BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2023

Delivered on : 17.07.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.8417 of 2023
in
Crl.M.P(MD)Nos.7342 and 7343 of 2023

Prabhakaran : Petitioner

Vs.

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Trichy District.

2.The Inspector of Police,
Vigilance and Anti Corruption Department,
Directorate of Vigilance and Anti Corruption,
Trichy District. Crime No.3 of 2022.

3.N.Jaya : Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in Spl.C.No.3 of 2023, dated 08.03.2023 pending on the file of the learned Special Judge, Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli and quash the same as against the petitioner as illegal.

For Petitioner : Mr.M.Ajmal Khan,Senior Counsel,
for Mr.C.M.Arumugam

For Respondents : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor,
for R1 and R2.

: Mr.R.C.Dilipan Pandian, for R3.

ORDER

It would be apt to begin this order by quoting the words of Hon'ble Supreme Court in the judgment reported in **(1997) 4 Supreme Court Cases 14 [Swatantar Singh Vs. State of Haryana]** :

> "*.....corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoreity much faster than the smoke.*"

2. The Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the charge sheet in Spl.C.No.3 of 2023, pending on the file of the Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli and quash the same against the petitioner/first accused.

3. On the basis of the complaint lodged by the third respondent/defacto complainant, FIR came to be registered in Crime No.3 of 2022 on 06.04.2022, against two persons including the petitioner herein for the alleged offence under Section 7(a) of Prevention of Corruption Act 1988 (as amended in 2018).

4. The petitioner has filed a petition in Crl.O.P(MD)No.1773 of 2023, to quash the first information report registered in Crime No.3 of 2022 on the file of the second respondent Police and that since it was represented that the charge sheet has already been filed, the said petition was ordered to be dismissed as withdrawn. Subsequently, the above petition came to be filed for quashing the charge sheet.

5. The first respondent Police, after completing the investigation has filed the final report under Section 173 Cr.P.C., against two accused including the petitioner herein for the alleged offence under Sections 7(a), 12 r/w 7(a) of the Prevention of Corruption Act, 1988 (as amended 2018) and the same was taken on file in Spl.C.No.3 of 2023 pending on the file of the Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli.

6. It is not in dispute that the petitioner/first accused was working as Zonal Deputy Tahsildhar, Pullambadi Zone, Lalgudi Taluk, Trichy District and the second accused was working as Village Administrative Officer, Mudhuvathur Village, Pullambadi Zone, Lalgudi Taluk, Trichy District at the relevant point of time.

7. The case of the prosecution is that the third respondent/defacto complainant is the resident of Lalgudi Taluk, Trichy; that her husband is working as construction labour in Singapore for four months prior to the registration of the case; that on 04.04.2022 at about 15 hours, the second

accused demanded Rs.15,000/- as an undue advantage from the defacto complainant; that after the request of the defacto complainant, the second accused reduced his demand as Rs.13,000/-; that on 05.04.2022 at about 12.30 hours, when the defacto complainant had approached the petitioner/first accused to reduce the amount, the first accused reduced the amount and directed the complainant to pay Rs.10,000/- to do favour in order to arrange and made correction in the computer chitta as Kaliaperumal, S/o.Arunachalam Udayar instead of Kaliaperumal, S/o.Appavu and that the defacto complainant not willing to pay the amount, appeared before the second respondent on 06.04.2023 and preferred a written complaint and on that basis, the present F.I.R., came to be registered.

8. It is the further case of the prosecution that after registration of F.I.R., a trap was laid and during the trap proceedings between 11.50 and 12.10 hours on 06.04.2022, when the defacto complainant had approached the accused at Lalgudi Taluk Office along with official witness, the first accused had reiterated the earlier demand of undue advantage amount of Rs.10,000/- from the defacto complainant and

directed her to hand over the amount of Rs.10,000/- to the second accused who was sitting infront of the first accused at that time and directed the second accused to receive amount from the complainant; that on the direction of the first accused, the second accused received the amount of Rs.10,000/- from the defacto complainant by his right hand and kept the same in his left hand; that the first accused directed the second accused to keep the money with him and accordingly, the second accused kept the said money in his left hand in the presence of the official witness; that phenolphthalein test was conducted on both hands of the second accused and the tested solution, which was sent to the FSL., Chennai proved positive.

9. It is the further case of the prosecution that in the course of the continuation of transaction, the first accused demanded an undue advantage amount of Rs.10,000/- and obtained through second accused, knowingly accepted as an undue advantage of the amount for themselves from the defacto complainant by abusing their official position as a public servant by corrupt and illegal means and that thereby the petitioner/first accused has committed the offence under Section 7(a) of

Prevention of Corruption Act, 1988 (as amended in 2018) and the second accused has abetted the aforesaid offence and thereby committed the offence under Section 7(a) of the Prevention of Corruption Act and 12 r/w 7 (a) of Prevention of Corruption Act.

