



Crl.R.C.Nos.1268 and 1049 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on : 27.09.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.Nos.1268 and 1049 of 2024
and CMP.Nos.8891, 8892 11085 & 11087 of 2024

1 N.Raja	... Petitioner in Crl.R.C.No.1268 of 2024 / Accused-2
2. A.Murugesan	... Petitioner in Crl.R.C.No.1049 of 2024 / Accused-3

Vs

The Inspector of Police
Vigilance and Anti-Corruption Wing
Cuddalore - 1
[Cr.No.8/207]

... Respondent / Respondent
(in both Crl.R.Cs)

Common Prayer: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. praying to call for the records pertaining to the order dated 19.01.2024 made in Crl.M.P.No.622/2021 in Special C.C.No.4/2020 passed by the learned Chief Judicial Magistrate / Special Court (Prevention of Corruption Act) at Cuddalore, and set aside the same by allowing this revision petition.



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For Petitioner : Mr.T.Gowthaman, Senior Counsel
Assisted by Mr.R.Swarnavel (Crl.R.C.1268/2024)

&

Mr. R.Swarnavel
for Mr.T.S.Baskaran (Crl. R.C.1049/2024)

For Respondent : Dr.C.E.Pratap
(in both Crl Rcs) Government Advocate (Crl. Side)

COMMON ORDER

1.1 These revision petitions are preferred challenging separate Orders passed by the Special Court for Prevention of Corruption Act (Chief Judicial Magistrate Court), Cuddalore, in Crl.M.P.No.622 of 2021 in Special C.C.No.4 of 2020. They were taken out by A3 and A2 under Sec.239 Cr.P.C.

1.2The revision petitioners in Crl.R.C.1049 of 2024 and 1268 of 20024 respectively are the Executive Engineer of Trichy Town Panchayat and the Assistant Executive Engineer in Cuddalore Town Panchayat. The rest of the facts are:

- In 2016-2017, Thittagudi Town Panchayat, a local body in Cuddalore District had undertaken a project for laying road in Thittagudi Panchayat,



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where both these petitioners were entrusted with the responsibility of supervising the work.

- While so, a whistle blower preferred a complaint to the Vigilance and Anti-Corruption Cell alleging that the road in question was laid with sub-standard materials. The V & AC cell in turn forwarded the complaint to the Ombudsman, constituted under the provisions of the Tamil Nadu Local Bodies Ombudsman Act, 2014. So far as the Executive Officer of the local body is concerned, the Ombudsman has found no material to proceed against him criminally, and made its recommendations accordingly. This was accepted by the Government. So far as the Assistant Engineer, is concerned, there was no complaint made.
- While so, the said complainant moved this High Court in Crl.O.P.No.14798 of 2017, wherein this Court was briefly informed about the proceedings before Ombudsman, but as a Court did not have any clarity about the stage of the proceedings before the Ombudsman, it merely directed the investigating agency, namely the Vigilance and Anti-Corruption, to register a case. The case indeed has been registered in Crime No.8 of 2017 for the offence U/s.409, 420, 477 and 471 r/w 109 I.P.C. and Section 13(2) and Section 13(1)(c) of Prevention of Corruption



Act, 1988.

- The investigating agency has since concluded its investigation and has laid its final report. It is right at this juncture, the petitioner had preferred Crl.M.P.No.622 of 2021 U/s.239 Cr.P.C. for discharging him.

2. Leading the arguments for the petitioners, Mr.T.Gowthaman, the learned Senior Counsel for the revision petitioner in Crl.R.C.1268 of 2024, submitted that when the legislature has passed the Local Bodies Ombudsman Act, 2014, then to bypass that Act would render the constitution of the very institution of Ombudsman redundant, and hence the investigating agency ought not to have laid its final report. He placed reliance on *Anil Kumar and others Vs M.K.Aiyappa and another* [(2013) 10 SCC 705)] and *Amal Kumar Jha Vs State of Chhatisgarh & another* [Crl.A.No.396 of 2016].

3. The learned Prosecutor submitted that the case came to be registered pursuant to the direction given by a learned Single Judge of this Court in Crl.O.P. 14798 of 2017, vide Order dated 27-07-2017, and that order was not challenged, and hence it has attained finality. That which the petitioners did not choose to challenge directly, they are barred from agitating the same indirectly



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in a collateral proceedings, argued the learned Prosecutor.

