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Crl.O.P.No.30592 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2025
PRONOUNCED ON : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.30592 of 2024 and
Crl.M.P.No.17836 of 2024

K.Sekar

... Petitioner

Vs.

Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore,
(in Coimbatore V & AC Cr.No.8/2018/AC/CB.)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure/528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in Spl.C.C.No.5 of 2024 on the file of the learned Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore District and quash the same.

For Petitioner : Mr.R.Shunmugasundaram, Senior Counsel for
Mr.D.Senthur Kugan

For Respondent : Mr.S.Udayakumar,
Government Advocate (Crl. Side)

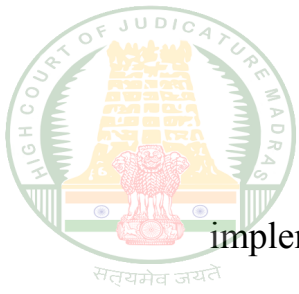


CrI.O.P.No.30592 of 2024

ORDER

WEB COPY The petitioner/A1, who is facing trial in Special C.C.No.5 of 2024 for offence under Sections 120-B, 167, 409, 468, 477A & 109 IPC and Section 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 before the learned Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore, has filed this present Quash Petition.

2.The learned Senior Counsel appearing for the petitioner submitted that the petitioner was initially appointed as Junior Assistant in Tamil Nadu Forest Department in the year 1987 and promoted as Deputy Conservator of Forest on 16.05.2022. During the year 2011, while the petitioner was working as Assistant Conservator of Forest, the Tamil Nadu Forest Department implemented a scheme by name “Tamil Nadu Biodiversity Conservation and Greening Project” (TBGP) with assistance of Japan International Cooperative Agency (JICA) for a period of eight years from 2011-12 to 2018-19. The implementation of the project in the field is headed under the supervision and control of the Project Management Unit (PMU). The forest divisions, wildlife and other units will be designated as Divisional Management Units (DMU). For



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implementing this project, the Forestry Extension Officer is incharge.

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The Forest Rangers implementing this project would be designated as Field Management Unit (FMU). The PMU is guided by the High Level Committee (HMC) headed by the Chief Secretary to Government and the Governing body headed by the Principal Chief Conservator of Forests on all financial policies issues. The project funds will be operated through the bank accounts following the provisions in the manual and departmental procedure.

3.He further submitted that the nursery is being raised in the Forest Extension Centres under the control of the Forest Extension Officer (FEO) in every district and also in private lands on agreement basis. Generally, the nursery work (sowing) is carried out between the January and March of every year and the same is maintained between the months of April and August. The plantation work is carried out between the month of August and December. After getting sufficient growth, the plant seedlings are distributed to the farmers. At the time of disturbance of plant seedlings, a consent letter from the farmer, copy of patta and photographs obtained by the officers of the Forest Extension Office. The Forest Ranger or the Technical Assistant will prepare an estimate for the



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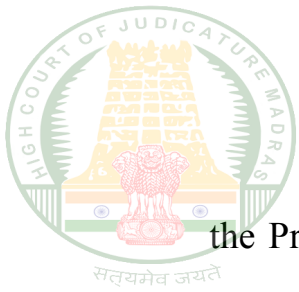
expense towards the planting of particular number of plant seedlings in a particular cluster. The transportation of the plant seedlings will be entrusted to petty or registered contractors to distribute the plant seedlings to the farmers. The petty or registered contractors to carryout the plantation work including transportation of plant seedlings. After completion of the planting works, the Forest Ranger/Technical Assistant will prepare vouchers in the form of running account bill/petty contractor bill and submit the same to FEO for sanctioning the bill. The FEO will inspect all the places and then only the bills will be cleared. The Ranger/Technical Assistant has to give a completion report as the works enumerated in the Divisional Sanction order get completed. Thereafter, the amounts will be credited in the account of the Forest Extension Officer from PMU and the Ranger will draw the amount through cheques and then distribute the cash to petty or registered contractors after getting proper vouchers.

4.The learned Senior Counsel further submitted that the case projected against the petitioner is that during the implementation of the scheme in the year 2014-15, the petitioner colluded and conspired with the other accused, fabricated the vouchers issued four cheques totalling



to the tune of Rs.10,77,471/- and only a meagre amount of Rs.76,210/-

given to the 48 farmers and criminally misappropriated the remaining amount of Rs.10,01,261/-. He further submitted that the petitioner was holding only additional charge for less than seven months from 27.05.2014 to 19.12.2014 and there was no complaint. Even the successor to the petitioner not enquired in this case to ascertain the facts and to find out what is the role of the petitioner and whether the petitioner connived with the other accused in commission of offence. The successor to the petitioner not found any administrative or financial discrepancies and reported the same to the Chief Conservator of Forest. The Supervisory Authority/Chief Conservator of Forest in implementing the scheme was not enquired by the respondent to ascertain the veracity of the allegations against the petitioner. The Tamil Nadu Biodiversity Conservation and Greening Project with assistance of Japan International Cooperation Agency (JICA) is formulated and implemented by an operational manual which prescribes for an Internal Audit headed by the team comprising of Principal Chief Conservator of Forest and Auditor General. The Internal Audit is conducted every year and no adverse remarks against the petitioner in any report. As per the operational manual, outsourcing contractual service and staffs can be approved by



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the Principal Chief Conservator of Forests and the petitioner herein has no power of appointing A3 as a Contractor, hence there is no nexus or collusion of the petitioner with A3.