10. The case of the petitioner is that the third respondent has originally filed an application in the year 2019 for transfer of patta from the name of Sri.Kaliaperumal, S/o.Appavu to the name of her husband; that the previous Deputy Tahsildar of Lalgudi Taluk, has rejected the said application as the same was not supported by any registered link document or any other supporting document; that the petitioner has received an online application for patta transfer from the second accused on 07.03.2022 and rejected the same as is not supported by an unregistered deed of consent and for want of parent documents; that there is no parent documents and no title could be transformed based on unregistered document, that the third respondent having received the rejection order passed by the petitioner through online, with wilful and oblique intention to make allegations against the petitioner, she has again applied for patta transfer through online mode on 16.03.2022 with the

same unregistered documents, that the petitioner has not committed any offence as alleged by the prosecution, that without any sufficient materials, the respondent Police has registered the case and consequent to the proceedings of the District Collector, Trichy, dated 08.04.2022, the petitioner was placed under suspension; that the petitioner was arrested and subsequently, he was granted bail by the Special Court and that the respondents 1 and 2 without conducting proper investigation, has filed the charge sheet mechanically.

11. The learned Senior Counsel appearing for the petitioner would submit that there is no valid sanction accorded by the sanctioning authority, that mere mentioning or recording of application of mind and further recording subject satisfaction in respect of alleged commission of offence as recorded by the sanctioning authority will not hold good, but at the same time is liable to be branded as illegal, arbitrary and unsustainable, that on perusal of the statement of the sanctioning authority recorded under Section 161(3) Cr.P.C would show that his non application of mind over the material, allegedly furnished upon him; that the sanctioning authority ought to have recorded his findings as to how

he came to the conclusion that the petitioner allegedly committed the offence as referred in the sanction order and that in the absence of such findings, the same will not be accepted.

12. The learned Additional Public Prosecutor for the respondents 1 and 2 would submit that the sanctioning authority has attained subjective satisfaction after the perusal of entire evidences and based on the independent application of mind without any extraneous consideration; that the petitioner has not at all taken any stand that discretion of the sanctioning authority to accord sanction has been taken by the police or higher authority and that the above aspects would go to show that the sanctioning authority has applied independent mind in according sanction.

13. The learned Senior Counsel would submit that the third respondent has applied through online for patta transfer and no application was filed to change the name of her husband's grandfather in the computerized chitta, that the very case of the defacto complainant is totally self-contradictory as she had given two versions in her online

applications, that though the third respondent's claim was rejected earlier on three occasions and after rejection of third application, she has applied for fourth time on 16.03.2022 and that the same would go to prove the *male fide* on the part of the defacto complainant coupled with oblique intention to take revenge upon the petitioner.

14. The learned Additional Public Prosecutor would submit that the defacto complainant had only applied for the name change in the patta through online mode on 16.03.2022 and that her online application was very much pending and not rejected by the petitioner during the time of registration of the case.

15. As rightly contended by the learned Additional Public Prosecutor whether the third respondent had applied for patta transfer or for change of name is a matter for trial and the same cannot be gone into at this stage. It is pertinent to note that the prosecution has taken a specific stand that the online application for name change, which was given on 16.03.2022 was very much pending at the time of registration of the case.

16. The learned Senior Counsel appearing for the petitioner would submit that though the present case was registered under Section 7(a) of Prevention of Corruption Act, it is not the case of the prosecution that the petitioner made any demand of illegal gratification upon the third respondent; that in the FIR itself, it has been stated that the second accused made demand at the same time, it is not alleged that the said demand was made either with the knowledge of the petitioner or at his instance and that therefore, it can easily be concluded that the alleged offence under Section 7(a) of said Act is not made out as against the petitioner in any manner. He would further submit that the very registration of the case under the provision of Prevention of Corruption Act is legally unsustainable without any demand and no presumption can be drawn by invoking Section 20 of the said Act.

17. The learned Additional Public Prosecutor, in order to counter the said argument would submit that the Constitution Bench of Supreme Court in ***Neeraj Dutta Vs. State Government of N.C.T of Delhi,*** reported in ***2022 Live Law SC 1029***; has held that once the prosecution had

established obtainment is called demand made from the accused and the presumption under Section 20 of Prevention of Corruption Act is in favour of the prosecution side, that the obtainment, acceptance coupled with the recovery has been established by the Investigating Officer and the presumption even though rebuttable in nature has to be rebutted only during the course of trial by the petitioner.

18. At this juncture it is necessary to refer the judgment of Hon'ble Supreme Court in ***Neeraj Dutta***'s case, wherein the Constitution of Bench of Hon'ble Supreme Court, after referring various decisions, has summarized the position and the relevant passages are extracted hereunder :

"68. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal

gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of Criminal Appeal No.1669 of 2009 illegal gratification by the public servant, the following aspects have to be borne in mind:

> *(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*
>
> *(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from*

the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is Criminal Appeal No.1669 of 2009 a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to

raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

.....

