



Crl.O.P.(MD).No.5912 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.12.2023
Pronounced On : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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K.Raja Mohammed

... Petitioner

Vs.

1.The State Rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli Detachment.
(Crime No.7/2016)

2.M.Syed Abil

... Respondents

PRAYER : Petition filed under Section 482 Criminal Procedure Code, to call for the entire records pertaining to the case in Special Case No.9 of 2022 on the file of the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli and quash the same as against the petitioner.



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For Petitioner :Mr.R.Anand

For Respondents :Mr.T.Senthil Kumar

ORDER

This Criminal Revision Case has been filed to quash the case in Special Case No.9 of 2022, on the file of the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, as against the petitioner.

2. The petitioner is the accused No.4 in S.C.No.9 of 2022 on the file of the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, filed the quash petition to quash the proceedings initiated against him for the offences punishable under Sections 120B, 167, 409 and 34 of IPC and Section 13(2) r/w 13(1)(d)(i)(ii) and 13(1)(c) of the Prevention of Corruption Act, 1988.

3. According to the prosecution, the petitioner is the contractor. He was entrusted with two works as per the scheme called Integrated Urban



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Development Mission (herein after called as IUDM). As per the tender and award of contract, the petitioner should do the work at Rail Nagar. Ward No-I and Siva Ilango Nagar. As per the work, he should have constructed the drainage. According to the prosecution, he has not done the said work and deviated the work allotted. Further, he completed the deviated work as well as the work originally entrusted with false measurement. Therefore, the investigating agency, after conducting detailed investigation, submitted the final report with the relevant document and examination of the witness with the specific following averments:

Thus in the Course of the same transaction, the Accused Officers 1 to 4 have entered into Criminal Conspiracy with common dishonest intention of deviating the works against the tender, Administrative Sanction, Technical Sanction terms of contract and estimate and framed incorrect records by entering boosted measurement in the measurement book than the actual quality and quantity utilized and committed Criminal Breach of Trust, upon the work entrusted to them and under their domain and committed offence of Criminal Misconduct by corrupt means, by abusing their Position as Public Servant,



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while holding office as a Public Servant without any Public interest.

As such the accused officers 1 to 4 are liable to be prosecuted under Section 120B, 167, 409 and 34 of Indian Penal Code and 13(2) r/w 13(1)(d) (i)(ii)(iii) and 13(1)(c) of the Prevention of Corruption Act, 1988

With these allegations, the petitioner filed the quash petition.

4. The learned counsel for the petitioner would submit that the fund was originally allotted for the construction of some other purpose, but, the same was with the permission of the higher officials, diverted for some other purpose and the said purpose also was satisfactorily done to the satisfaction of the appropriate authority. Subsequent to the completion of the work, the same was rectified by the Commissioner of Municipalities, according to the petitioner, who is the competent authority to rectify the same. The said document also form part of the record and hence, he seeks indulgence of this Court to quash the proceedings, since his contract work was approved and rectified by the competent authority. So far as false



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measurement is concerned, the competent authorities made inspection after many years. On the basis of the investigation report, the finding of the investing agency that there was a false entry in the M-book is not correct and it is not the prosecution case that the petitioner obtained the amount without completion of work. But the prosecution case is that the work was not properly done as per the tender conditions. Hence, said allegations are on the basis of the documents annexed in the final report as well as the undisputed documents filed by the petitioner in the quash petition. There are no *prima facie* materials to frame the charges and seeks the indulgence of this Court to quash the proceedings.

5. The learned Additional Public Prosecutor, per contra submitted that the submission of the learned counsel for the petitioner all are questions of fact, which has to be decided during the course of trial upon appreciation of the evidence. As per the final report, the petitioner and the other accused conspired together and committed misappropriation to the tune of Rs.40,33,471/- by making a false entry in the M-book. There was disbursement of amount without completion of entire work and also quality



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fixed in the tender condition is not met due to substandard completion of work. Therefore, the defence of the petitioner that the work was done in accordance with the tender condition and the claim was made for the work done are all disputed question and the same has to be considered at the time of trial on the basis of the evidence. Hence, he prays to dismiss the quash petition.

6. This Court considered the rival submission made on the side of both the parties and perused the materials available on records and precedents relied upon by them.

7. The prosecution has come forward with the specific case that this petitioner is the contractor who conspired with the officials namely A1 to A3 and created false entries in M-book and obtained the payment as if the work was completed satisfying the quantity as well as the quality.

8. According to the prosecution, the work was substandard. Apart from that the fund was diverted to some other work. Therefore, they



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intended to swindle the amount. Even though the rectification was done subsequently, according to the prosecution, that there was a short fall in quantity and quality. The said fact has to be decided in the trial. Even though the learned counsel for the petitioner produced a number of documents to show that there was a proper execution of work, This Court is not inclined to look into the document and make discussion over his defence which has to be appreciated during the trial.

9. The Hon'ble Supreme Court repeatedly held that while exercising under Section 482 of Cr.P.C., jurisdiction, the Courts are required to refrain from making a discussion on the factual aspect and taking a decision, as appellate Court cannot sit over the judgment of conviction or acquittal at the time of quash. It is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 at page 347***

28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the



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prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. *The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the*



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prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of



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recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. *Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:*

30.1. *Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

30.2. *Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as*



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would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.



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***In S. Krishnamoorthy v. Chellammal, (2015) 14 SCC 559
at page 561***

5. The above defence of the respondent (the accused) before the High Court, in the petition filed under Section 482 of the Code, is nothing but absolutely factual in nature, which is neither admitted by the complainant, nor apparent on the face of the record. Such type of disputed factual defences could have been appreciated only by the trial court, after the parties led their evidence. In our opinion, the High Court committed grave error of law in examining the allegations and counter-allegations which are disputed and factual in nature in a proceeding under Section 482 of the Code.

6. In Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] , this Court, explaining the law on the scope of Section 482 of the Code, has observed, in para 32, as under: (SCC p. 448)

“32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a



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conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal.”

By applying the above principle, this Court is unable to appreciate the argument of the learned counsel for the petitioner by delving into the factual aspect on the basis of the material submitted by the learned counsel for the petitioner. Further, the case of the petitioner that there was no manipulation of the measurement in the M-book, the work was properly executed by the petitioner are all the appreciation of the evidence, more particularly, the prosecution disputed the documents produced before this Court by the petitioner. Therefore, this Court without exercising any opinion on the submission of the learned counsel for the petitioner, dismiss the quash petition.



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10. Accordingly, this Criminal original Petition is dismissed with liberty to the petitioner to raise all the contentions before the trial Court and the trial Court is directed to dispose of the trial proceedings without getting influenced by this order.

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NCC :Yes/No
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K.K.RAMAKRISHNAN, J.

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