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Crl.M.P.(MD)No.12181 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 26/09/2023

Date of Judgment : 22/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.MP (MD) No.12181 of 2023

in

Crl.OP (MD) No.4421 of 2022

E.Ramesh : Petitioner/Petitioner/
Accused

Vs.

State by: Dy. Superintendent of Police,
SPE/CBI/ACB, Chennai.
(Cr.No.RCMA12012A0007) : Respondent/Respondent/
Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to recall the Order, dated 03/03/2023 in Crl.OP (MD) No.4421 of 2023 and quash the charge sheet in CC No.9 of 2023 on the file of the II Additional District Court for CBI Cases, Madurai and pass such order or orders.

For Petitioner : Mr.K.Suresh Babu

For Respondent : Mr.N.Mohideen Bash
Special Public Prosecutor
for CBI Cases.



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O R D E R

WEB COPY This criminal original petition has been filed seeking recall of the order, dated 03/03/2023 in Crl.OP(MD)No.4421 of 2023 and quash the charge sheet in CC No.9 of 2023 on the file of the II Additional District Court for CBI Cases, Madurai.

2.The earlier petition filed in Crl.O.P(MD)No.4421 of 2022 for quashment of CC No.9 of 2023 on the file of the II Additional District Court for CBI Cases was dismissed, on 03.03.2023 observing.

"Maintainability of second quash petition

1.When this petition was filed by the petitioner, it was objected by the Registry that whether second quash petition is maintainable, the petitioner submitted 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 the petition was ordered to be proceeded.

2.It was submitted by the prosecution regarding sanction for E.Ramesh, is that since he already retired



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from service, there is no necessity to obtain sanction as per section 19 of Prevention of corruption act. The learned counsel on record has clarified that proposition submitted that even after retirement, section 197 of Cr.P.C must be strictly complied by the prosecution. And also he would rely upon the judgement of Hon'ble Supreme Court in the case of Balakrishnan VS State of Kerala in Crl Appeal No. 1742 of 1995. According to him even though such 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.

3.It was observed in para 8 that I am unable to agree this argument for the simple reason that nowhere in the grounds in Crl OP(MD)No.7444 of 2016 batch, it has been stated that no sanction order has been obtained for Ramesh. It has been stated in 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 sanction.

*4.A.K.Loganathan, who accorded sanction for prosecuting **Mr.C.Govindasamy**, was examined as PW1. A lengthy cross examination was done by this petitioner.*



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But nowhere, he has asked him that even for retired Government staff, sanction under section 197 Cr.P.C is required. But cross examination done only with regard to the process of levying the duty. So, the argument on the side of the petitioner that in the earlier occasion, he has raised the point that no material available to substantiate his ground and there was no finding or discussion in the earlier order is completely out of place and not correct on record also.

5.The petitioners repeatedly approaching the court in a piecemeal manner seeking quashment making additional grounds is not appreciable in nature.

2.PROSECUTION BARRED BY LIMITATION

1.The petitioner submitted that the prosecution itself is barred by limitation. For that purpose he relied upon section 155 and section 155(2) of the Customs Act and also several judgements. It was observed in para 11 that "I am not going into those judgements for the simple reason that such plea was not raised at the earliest opportunity that was available to the petitioner in the year 2016 itself. And no ground was made in his petition on that point. During the cross-examination of PW1 also, nowhere cross examined with reference to the



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limitation under section 155(2) of the Customs Act.

Having omitted to raise such pleas in the earliest opportunity, the petitioner has come belatedly. Again, this ground is also barred under the principle of piecemeal grounds.

2.The petitioner also submitted that on the date of 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. It was also observed that this ground was available at the earliest opportunity. But he did not avail it. 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 and also no cross-examination on that point to PW1.

3.VIOLATION OF ARTICLE 14(1) OF CONSTITUTION OF INDIA

1.The petitioner submitted the equally placed Government officer has been treated differently, since sanction order has been obtained in respect of that person but denied the said right to the petitioner is a clear violation of Article 14(1) of the constitution of India.



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This was also rejected that this is a belated ground.

In Para 15 of common order this court, dismissed his petition on the ground that if such sort of piecemeal grounds and pleas are allowed to be entertained under section 482 of CRPC then there will be no limitation for the trial to be completed. Then the causality will be the speedy trial process. So such sort of attempt should not be allowed and that too while exercising jurisdiction under section 482 of Cr.P.C. So all the pleas can be raised during the course of trial. All the petitions are deserves to be dismissed. Hence all criminal original petitions are dismissed with some observations."

