Crl.M.P.Nos.19769 & 19772 of 2023

in

Crl.R.C.Nos.2194 & 2195 of 2023

VIVEK KUMAR SINGH, J.

The petitioner has filed the petition in Crl.O.P.No.2194 of 2022 to set aside the order dated 23.11.2023 passed by the learned II Additional District Judge for CBI cases, Coimbatore in Crl.M.P.No.1527 of 2023 in C.C.No.2 of 2023 and he has also filed another petition in Crl.O.P.No.2195 of 2022 to set aside the order dated 28.11.2023 passed by the learned II Addtional District Judge for CBI cases, Coimbatore in C.C.No.2 of 2023 to discharge him from all the charges framed against him / first accused by the Court below.

2. The brief facts of the case is as follows:

i) The petitioner in both the Criminal Revision Cases is the first accused in RC ME1 2001 E 0013 registered by the respondent police against him along with the other named accused persons for the alleged offences under Sections 120-B r/w 347, 384, 506 (i) of IPC and Sections 8, 10 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After completion of investigation, the same was taken cognizance by the Court below in C.C.No.2 of 2013.

ii) The petitioner is a member of Indian Police Service, allotted to the State of Tamil Nadu. While he was functioning as Inspector General of Police, West Zone, based at Coimbatore, a complaint was registered in Crime No.26 of 2009 by the Central Crime Branch (CCB) Tiruppur, against the Directors of Paazee Forex Trading India Ltd., under the provisions of Prize Chits and Monies Circulation Scheme (Banning) Act, 1978 and Section 420 of IPC. Subsequently, Tiruppur North Police registered a case in Cr.No.3068 of 2009 for "Woman Missing" pursuant to a complaint that Mrs.Komalavalli Arumugham, Director of Paazee Forex Trading India Ltd., was found missing. Since police failed to take any action against the Directors of Paazee Forex Trading India Ltd., inspite of cancellation of the anticipatory bail, one of the depositors and the association of depositors of Paazee Forex Trading India Ltd., moved this Court in Crl.O.P.Nos.2691 and 5358 of 2011 with a prayer for transfer of investigation from the State police to CBI. The petitioner was not an accused at that point of time. The High Court passed an order dated 19.04.2011 transferring the investigation of both the crimes from the State police to CBI. In the meanwhile, the first respondent was interrogated in connection with Crime No.3068 of 2009 on 06.04.2011 and on investigation, it was found that the first respondent abused his official position as Inspector General of Police and inter-alia was involved in extorting money from the Directors of M/s Paazee Forex. This Court by an order dated 19.04.2011, transferred the investigation in Crime No.3 of 2010 (originally crime No.26 of 2009) to CBI. Thereafter, the petitioner had filed an application for bail, which was rejected by this Court on 20.04.2012 and he was arrested. The Principal Secretary to Government of Tamil Nadu by an order dated 10.05.2012 placed the petitioner under suspension with effect from 02.04.2012 in terms of Sub Rule 2 of Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969, until further orders.

iii) Thereafter, the petitioner had filed a Writ Petition in W.P.No.21801 of 2012 before this Court forbearing the respondents from proceeding further with conducting enquiry or investigation in

FIR in RC No.13(E)/2011/CBI/EOW/Chennai and the same was dismissed by this Court. In the meanwhile, the decision to initiate a disciplinary proceeding against the petitioner was approved by the Disciplinary Authority on 05.04.2013. Pursuant to which, a charge memo was issued to him on 29.10.2013. This Court by an order dated 19.04.2011 in Crl.O.P.Nos.2691 of 2011 and 5356 of 2011 had transferred the investigation in Crime No.26 of 2009 and Crime No.3068 of 2009 to CBI, which was challenged before the Hon'ble Supreme Court by way of SLP and the same was disposed of and the High Court was required to clarify that the order dated 19.04.2011 will not stand in the way of the petitioner herein while disposing of the matter afresh.

iv) The petitioner filed O.A.No.165 of 2016 before the Central Administrative Tribunal, Madras Bench, for quashing the order of suspension dated 10.05.2013 and the charge memo dated 29.10.2013 and also sought for reinstatement with all consequential benefits. The Central Administrative Tribunal, Madras Bench, refused to interfere with the charge memo, however, directed revocation of suspension by holding that there was no material to indicate that the petitioner had tampered with the evidence and influenced the witnesses. Aggrieved by the direction issued by the Central Administrative Tribunal to reinstate the petitioner, the State of Tamil Nadu filed a Writ Petition before this Court. This Court by a judgment dated 12.01.2017, upheld the judgment of the Tribunal pertaining to revocation of suspension. Further, this Court quashed the disciplinary proceedings on the ground that the charge memo was not approved by the disciplinary authority. Against the same, the State of Tamil Nadu had filed a Civil Appeal before the Hon'ble Supreme Court and the Hon'ble Superme Court by relying on the decision of ***Ajay Kumar Choudhary Vs. Union of India*** reported in ***(2015) 7 SCC 291*** and on the basis of the material on record, convinced that no useful purpose would be served by continuing the petitioner under suspension any longer and that his reinstatement would not be a threat to a fair trial and also reiterated the observation of this Court that the State has the liberty to appoint the petitioner in a non sensitive post. By an order dated 02.11.2021, in a batch of Writ Petitions and Crl.O.Ps, this Court had finally dismissed all the petitions preferred by the petitioner herein as well as by the other accused. As against the dismissal order, the petitioner had preferred SLP before the Hon'ble Supreme Court in SLP.No.8901-8904/2021 and the Hon'ble Supreme Court had dismissed the SLP with liberty to the petitioner to raise all the grounds raised therein before the appropriate Court, if and when the charges are framed against the petitioner.