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4. In response, the learned counsel for the petitioners submitted that in terms of the ratio in ***G. Prabakaran Vs Superintendent of Police & another*** [(2018) 5 CTC 623 : (2018) 2 LW (cri) 498], a Division Bench of this Court had held that the High Court in exercise of its powers under Sec.482 Cr.P.C. cannot direct registration of a criminal case, and that this judgement binds the learned Single Judge who passed the order in Crl. O.P.14798 of 2017. However, in directing the registration of a case, the order passed in Crl.O.P.14798 of 2017, runs counter to the dictum in ***Prabakaran case***. The learned Single Judge, indeed has referred to the enquiry pending before the Ombudsman in his Order in Crl.O.P 14798 of 2017.

Discussion & Decision

5. The arguments advanced on either side is dissected: (a) The sustainability of the Order of the learned Single Judge in Crl.O.P.14798 of 2017 directing registration of the case vis-a-vis the Local Bodies Ombudsman Act (hence forth Ombudsman Act); and (b) the Order of the learned Single Judge Vs the dictum of the Division bench of this Court in ***Prabakaran case***. Both the issues



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however, can be folded into one: Whether the Order in Crl O.P.14798 of 2017 is *per incuriam*.

6. The second part is taken first. Whether the Order of the Division Bench in ***Prabakaran' case*** will invalidate the Order passed by the learned Single Judge in Crl. O.P. 14798 of 2017? Both on facts and on law this argument is misconceived. It is explained:

- a) The learned Single Judge has passed his Orders on 27-07-2017, where as the Division Bench in ***Prabakaran' case*** has delivered its verdict only on 20.09.2018, more than a year after the learned Single Judge had passed the order in Crl.O.P.14798 of 2017. There is nothing in the Order in ***Prabakaran's case***, that the Division Bench intended to set at naught all that had been done prior to the said Order.
- b) Secondly, the issue before the Division Bench in ***Prabakaran's case*** *inter alia* involved maintainability of a petition under Sec.482 Cr.P.C, seeking a direction from the High Court for registering a case by bypassing Sec.156(3) Cr.P.C. route to remedy. And, the Court has answered it in the negative. Indeed, in the operative portion of its Order, the Division



Bench has not dealt with the power of the High Court to issue directions under Sec.482 Cr.P.C. Therefore, even if a Single Judge, by inadvertence invokes Sec.482 Cr.P.C., and directs registration of a FIR, it can only be construed as a breach of propriety in passing an order as it might stare on the face of the dictum in ***Prabakaran's case***, but it may not invalidate the Order passed. After all the Bar is part of the system, and every Advocate who presents a case before the Court should bring to the knowledge of any Court presided by a Single Judge or by a Bench of larger strength of the correct legal position so that no Judge falls into error even inadvertently.

- c) What if the Bar fails to alert the Court, and an order passed by it is found to be in breach of propriety? Can a coordinate Bench of equal strength interfere with the said Order? This is answered in the next paragraph.

7. A High Court is a superior Court of Record with plenary jurisdiction with regard to matters concerning its own jurisdiction. In ***Naresh Shridhar Mirajkar Vs State of Maharashtra*** [AIR 1967 SC 1], a seven judges' Bench of the Supreme Court had observed that an order of a superior court of record was not open to attack on a collateral ground. Gajendragadkar, CJ observed:



59. *This Court cited a passage from Halsbury's Laws of England where it is observed that “ prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court”. If the decision of a superior court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court.*

An order of a superior court of record can either be regular or irregular. If it is the former then it is susceptible to correction by way of appeal. In the latter, the court may set it aside in exercise of its inherent powers. The point was lucidly explained by Lord Diplock, speaking for the Privy Council in **Grafton Isaacs v Emery Robertson**, 1984 3 W.L.R 705, where the learned Law Lord had observed thus:

“Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions



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between orders that are “void” in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are “voidable” and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions “void” and “voidable” respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in the appeals Marsh v. Marsh [1945] A.C. 271, 284 and MacFoy v. United Africa Co. Ltd.,[1962] A.C. 152, 160; but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall into a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceedings to have them set aside. The cases that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind; what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make. The judges in the cases that have drawn the distinction



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between two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts ex debito justitiae the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice.”

These observations were quoted with approval by Venkatachaliah, J (as the learned Chief Justice then was) speaking for a unanimous Constitution Bench in ***Union Carbide Corporation Vs Union of India***, [(1991) 4 SCC 584], observing, *inter alia*, as under:

“72. In relation to the proceedings and decisions of superior courts of unlimited jurisdiction, imputation of nullity is not quite appropriate.”