RECALL PETITION CRL MP (MD) NO.12181 OF 2023;

3.The case of the petitioner is that, after reserving the orders in Crl.O.P(MD)No.4421 of 2022, this court was pleased to pronounce the order of dismissal on 03.03.2023 in the open court and web-copy of that order was uploaded in Madras High court web-site on 29.03.2023 and certified copy of the said order was not made available till date. The petition to recall the order passed by this court dated 03.03.2023 in Crl.O.P(MD)No.4421/2022 is well within limitation.



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4.The petitioner further submits that he petitioner had filed a synopsis or written submission and annexed the following citations amongst other citations of the Hon'ble Supreme Court of India in support of the quash petition.

*(i) Matajog Dobey Vs. H.C.Bhari
(Criminal Appeals Nos.67 and 68 of 1954,
dated 31/10/1955);*

*(ii) State of Madhya Pradesh Vs.
Sheetla Sahai and others (Criminal
Appeal No.1417 of 2009, dated
04/08/2009).*

*(iii) R.Balakrishnan Pillai Vs.
State of Kerala (Criminal Appeal No.1742
of 1995, dated 05/12/1995);*

*(iv) Indra Devi Vs. State of
Rajasthan (Criminal Appeal No.594 of
2021, dated 23/07/2021);*

5.While making their final oral submissions before this Court, petitioner restricted his defence to only two points.

*(i) The need for sanction to
prosecute the petitioner post retirement
on VRS u/s197 CrPC r/w Article 14 of the
constitution and that such protection of*



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Sanction can be raised at anytime a) after the cognizance b) may be immediately after cognizance or framing of charge or c) even during trial or d) even at the time of conclusion of trial.

(ii) Article 20(i) of the constitution of India being violated by the prosecution by not granting protection as contemplated U/S 102, r/w S.101.

(iii) of Finance Act, 2009 when the petitioner is being prosecuted for the acts or omissions committed by him as a public servant in the Customs Department with regards to Assessment-levy of Anti-Dumping Duty (ADD) .

6.Heard both sides.

7.Let me straightaway go the original order at the cost of repetition. Para 8 to 10 of the original order reads as under:-



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"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 Ramesh. It 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



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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



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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."

8.At the time of hearing the argument of the learned counsel for the petitioner, this was specifically put to him to give response. The response is on two folds. One is that this court has not understood the meaning of para 21 in the earlier petition. The meaning thereby that power was delegated to sanction to accord under the provisions of the Customs Act. And not specifically deals about section 197 Cr.P.C.

9.I am totally unable to understand the reasoning or explanation offered by the petitioner. Plain meaning of para 21 does not lead to two inferences. The petitioner was conscious on his ground, while making the first application. Now having suffered and suffered twice, as the case may be, turn around and would say that this court has not understood the meaning. If this is the reason for recalling the order, then absolutely, it is



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not available. If such sort of argument or defence is accepted, then there will be no end to the repeated filing of the application.

10. Reading of the earlier order namely the original order in Crl.OP(MD)No.4421 of 2022 batch etc., does indicate that a specific argument was advanced by this petitioner that para 21 is dedicated to sanction to be obtained or issued under the provisions of the Customs Act. The parties cannot be permitted to give different interpretation, different meaning to his own word and come repeatedly before this court. Seeking the very same ultimate relief, this sort of practises cannot be entertained, but got to be deprecated. So this argument is rejected outright.

11. Now coming to the fact that even for a retired servant, sanction under section 197 Cr.P.C is required.

12. The grievance of the petitioner is that this issue was not answered by this court at the time of passing the order. Again, I am unable to agree this line of argument for the simple reason that the original order was passed on the ground that parties cannot be permitted to file repeated petitions on piecemeal grounds. I am



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going straightaway to the judgment of this court on this aspect. Since, the ground raised by the petitioner will amount to re-hearing the quash petition. But to set the records right, I want to make the reference to the judgment of the Hon'ble Supreme Court in the case of ***Bhisham Lal Verma Vs. State of Uttar Pradesh and another (2023 SCC OnLine SC 1399)***. On what ground, the second application will lie is under elaborate consideration.

