked (infer) innocence of the petitioners herein, while the materials evidences are available for the Trial Court to proceed against them.

6. The very fact that voluminous documents the petitioners want to produce and impress upon this Court for summary decision itself a good reason for this Court to dismiss this petition to quash the charges framed against them, since the material placed provides sufficient facts indicating the involvement of the petitioners in the project. It is for the Trial Court to appreciate the evidence and arrive at a conclusion. The Trial Court need not be carried away by any observation made by this Court in this order. The learned counsel appearing for the petitioners questions the validity of the sanction granted by the authority to prosecute. The application of mind of the sanctioning authority cannot be tested in the quash petition when the sanction order *prima facie* discloses the fact that the authority has perused the records and applied his mind.



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Dr.G.JAYACHANDRAN, J.,
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7. Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

04.07.2023

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To

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Rep by its Secretary,
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- 2.The Deputy Superintendent of Police,
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