



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P. (MD) Nos.4421, 15398, 15399, 15401, 15406, 15407, 15408 and 16562 of 2022

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Crl.O.P.(MD).No.4421 of 2022

E.Ramesh

... Petitioner/Accused

Vs.

The State rep. by the
Deputy Superintendent of Police,
SPE/CBI/ACB,
Chennai.

(Cr.No.RCMA1 2012 A 0007)

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.9 of 2013 on the file of the II Additional District Court for CBI Cases, Madurai, for the perusal of this Court and Quash the Charge Sheet in C.C.No.9 of 2013 on the file of the II Additional District Court for CBI Cases, Madurai.

K.S.Murugan ... Petitioner/ Accused No.2 in CRL OP(MD).
15398, 15399, 15401, 15406, 15407, 15408, 16562 of 2022
- Vs. -

1.The Deputy Superintendent Of Police,
Central Bureau of Investigation,
ACB/Chennai. Fir No.Rc MA1 2012 A 0007.

... Respondent in CRL OP(MD). 15398, 15399,
15401, 15406, 15407, 15408/ 2022

1.The Deputy Superintendent Of Police,
Central Bureau of Investigation,
ACB/Chennai. Fir No.Rc MA1 2012 A 0006.

... Respondent in CRL OP(MD).16562 of 2022

Prayer in CRL OP(MD).15398, 15399, 15401, 15406, 15407, 15408 of 2022:

Criminal Original Petitions are filed under section 482 of Cr.P.C to call for the records pertaining to the Charge Sheet in CC.No.4,5,6,7,8&9 of 2013 respectively on the file of the Learned II Additional District Court for CBI Cases,Madurai and quash the same in respect of FIR No.RC MA1 2012 A 0007.

Prayer in CRL OP(MD). 16562/ 2022 :

Criminal Original Petition is filed under section 482 of Cr.P.C to call for the records pertaining to the charge sheet in



C.C No. 03 of 2013 on the file of the Learned Principal Judge for CBI Cases, Madurai and quash the same in respect of F.I.R No.RC MA1 2012 A 0006.

For Petitioner : Mr.K.Suresh Babu
in Crl(MD)No.4421 of 2022
(*) Mr.Karuppasamy Pandian
in Crl.OP(MD)No.15398,15399,15401,15406,15407,
15408 & 16562 of 2022
For Respondents : Mr.N.Mohideen Basha
Special Public Prosecutor for CBI
in all Crl OP's

COMMON ORDER

These criminal original petitions have been filed seeking quashment of the case in C.C.Nos.3 to 9 of 2013 on the file of the II Additional District Court for CBI Cases, Madurai.

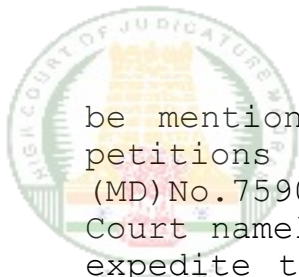
2.The background facts in brief:

The facts of the case are narrated in more than one occasion by this Court while dealing with Crl.O.P.(MD).Nos.5354 of 2013 batch, which were filed by the K.S.Murugan, who is the petitioner herein in Crl.O.P.(MD).No.15398 of 2022 batch. Similarly, E.Ramesh, who along with 3 other accused persons filed Crl.O.P.(MD). No.7444 of 2015 and batch.

3.This is the second quash petition filed by the above said K.S.Murugan and E.Ramesh, citing different reasons. Since the facts have been clearly narrated in the above said matters, we need not go in detail about the prosecution case. Suffice to say that reference can be made with regard to the prosecution case in the above said matters.

4.At the out set this Court is not in a position to appreciate the attempt that has been made by the petitioners by filing this second quash petitions. When the application was moved by E.Ramesh through his counsel, objection was raised by the Registry as to whether the second quash petition is maintainable. The matter was listed before the Court for deciding the issue and counsel, who is appearing for the above said Ramesh, would submit that even though the ground on which the present petition has been filed also raised in the earlier petition that was not answered by that Court, since no sufficient materials have been placed by this petitioner at that time. On that point subject to the maintainability, the petition was ordered to be processed by the Registry and placed before the Court for final disposal. The matter was taken up for hearing along with other matters that was filed by K.S.Murugan.