5.He further submitted that the sanction order issued in this case is defective and the sanctioning authority not applied his mind while according sanction which vitiates the cognizance taken by the Trial Court. Further, no sanction under Section 197 of Cr.P.C obtained for offence under Sections 120-B, 167, 468, 471, 477-A and 409 IPC. He further submitted that the petitioner attained superannuation on 31.07.2023, thereafter the above case filed.

6.In support of his submissions, the learned Senior Counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of ***“Directorate of Enforcement v. Bibhu Prasad Acharya and others*** reported in ***(2025) 1 SCC 404***” wherein it had held that there are two conditions for applicability of Section 197(1). The first condition is that the accused must be a public servant removable from his office by or with the government's sanction. The second condition is that the offence alleged to have been committed by the public servant while acting or



purporting to act in the discharge of his duty. Further it had held that

Taking the averments made in the complaint as correct, the act alleged against him has been done by him purporting to act in the discharge of his official duties. It is not even the allegation in the complaints that the two respondents were not empowered to do the acts they have done. Thus, in the present case, the petitioner only performed his duty as per the operational manual prescribed, hence the sanction under Section 197 of Cr.P.C is imperative.

7.Making the above submissions and relying upon the above decision, the learned Senior Counsel prays for quashing of the criminal proceedings against the petitioner.

8.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the petitioner was formerly working as Forestry Extension Officer, Namakkal from 27.12.2013 to 31.03.2016 holding additional charge of Salem District from 01.02.2014 to 19.12.2014 and Coimbatore from 27.05.2014 to 19.12.2014. The Forest Department formulated a project primarily focusing its attention on conservation of vital biodiversity and the project



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also envisages large scale tree cultivation in private lands in order to increase the natural source outside the forest area. The project involves two stages. One raising nursery and another to distribute the saplings to the farmers. In the year 2014-15, the Government proposed to plant 1,70,000 seedlings in Coimbatore District at the cost of Rs.53.4 lakhs (including all expense on nursery and plantation). During implementation of TCPL, an amount of Rs.33,66,000/- was allotted for plantation of seedlings at the rate of Rs.19.80/-. The petitioner was holding additional charge, Coimbatore District from 27.05.2014 to 19.12.2014. There are post of Rangers, Foresters, Plot Watchers, Technical Assistants and Statistical Staffs to assist the FEO, the petitioner herein. In the year 2014-15, the Government proposed to distribute 55,000 seedlings and samplings distributed to 134 farmers. The distributed samples transported by beneficiaries on their own and samplings planted by the farmers in their lands on their own expenditure. The petitioner/A1 and Mr.V.A.Murugan/A2, formerly Forest Ranger hatched criminal conspiracy with A3, a registered petty contractor, a private individual distributed meagre amount to the tune of Rs.76,210/- to 48 farmers and failed to adhere to the guidelines.



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9.He further submitted that the petitioner/A1 and A2 in collusion with A3 fraudulently prepared four vouchers under the form of running account bill to claim the plantation charges. The running account bills entered in the cash book and check register to make believe that the above registers are genuine and thereby falsified the accounts. A2 signed and falsely certified that he inspected. The petitioner is the authorized person for making payment and signed four vouchers in order to distribute the amount by way of cheque through A3. Further, A2 prepared the cheque bearing No.165627, dated 28.08.2024 for an amount of Rs.4,84,852/-, another cheque bearing No.165645, dated 11.10.2014 for an amount of Rs.4,04,573/-, another cheque bearing No.242107, dated 26.11.2014 for amount of Rs.1,02,571/- and cheque bearing No.242106 dated 11.10.2014 for amount of Rs.85,475/- for deduction of tax to A3. Thus, the petitioner signed in the running account bills and disbursed the above four cheques to A3. After encashing the four cheques for an amount of Rs.10,77,471/-, the petitioner/A1 and A2 disbursed a meagre amount of Rs.76,210/- to 48 farmers. Hence all the accused conspired and criminal misappropriated an amount of Rs.10,01,261/-. On registration of FIR, investigation commenced, sanction obtained under 19 of Prevention of Corruption Act, 1988, on



completion of investigation, charge sheet filed before the Trial Court listing LW1 to LW101 and LD1 to LD17. The Trial Court took cognizance of the case and assigned Special C.C.No.5 of 2024 and issued summons to the accused.

