



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)No.22734 of 2022

and

Cr1.MP(MD)No.16092 of 2022

S.Thennarasu : Petitioner/Accused
Vs.

1.The State rep. By
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Pudukottai District. : 1st Respondent/Complainant

2.N.Prabhakaran : 2nd Respondent/De-facto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in Special CC No.3 of 2022 on the file of the Chief Judicial Magistrate, Pudukottai District and quash the same as against the petitioner and pass such any or other orders.

For Petitioner : Mr.R.Anand

For 1st Respondent : Mr.S.Ravi
Additional Public Prosecutor

For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking in order to set aside the charge sheet filed in CC No.3 of 2022 on the file of the Chief Judicial Magistrate, Pudukottai District.



2.The facts in brief:-

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The petitioner is facing the charge for the offence punishable under section 7 of the Prevention of Corruption (Amendment) Act, 2018. As per the case of the prosecution, on the basis of the complaint given by the de-facto complainant, trap was laid. On the basis of the demand of Rs.5,000/- as bribe for issuing "No Objection Certificate", trap was conducted, on 28/10/2020 and while allegedly receiving the money, he was apprehended and after completing the formalities of arrest, now the trial process is underway.

3.Pending trial process, on going through the evidence of PW1, it was noticed that sanction order was granted under old Act. On that basis, this revision petition has been filed by the petitioner seeking quashment of the entire proceedings.

4.Heard both sides.

5.Now the grievance of the petitioner is that while issuing sanction order, PW1 has not applied his mind in a strict sense to the statute, which was in force on the date of the alleged occurrence. So according to him, the allegations that have been made against him attract the



offence under section 7(1) of the Prevention of Corruption Act, 2018, but whereas without taking into account of the above said development of law, PW1 has issued sanction order as if it is the offence under section 7 of the Prevention of Corruption Act, 1988.

6. According to the learned counsel appearing for the petitioner, because of the defective sanction order, he has been affected prejudicially. Had it been taken into account the development of law and the consequential amendment, PW1 would not have issued the sanction order. So according to him, there is world of difference between section 7 of the Prevention of Corruption Act, 1998 and section 7 of the Present Act. If the prosecution is allowed to be prosecuted on the defective sanction order, then his case will be prejudiced.

7. Per contra, the learned Additional Public Prosecutor would submit that it is a typographical error, that was committed by PW1 at the time of issuing the sanction order. As per section 19 of the Prevention of Corruption Act, any defect or error in the sanction order, that will not vitiate the proceedings, unless serious prejudice has been alleged and proved. According to him, this does not affect the prosecution case and will not cause any prejudice to the defence also.



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8. In reply to the above said argument, the learned counsel appearing for the petitioner would rely upon various judgments to bring home the point and what would be the consequence of such defective sanction order.

9. For better appreciation of the issue involved in this case, let us extract section 7 of the Prevention of Corruption Act, 1988 and section 7 of the Prevention of Corruption amended Act.

10. Section 7 of the Prevention of the Corruption Act, 1988 reads as under:-

"7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in



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the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation.-(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.



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(c) Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

11. Section 7 of the Prevention of Corruption Amendment Act, 2018 reads as follows:-

"7. Offence relating to public servant being bribed. - Any public servant who, -



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(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improper or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1. For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.



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Explanation 2.- For the purpose of this section.-

(i) the expression "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant, or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

12. Let us appreciate the argument of the learned counsel appearing on either side, in the light of the above said amendment and in the light of the judgment cited.

13. First let us take the judgments cited by the learned counsel appearing for the petitioner in a chronological order.

1. In State of Goa Vs. Babu Thomas [(2005) 8 SCC 130]. In that case, the



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sanction order was issued by the incompetent authority. So a fresh sanction order was ordered to be issued by the competent authority.

2.In State of Uttarakhand Vs. Yogendra Nath Arora and another [(2013)14 SCC 299]. It is also on the very same point with regard to the competency of the sanction order issuing authority with a direction to issue a sanction order by the competent authority, the above said matter has been discussed and decided.

3.In Nanjappa Vs. State of Karnatama [(2015)14 SCC 186]. In that case, it has been observed by the Hon'ble Supreme Court that when sanction order is issued by the competent authority and found to be defective, no acquittal is possible and fresh sanction order must be obtained.

4.In State of Mizoram Vs. C.Sangnghina [(2019)13 SCC 335], the same issue has been raised with regard to the sanction order by the incompetent authority and a fresh sanction order was ordered to be obtained.

14.In this case, we are dealing with the improper issue of sanction order. As mentioned above, the grievance of the petitioner is that PW1 has not considered the



prosecution case in the light of the amended Act. so at best, it can be termed only as 'improper sanction order'.

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15. In the light of the evidence of PW1, I am of the considered view that quashment of the entire proceedings is not permissible in law. Because of the improper sanction order, at best, PW1 can be directed to issue fresh sanction order by taking into account all the relevant materials and circumstances. So with the above said direction, this matter can be disposed of with the following direction:-

PW1, who is the sanctioning authority is required to pass appropriate orders by going through records by taking note the amended provisions of the Prevention of Corruption Act, 1988, as amended by the Act, 2018. Let the entire papers be resubmitted to PW1 mentioned by the respondent herein. On going through the records afresh, appropriate orders may be passed without being influenced, either by the earlier order or observation made by this court. The above said process shall be completed within a period of two months, from the receipt of records. Till then, the trial may be kept in abeyance.



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16. With the above said direction, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petition is closed.

09/01/2023

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

1. The Chief Judicial Magistrate,
Pudukkottai District.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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