3. Heard Mr.A.Ramesh and Mr.C.Manishankar, learned Senior Counsels appearing on behalf of the petitioner in Crl.R.C.No.2194 of 2023 and Crl.R.C.No.2195 of 2023 respectively as well as Mr.Srinivasan, learned Special Public Prosecuor appearing for CBI.

4. Since the issue involved in these revisions are one and the same, a common order is being passed in these Criminal Revision Petitions.

5. Mr.C.Manishankar, learned Senior Counsel appearing for the petitioner in Crl.R.C.No.2195 of 2023, submits that there is no material available as against the petitioner, for framing of charges under the Prevention of Corruption Act, 1988. For an offence under Section 13(2) r/w 13(1)(d) of the Act, it is necessary that demand

and acceptance of tainted money/illegal gain be established. In the present case, even as per the status report dated 17.10.2023 filed before the Trial Court, there has been no mention about the recovery or money trail, to make out an offence under Section 13(2) r/w 13(1)(d) of the Act. The relevant portion of the said status report is extracted hereunder:-

> *"10.That in pursuance of the direction of this Hon'ble Court vide docket order dated 11.10.2023, the present status report is filed. During further investigation which is progress certain accused, suspects and witnesses were examined. Further, details regarding certain investment/property held by the Accused in this case are under scrutiny and further certain other details are being collected and collated. Further investigation conducted so far has not fructified into evidence. All efforts are being made to ensure that the further investigation would be completed within a very short time so that the outcome of the same may be placed before this Hon'ble Court."*

6. The learned Senior Counsel also drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***P.Satyanarayana Murthy Vs. District Inspector of Police*** reported in ***(2015) 10 SCC 152***, to establish an offence under Section 13(1)(d), demand of illegal gains and subsequent acceptance of such illegal gain is a necessary requisite. Therefore, the prosecution has not made out a *prima facie* case as against the petitioner, for lack of establishing an illegal gain.

7. In furtherance, Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner in Crl.R.C.No.2194 of 2023, submits that since the offence occurred at Tiruppur, CBCID, Coimbatore, has the territorial jurisdiction to investigate the same whereas in this case, the investigation has been conducted by the Deputy Superintendent of Police, CBCID, Vellore, which is contrary. The CBCID is required to transfer the case as per its own manual to the Directorate of Vigilance and Anti Corruption, if the major offence falls under Prevention of Corruption Act but by continuing the investigation, the CBCID has violated its own manual. The Vigilance

Manual of the State Government requires specifically that the officers of All India Service cannot be enquired under P.C. Act, without the prior permission of the State Government. The CBCID, Vellore enquired the petitioner without such approval. Hence, the investigation was bad in law and is a clear abuse of process of law.

8. Mr.Srinivasan, learned Special Public Prosecutor for CBI, accepts the notice for the respondent and submitted that this Court by an order dated 04.09.2023 in Crl.O.P.No.24216 of 2018 filed by the Co-accused/A4, directed the trial Court to proceed with the trial by examining as many as 103 witnesses commencing from 04.11.2023 to 27.06.2024. He further submits that only to protract the proceedings, one after another accused has filed the applications. Therefore, he vehemently opposed for granting interim stay to the petitioner.

9. At this juncture, the learned Senior Counsel for the petitioner submits that the charges framed against the petitioner suffers from non-application of mind and in violation of established principles of law. He further submits that subjecting the petitioner to

trial would be an abuse of process of law, since the respondent has failed to make out a *prima facie* case against the petitioner.

10. The Hon'ble Supreme Court of India has passed an order dated 21.08.2018 in the case of ***State of Tamil Nadu rep. by its Secretary to Government (Home) Vs. Pramod Kumar and another in Civil Appeal No.8427-8428 of 2018***, wherein it has held that reinstatement of the petitioner would not be a threat for trial and granted liberty to the State to reinstate him in service in a non sensitive post.

11. Considering the submissions made on both sides and in the light of the decision of the Hon'ble Apex Court as stated supra, this Court is of the view that the petitioner has made out a prima facie case for grant of an order of stay. Accordingly, there shall be an order of interim stay of all further proceedings in C.C.No.02 of 2013 till 11.03.2024.

12. The personal appearance of the petitioner before the learned II Additional District Judge for CBI cases, Coimbatore, in C.C.No.2 of 2023, is dispensed with for the present.

13. It is also made clear that any of the observations made in these revisions shall not influence the outcome of the final orders to be passed in these cases.

14. Registry is directed to list the matter on 11.03.2024. In the meanwhile, the learned Special Public Prosecutor shall file his counter affidavit.

20.12.2023

vkr/DP

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