13.In that case, the Hon'ble Supreme Court held in para 10 and 11 as under:-

"10.In S. Madan Kumar vs. K. Arjunan 8, the Madras High Court observed that a person who invokes Section 482 Cr.P.C. should honestly come before the Court raising all the pleas available to him at that point of time and he is not supposed to approach the Court with instalment pleas. It was further observed that there may be a change of circumstances during the course of criminal proceedings which would give scope for the person aggrieved to invoke the inherent jurisdiction of the Court, but when he is posted with all the facts and circumstances of a case, he cannot withhold part of it for the purpose of



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filing yet another petition seeking the same relief.

11.We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be no blanket rule that a second petition under [Section 482 Cr.P.C.](#) would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under [Section 482 Cr.P.C.](#), though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under [Section 482 Cr.P.C.](#) ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under [Section 482 Cr.P.C.](#), irrespective of when the cause therefor arose. Such abuse of process cannot be permitted."

14.After observing so, it was concluded in para 12, which is extracted hereunder:-



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"12. In the case on hand, the filing of the charge sheet and the cognizance thereof by the Court concerned were well before the filing of the first petition under [Section 482 Cr.P.C.](#), wherein challenge was made only to the sanction order. That being so, the petitioner was not at liberty to again invoke the inherent jurisdiction of the High Court in relation to the charge sheet and the cognizance order at a later point of time. The impugned order passed by the Allahabad High Court holding to this effect is, therefore, incontrovertible on all counts and does not warrant interference."

15. Para 12 is more clarificatory on that issue. Actually on this line, in view of the settled position of law only, the order was passed by this court. I find absolutely nothing on record to attract the mischief for recalling the order. But on what ground, the order can be recalled, more or less now well settled by the Hon'ble Supreme Court in the case of **Daxaben Vs. The State of Gujarat and others (2022 LiveLaw (SC) 642)**.

16. Let me extract the relevant portion.

"21. In **Krishna Kumar Pandey** (supra) this Court referred with approval, to the



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judgment of this Court in **State of Punjab v. Davinder Pal Singh Bhullar and Ors. (2011)14 SCC 770** where this Court held that the High Court was not denuded of inherent power to recall a judgment and/or order which was without jurisdiction, or in violation of principles of natural justice, or passed without giving an opportunity of hearing to a party affected by the order or where an order was obtained by abusing the process of Court which would really amount to its being without jurisdiction. Inherent powers can be exercised to recall such orders."

17.Out of the above said limitations, now the learned counsel appearing for the petitioner would rely upon the principles that there is violation of principles of natural justice and another ground that without giving opportunity of hearing, the order has been passed.

18.But with regard to the first point that there was violation of natural justice, he would submit that parity of treatment was not given by the competent authority, while granting sanction. One person was given protection, but the petitioner is not. According to him, Article 14 of the Constitution of India is violated. This, according to him, is the violation of principles natural justice.



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This point is not available to him. What he wants from this court by way of filing this petition is a clear observation to the effect that whether section 197 Cr.P.C stands apply to the petitioner or not.

19.It is further submitted by the petitioner that at the time of moving the first application, there was no evidence on record to show that his duty was intrinsically connected with the discharge of the functioning. Now enough materials have been brought on record in the form of cross examination of the sanctioning authority. It *prima facie* shows that the duty assigned to the petitioner is intrinsically connected with the alleged offence now taken. So according to him, when enough material was not available before this court at the time of filing the first application on the specific point, he was groundless. Now, he has made strong ground on this point and coming before this court. So according to him, a specific observation must be made on this aspect. But I was carefully avoiding the point as to whether section 197 Cr.P.C applies to the petitioner or not, leaving the matter to be decided by the trial court by making the observation that the petitioner is not permitted to make the piecemeal ground. If the contention of the petitioner is accepted that the



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evidence so far let in does indicate the requirement of sanction, that will lead to filing of the repeated applications seeking quashment by the accused. It will open to a flood gate.

20.That sort of malady may crop in . That is why, repeatedly it has been held that second quash petition is not maintainable, except the subsequent development. Examination of the witnesses before the trial court, at no stretch of imagination, will amount to subsequent development. This contention on the part of the petitioner is rejected outright.

21.It is made clear that application filed by the petitioner was rejected on the ground that piecemeal ground has been made. Nothing more remains to be stated in this order. The parameters set out for recalling the order are not satisfied.

22.In the result, this criminal miscellaneous petition is **dismissed**.

22/12/2023

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

1.The II Additional District Court
for CBI Cases, Madurai.

2.The Superintendent of Police,
SPE/CBI/ACB, Chennai.

3.The Special Public Prosecutor
for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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