What could now be deduced is that if an Order of the Court is found to be in breach of propriety, which is essentially an irregularity, then the same Court has the inherent power to recall it, but the same cannot be interfered with by another Court of co-ordinate jurisdiction in a collateral proceeding. It could now be derived that the order of the learned Single Judge Crl O.P.14798 of 2017 cannot be held *per incuriam* and hence cannot be ignored. This answers one aspect of the arguments of the revision petitioners.



8. Moving to the next leg of the arguments of the revision petitioners, whether the Order of the single Judge in Court in Crl.O.P.14798 of 2017, per incuriam for ignoring the Local Bodies Ombudsman Act? It depends on how the Ombudsman Act is conceived by the legislature.

9.1 The preamble to the Ombudsman Act reads: *“An Act to provide for the establishment of Ombudsman for conducting enquiry on the allegations against the elected members of the Local Bodies and the Officers and employees working under the Local Bodies in the State of Tamil Nadu and for matters connected therewith and incidental thereto.”* Sec.10(1) of the Act provides, *“Notwithstanding anything contained in this Act, the Government may refer **any allegation of corruption or maladministration** against a local body or a public servant which is within its knowledge or brought to their notice, to the Ombudsman, and the Ombudsman is required to enquire into it.”* The word 'allegation' is defined in Sec.2(2) of the Act and if the entire section is carefully read it only indicates that it should be an allegation involving different shades of corrupt practices. The expression '*Maladministration*' is defined in Sec.2(8). What is contextually significant is Sec.11. It reads:



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“11. Initiation of prosecution :-

(1) If, after an enquiry, the Ombudsman finds that there is a prima facie case against a public servant involving a criminal offence, the Ombudsman may refer the complaint and the findings with recommendation to the appropriate investigating agency.

(2) The appropriate investigating agency, on completion of investigation, shall initiate prosecution after obtaining sanction from the competent authority.”

9.2 Is there anything in the Local Bodies Ombudsman Act that makes the proceedings under it a precondition or a *sine quo non* for registering a case? Does the Act, subject to the need for obtaining any statutory sanction for initiating prosecution against a public servant, including that of the Local Body, take away the power of the Court to register a case even under Sec.156(3) of Cr.P.C. [now Sec.175(3) BNSS]?

10. Sec.10(1) which enables the Government to refer an allegation to the jurisdiction of the Ombudsman starts with a *non obstante* clause, and going further it states that the Government '*may*' refer any allegation to Ombudsman,



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and they in combination makes it evident that it is not mandatory that the Government should in every case refer a matter to the Ombudsman constituted under the Act. If Sec.11 is analysed it portrays an Ombudsman into a recommendatory body for instituting a criminal case. Taken as a whole there is nothing in the Act which makes a reference to the Ombudsman mandatory or as a precondition for a police officer or the Court to hold or direct, as the case may be, an enquiry or investigation into an allegations which possessess the ingredients for constituting an offence. An interdiction of the variety imposed on a police office to enquire into or investigate a complaint as is found in Sec.17A of the Prevention of Courrrption Act, 1988, is not there in the Ombudsman Act. And the Ombudsman Act does not create an exception to the operation of Cr.P.C. or the powers of the Court act on a complaint.

11. Where the above discussion takes this court to is to the only possible conclusion that the powers of the Court to act on a complaint under the Cr.P.C. is not intended to be interefered with by the legislature, which necessarily leads to the next inference that an Order of the Court, no matter whether it is exercised under Sec.156(3) Cr.P.C. [now Sec. 175(3) of BNSS] or under Article 482 of the Constitution is not fettered by non-compliance of the Local



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Body Ombudsman Act.

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12. The outcome of these revision petitioners now predictable. However, this court is now required to consider the merit of couple of authorities which the petitioners' counsel had relied and its efficacy to change the course of the outcome. Both *Anil Kumar case* [(2013) 10 SCC 705)] and *Amal Kumar Jha case* [Crl.A.No.396 of 2016] pertains to a need for sanction under Sec.197 Cr.P.C. and the ratio in those authorities hardly has any relevance to the issue before this Court, and necessarily they throw no impact on the outcome of these petitions.

13. In the result, these petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
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To:

- 1.The Chief Judicial Magistrate /
Special Court (Prevention of Corruption Act)
Cuddalore.
- 2.The Inspector of Police
Vigilance and Anti-Corruption Wing
Cuddalore – 1.
- 3.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE, J.

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Pre-delivery Order in
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