5.With regard to the conduct of the K.S.Murugan, also it has to

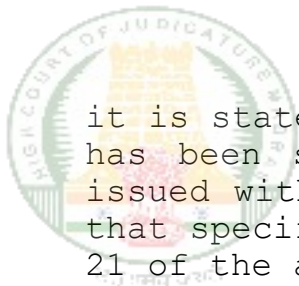


be mentioned that subsequent to the dismissal of the abovementioned petitions Crl.O.P.(MD).Nos.5354 of 2013 batch, again he filed W.P.(MD)No.7590 of 2021 etc batch, seeking direction to the Special Court namely II Additional District Court for CBI Cases, Madurai, to expedite the trial process in C.C.No.3 to 9 of 2013 on day to day basis within the time stipulated by this court. That petition was also ordered on 03.09.2021, directing the Special Court to expedite the trial process without unnecessarily adjourning the matter as early as possible and that within a period of 5 months from the date of receipt of a copy of that order. If any necessity arises, liberty was granted to the trial Judge to seek further period of five months for completing the trial process. That petition was filed on 01.04.2021. The present petitions seeking quashment were filed on 05.08.2022. When this was pointed out by the learned Additional Public Prosecutor, I made an enquiry with the counsel on record for K.S.Murugan as to whether such a course taken by him is not abuse of the process of the Court. In reply to the above said query, the counsel on record would place a communication that was sent by one of the witnesses to the Court stating that on the particular day, the above said witness about to appear, CBI directed him not to appear before the Court. In the communication he has stated that he received 13 summons from the Court in 18 months. Even though he attended the Court, he was not examined. So according to the counsel, delaying tactics is adopted only by the CBI and not by the accused. Since the trial process is getting delaying, he has filed the present petition.

6.Whatever may be the grievance by the petitioners, but they repeatedly approaching the Court, in a piecemeal manner seeking quashment making additional grounds is not at all appreciable in nature. So this is the first observation, which this Court wants to place on record before going to the discussion portion.

7.Regarding the sanction for E.Ramesh, it was submitted by the prosecution that since he has already retired from service, there is no necessity to obtain sanction as per section 19 of the Prevention of Corruption Act. The learned counsel on record has now clarified on that preposition and submitted that nevertheless even after retiring Section 197 of Cr.P.C. must be strictly complied by the prosecution. According to him, that provision applies even to retired Government Staffs. He would straight away rely upon the judgment of the Honourable Supreme Court in the case of **Balakrishnan Vs. State of Kerala** made in **Crl.A.No.1742 of 1995**. So according to him, even though such a plea was raised by him in the earlier batch of original petitions, that was not considered. So he cannot be prevented from raising the point once again before this Court.

8.But, I am unable to agree this line of argument for the simple reason that in the grounds in Crl.O.P.(MD).7444 of 2016 batch a copy of which were made available in this time, I find, nowhere,



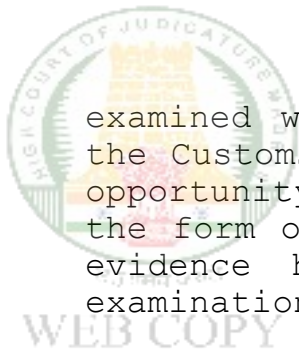
it is stated that no sanction order has been obtained for R. [t has been stated in a general terms that sanction order has been issued without proper application of mind. So this cannot be stated that specific ground has been made with regard to the sanction. Para 21 of the above said grounds is as follows:

"21.The petitioner submits that the sanction to prosecute the public servant in this case was accorded on 28.09.2012 culminating to the prosecution of the petitioner also in this case, looks like a Xerox copy from various independent competent authorities meaning that there was no application of mind by the Competent Authorities and the said Sanction Orders looks as if it is prepared by some external agency and the sanctioning authority had merely signed on the Sanction Order without applying their mind thus making the sanction order defective."

9.Now, in this background, let us go to the cross examination of PW1 by this petitioner namely E.Ramesh, which is also available in the typed set of papers. A.K.Loganathan was examined by the prosecution before the trial Court as PW1, who accorded sanction for prosecuting Mr.C.Govindasamy. A lengthy cross examination was done by this petitioner namely E.Ramesh as to alleged role played by him in the above said process of levying anti dumping duty. But nowhere, it has been asked to him that even for retired Government Staff, sanction under Section 197 Cr.P.C. is required. As I mentioned earlier, lengthy cross examination has been done only with regard to the process of levying the duty. Now, in the light of the above said development, the argument on the side of the petitioner that in the earlier occasion, he has raised the point that no material are available to substantiate his ground and there was no finding or discussion in the earlier order, which is completely out of place and not correct on record also.