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1) (d) (i) and (ii) of the Act.

19. As rightly contended by the learned Additional Public Prosecutor, the prosecution has to show the fundamental or foundational facts and on proving the same, the Court has to raise presumption that the illegal gratification was for the purpose of motive or reward.

20. No doubt, the said presumption is a legal presumption and is subject to rebuttal. The main contention of the petitioner is that even according to the prosecution, the demand for illegal gratification was

made by the second accused and not by the first accused and according to the learned Senior Counsel, the prosecution has neither alleged nor produced any material to show that the second accused made the said demand either with the knowledge of the petitioner or at his instance.

21. But the learned Additional Public Prosecutor would submit that it is the specific case of the prosecution that though the initial demand was made by the second accused, after reducing the bribe amount from Rs.15,000/- to Rs.13,000/-, the second accused for further reduction, he had directed the complainant to approach the first accused and accordingly, she approached the first accused on 05.04.2022 and at the request of the defacto complainant, the first accused reduced the amount from Rs.13,000/- to Rs.10,000/- and that subsequently on 06.04.2022, the first accused had reiterated his earlier demand and directed the defacto complainant to hand over the amount to the second accused, who was very much sitting infront of the first accused.

22. As rightly contended by the learned Additional Public Prosecutor, the prosecution has raised necessary allegations that the first

demand was made by the first accused on 05.04.2022 before trap proceedings and reiterated his demand on 06.04.2022 and directed the complainant to hand over the bribe amount to the second accused and accordingly, the second accused had received the amount. It is the specific contention of the prosecution that the first accused was very much available at the time of trap proceedings and the phenolphthalein test conducted on both the hands of the second accused, proved positive.

23. At this juncture, it is necessary to refer the known text book for the subject, Powers of the High Courts under Section 482 Cr.P.C., authored by **Hon'ble Justice.S.Rathinavel Pandian,** for the Division Bench of the Hon'ble Apex Court, in **State of Haryana Vs. Bajan Lal** reported in **1992 Suppl.(1) SCC 335** and whereunder the Supreme Court enumerates 7 categories of cases, where the power can be exercised under Section 482 of Cr.P.C and the same are reproduced hereunder;

> "***102***. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent*

powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

24. The learned Additional Public Prosecutor has relied on the judgment of Hon'ble Supreme Court in ***Chilakamarthi Venkateswarlu and another Vs. State of Andhra Pradesh and another*** reported in ***AIR 2019 SC 3913***, wherein the Hon'ble Apex Court has elaborately dealt with the power of High Courts under Section 482 Cr.P.C and the relevant passages are extracted hereunder :

> "*12. The plenary inherent jurisdiction of the Court under Section 482 of CrPC may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.*
>
> *13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice.*
>
> *14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.*

15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W. Palanitkar and Ors. v. State of Bihar and Another2. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision.

25. It is settled law that the High Court is having power and jurisdiction to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue, would be abuse of process of the Court or that the ends of justice required that the proceedings are to be quashed and that this Court while exercising the power under Section 482 Cr.P.C does not function as a Court of Appeal or Revisional Court.

26. It is pertinent to note that though the inherent jurisdiction under the said Section is very wide, it has to be exercised sparingly, carefully and with caution and that the same is to be exercised *exdebito justitiae* to do real and substantial justice for the administration of which alone, Courts exist. Moreover, the inherent power should not be exercised to stifle a legitimate prosecution.

27. As rightly contended by the learned Additional Public Prosecutor, the grounds/aspects now canvassed by the petitioner are matter for consideration before the trial Court. As rightly pointed out by the learned Additional Public prosecutor, the petitioner by raising the

above grounds has been attempting to have a mini trial at this stage, which is legally impermissible and the veracity of the grounds raised can only be tested at the trial.

28. On considering the final report, the statements filed along with the final report and other documents produced and also phenolphthalein test results, as rightly contended by the learned Additional Public Prosecutor there are *prima facie* materials available to proceed against the petitioner/accused. The Constitution Bench of Hon'ble Supreme Court in ***Neeraj Dutta'***s case referred above, has expressed their hope and trust that complainants as well as the prosecution make sincere efforts to ensure that the corrupt public servants are brought to book and convicted, so that the administration and governance becomes unpolluted and free from corruption.

29. Considering the above, this Court is of the clear view that it is not a fit case for quashing of charge sheet and hence this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

30. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

17.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1.The Special Judge, Special Court
for cases under the Prevention of Corruption Act,
Tiruchirappalli.

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

3.The Inspector of Police,
Vigilance and Anti Corruption Department,
Directorate of Vigilance and Anti Corruption,
Trichy District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
Crl.O.P.(MD)No.8417 of 2023
in
Crl.M.P(MD)Nos.7342 and 7343 of 2023

Dated: 17.07.2023