



Crl.O.P.(MD)No.17930 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2024

Pronounced on : 22.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.17930 of 2024

and

Crl.M.P.(MD)Nos.11070 and 11071 of 2024

1.Nepoliyan

2.Sebastian Levey

3.Rajan

... Petitioners

Vs.

1.The State by
The Inspector of Police,
Nerkuppai Police Station,
Sivagangai District.
(Crime No.39 of 2021)

2.Siva
Deputy Block Development Officer,
Static Surveillance Team,
Thiruppathur,
Sivagangai District.

... Respondents

Prayer : This Criminal Original Petition filed under Section 528 B.N.S.S.,
to call for records pertaining to the charge sheet in S.T.C.No.494 of 2022



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on the file of the District Munsif cum Judicial Magistrate Court,
Singampunari and quash the same as illegal.

For Petitioners : Mr.T.Lenin Kumar

For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to call for the records in S.T.C.No.494 of 2022 pending on the file of the District Munsif cum Judicial Magistrate Court, Singampunari and quash the same.

2. The petitioners are the accused 1 to 3 in S.T.C.No.494 of 2022 for the alleged offences under Sections 171(E) and 511 IPC.

3. The case of the prosecution is that when the second respondent/ defacto complainant, who was the then Deputy Block Development Officer, Static Surveillance Team-3, Thiruppathur 185, was on surveillance on 05.04.2021, at about 11.00 a.m. at Nerkuppai to Ponnamaravathi road, he intercepted a Wolkswogan car bearing



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Registration No.TN-63-BF-1071 and found that the petitioners were in possession of Rs.20,000/-, a booklet containing the name of DMK functionaries and also a booklet containing the name of voters and that since the petitioners were not having any documents for possessing the currency, the second respondent has lodged a complaint.

4. It is evident from the records that on the basis of the complaint given by the second respondent, considering the fact that the offences are non-cognizable in nature, the first respondent applied for permission and as per the permission granted by the jurisdictional Magistrate, FIR came to be registered in Crime No.39 of 2021 on 05.04.2021 on the file of Nerkuppai Police Station for the offences under Sections 171(E) and 511 IPC and after completing the investigation, charge sheet came to be filed before the jurisdictional Court and the case was taken on file in S.T.C.No. 494 of 2022 and is pending on the file of the District Munsif cum Judicial Magistrate Court, Singampunari.

5. The main contention of the petitioners is that the allegations levelled in the FIR and in the charge sheet do not make out any case



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against the petitioners as the allegations are baseless, that the second respondent does not have any material to substantiate his allegations that the petitioners possessed money to distribute to the voters, that there is no allegations that the petitioners offered money to the voters and the same was accepted by them and that since the allegations for the offence under Section 171(E) IPC itself is baseless, charge under Section 511 IPC cannot stand.

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit the surveillance team has recovered currency to the tune of Rs.20,000/- along with the list containing the DMK functionaries and list of voters, that the petitioners have not offered any reason or explanation for possessing that amount at that time and that all the points / aspects now canvassed can only be decided at the trial.

7. Before entering into further discussion, it is necessary to refer Sections 171(B) and 171(E) IPC,

“171B. Bribery.— (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral



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right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery: Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171E. Punishment for bribery.-*Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; Provided that bribery by treating shall be punished with fine only. Explanation - “Treating” means that form of bribery where the*



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gratification consists in food, drink, entertainment, or provision”

8. Section 171(B) IPC defines the offence of bribery at an election. Bribery defines primarily as the giving or accepting of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election. Section 171(B)(1)(ii) IPC provides that if a gratification is given to any person inducing him or any other person to exercise any electoral right, then it will amount to bribery. Section 171(A)(b) defines electoral right which indicates that electoral right is of definite nature and is to be exercised by individual.

9. At this juncture, it is necessary to refer the decision of the Telangana High Court in ***Sunil Kumar Ahuja and another Vs. The State of Telangana and another*** reported in ***CDJ 2023 TSHC 023*** relied on by the learned counsel appearing for the petitioners, wherein, the police has recovered huge amount of case of Rs.7,51,10,300/- from the possession of the petitioners and another and the relevant passage is extracted hereunder:-



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“8. To attract an offence punishable under Section 171-E of IPC, the ingredients of Section 171-B of IPC have to be fulfilled. If a person gives any gratification to any person for exercising any electoral right or for having exercised such right or accepts such amount from any person as a reward for exercising any right or inducing or attempts to induce any person in exercise of such rights amounts to bribery. In the present case, the amounts were allegedly found in the possession of the petitioners. The police assume that the said amounts are meant for political leaders to bribe the voters in the ensuing elections of December 2018. Admittedly, no person was bribed or any money was accepted by those people for such purpose of exercising electoral franchise. For the said reasons, the offence under Section 171-B of IPC is not made out and consequently the question of prosecuting these petitioners for the offence of bribery punishable under Section 171-E of IPC does not arise.”

10. In the case of ***Veeraraghavan Vs. Rajinikanth*** in ***Crl.R.C.No. 410 of 1996 dated 18.06.1997***, a learned Judge of this Court, while considering the charge against the film actor Rajinikanth that on the eve of general election he asked the voters of Tamil Nadu to accept Rs.500/- or Rs.1,000/- from the opponent candidate and refrain from voting for that



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candidate even after taking money, after referring Section 171(B) IPC, has observed as follows:-

“16. ... This provision would make it clear, that the act of giving a gratification to any person to exercise any electoral right and accepting such a gratification for exercising any such electoral right would amount to the offence of bribery. In the instant case, as pointed out by learned Public Prosecutor, neither the giver nor the acceptor is the party before the Court. There is no allegation that the respondent herein either gave or received any such gratification. As such the offence under Section 171-B of the Indian Penal Code – Simplicitor, would not be attracted in this case.”

11. In the case on hand also, it is not the case of the prosecution that the petitioners have bribed any person or that money was accepted by some person from the petitioners for the purpose of exercising electoral franchise.

12. As rightly contended by the learned counsel appearing for the petitioners, there is absolutely no allegations that the petitioners have given money to anybody and that somebody had received the same.



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13. Considering the above, this Court has no hesitation to hold that the offence under Section 171(B) IPC is not made out and as such, the question of invoking Section 171(E) IPC which deals with punishment for the offence of bribery does not arise at all and as such, continuing the prosecution would only amount to abuse of process of law. Hence, this Court concludes that the impugned charge sheet cannot legally be sustained and the same is liable to be quashed.

14. In the result, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.494 of 2022 pending on the file of the District Munsif cum Judicial Magistrate, Singampunari is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

22.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The District Munsif cum Judicial Magistrate,
Singampunari.
- 2.The Inspector of Police,
Nerkuppai Police Station,
Sivagangai District.



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K.MURALI SHANKAR,J.

csn

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

Pre-Delivery Order made in
Crl.O.P.(MD)No.17930 of 2024
and
Crl.M.P.(MD)Nos.11070 and 11071 of 2024

Dated : 22.11.2024