10.As I mentioned earlier, a party cannot be permitted to make a repeated application making out piecemeal grounds, it would amount to clear abuse of the process of the Court.

11.So with this point we go to the next aspect. According to him, the prosecution itself is also barred by limitation and for that purpose he would rely upon Section 155 and 155(2) of the Customs Act. To substantiate his argument, he would rely upon several judgments in the typed set of papers. I am not going into those judgments for the simple reason that such a plea was not raised at the earliest opportunity that was available to him in the year 2016 itself. No ground was also made on that line. Now, again this ground is also barred under the principle of piecemeal grounds. Moreover, nowhere, during the course of cross examination, PW1, who accorded sanction to the above said Govindasamy, has been cross



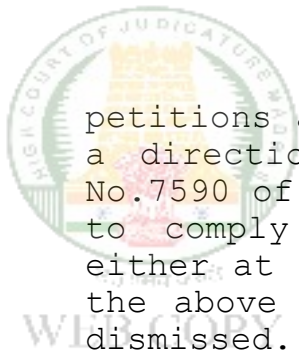
examined with reference to the limitation under Section 1 of the Customs Act. Having omitted to raise such pleas in the earliest opportunity, now, he has come to the Court belatedly, that too in the form of second quash petition and that too when the portion of evidence has been let in by the prosecution and after cross examination of the sanctioning authority also over.

12.The next ground is that on the date of the above said cause of action, the violation was not at all an offence and for that purpose, he would rely upon Section 102 r/w 101 (3) of the Finance Act 2009. Again this ground was also made available to him at the earliest opportunity. But, he did not avail it. Again, this ground cannot be considered as bar of piecemeal ground. So it can be raised before the trial Court at the time of trial process. So this ground was also not available to this petitioner at this stage, again no cross examination on the point to PW1.

13.Now, the third argument is that violation of Article 14(1) of the Constitution of India. According to him, when the equally placed Government Officer has been treated differently, since sanction order has been obtained in respect of that person, denial of the above said right is clear violation. So this is also a belated ground. Moreover, whether sanction is required under Section 197 Cr.P.C., is also matter for consideration by the trial Court, since now the trial process is underway. As stated above proper ground was made at the earliest opportunity. So I am of the considered view that the second attempt that has been made by Ramesh also not proper, in view of the belated and piecemeal grounds.

14.Similarly, the ground that has been raised by K.S.Murugan also have to be rejected out right. Since most of the grounds is relating to the the offence alleged in the particular point of time. Whether it is an offence on the date of occurrence can also be considered by the trial Court. As mentioned above, this point was also not raised by way of cross examination of PW1, who accorded sanction to one of the Government officials. Again this ground also cannot sustained because of piecemeal application for quashment. Having obtained direction from this Court seeking speedy disposal after suffering dismissal of Crl.O.P(MD).No.5354 of 2013 batch, is not fair on the part of the petitioner to make out a new plea.

15.If such sort of piecemeal grounds and pleas are allowed to be entertained under Section 482 Cr.P.C. then there will be no limitation or limits for the trail to be concluded. There is every danger that in the course of the trial process, finding new pleas filing repeated petitions could be filed. Then the casualty will be the speedy trial process. So such sort of attempt should not be allowed and that too while exercising the jurisdiction under Section 482 Cr.P.C. So all the pleas that have been raised by these petitioners now can be raised during the course of trial. I find



petitions are deserves to be dismissed and of course, since by a direction by the Co-ordinate Bench of this Court in WP.(MD). No.7590 of 2021 batch, dated 03.09.2021, the trial Court is directed to comply the same without unnecessarily adjourning the matter either at the request of CBI or at the request of the accused. With the above said observation all the criminal original petitions are dismissed.

Sd/-

Assistant Registrar (CS-II)

(*)Corrected as per order of this Court dated 12.04.2023 made in Crl.O.P. (MD) .No.4421 of 2022

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/05/2023

Sub Assistant Registrar(CS)

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To

- 1.The II Additional District Court for CBI Cases, Madurai.
- 2.The Deputy Superintendent of Police,
SPE/CBI/ACB, Chennai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SURESH BABU, Advocate (SR-12778[F] dated 03/03/2023)

Crl.O.P. (MD) Nos.4421, 15398, 15399, 15401, 15406, 15407, 15408 and 16562 of 2022
03.03.2023

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