10.He further submitted that the points raised by the petitioner that the petitioner was only holding an additional charge for a limited period and he had gone by the report put up by the field staffs and records put up by A2 and thereafter issued the cheque, hence no criminality can be attributed on the act of the petitioner, is a matter of fact which necessarily to be decided during trial. The other contention of the petitioner that the petitioner only discharged his duty as public servant, hence the sanction under Section 197 Cr.P.C is required, cannot be accepted for the reason that the petitioner involved in a corruption case, hence the sanction for prosecution under Section 19 of Prevention of Corruption Act, 1988 obtained. The petitioner committed the offence of corruption which cannot be termed as discharge of official duty. The offence under IPC are not done in official capacity, hence the sanction under Section 197 is not required.



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11.In support of his submissions, the learned Government Advocate (Crl. Side) relied on the decision of the Hon'ble Apex Court “*Omkarnath Misra & Others v. State (NCT Delhi) & another* reported in (2008) 8 SCC 561 and *Sheroj Singh Ahalwat v. State of U.P & another* reported in AIR 2013 SC 52 and *Rajesh Bajaj v. State of NCT Delhi & others* reported in (1999) 31 SCC 259” for the point that the Court need not go deep into the probative value of the materials on record what needs to be considered is whether a ground for presuming that the alleged offence has been committed. Further, the Trial Court is not supposed to adopt a strict hyper technical approach to sieve the complainant through a cull under or finest gauging of testing the ingredients of offence which are charges. Such an endeavour is justified during the trial but not during the initial stage.

12.He further relied upon the decision of “*Sajjan Kumar v. Central Bureau of Investigation* reported in (2010) 3 SCC (Cri) 1371” wherein it had held that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by



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the accused was possible. He placed reliance on the decision of the

Hon'ble Apex Court in the case of *State of Haryana v. Bhajanlal* reported in *AIR 1992 SC 604* wherein it had held that the power under Section 482 of Cr.P.C should be exercised sparingly with circumspection and only in the rarest of rare case.

13.Making the above submissions and relying upon the above decisions, the learned Government Advocate (Crl. Side) prays for dismissal of the quash petition.

14.This Court considered the rival submissions and perused the materials available on record.

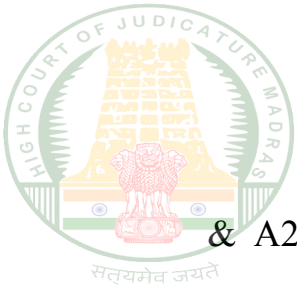
15.The petitioner served as Forestry Extension Officer (Assistant Conservator of Forest) and he is a public servant. A2 in this case is a Forest Ranger Officer who after his retirement from service on 30.06.2011, was reappointed as Forest Range Officer for Forestry Extension Range, Coimbatore on contract basis. A3 in this case is a registered petty contractor a private individual. The Tamil Nadu Forest Department formulated a project primarily focusing its attention on



conservation of vital biodiversity both inside the protected area and reserved forests lands adjoining the forest area including private lands.

With the financial assistance from Japan International Cooperation Agency (JICA), the project was implemented. As stated above, during the relevant period, the petitioner was holding additional charge of Coimbatore as Forest Extension Officer. At that time, the Government proposed to plant 1,70,000 plant seedlings like teak, kapok, malaivembu and alianthus to 286 farmers belong to Mullipuram, Maruthur and Pichanur cluster villages and the Tree Cultivation in Private Land (TCPL) Scheme was implemented.

16.The petitioner was holding additional charge of Forestry Extension Officer of Coimbatore from 27.05.2014 to 19.12.2014. During the implementation of the TCPL Scheme, the Government proposed to distribute 55,000 seedlings to 134 farmers in Pichanur cluster villages. After receiving application from farmers, the samplings distributed and transported. On verification, it was found the samplings transported by the beneficiaries on their own expense and the samplings also planted by the farmers in their lands on their own expense. The petitioner/A1 and A2 fully knowing the farmers bearing their expenditure on their own, A1



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& A2 hatched a conspiracy with A3, decided to claim the plantation charges from the Government. Pursuant to the plan devised, the petitioner prepared four cheques for a sum of Rs.10,77,471/- and signed in the running account bills and disbursed the four cheques to A3, after encashing the cheque amount, the petitioner/A1, A2 and A3 disbursed only a meagre amount of Rs.76,210/- to 48 farmers and misappropriated the balance amount of Rs.10,01,261/- among them and thereby committed the offence as per charge sheet. The explanation of the petitioner can be decided during trial.

17.The primary contention of the learned Senior Counsel for the petitioner is that the sanction under Section 197 Cr.P.C not obtained; in implementing the Tamil Nadu Biodiversity Conservation and Greening Project (TBGP), no administrative or audit objection raised in this case; further the successor to the petitioner made no complaint against the petitioner with regard to any misappropriation of funds; the petitioner while acting in discharge of his official duty, signed the cheques and approved the payments to A3, hence the petitioner is entitled for protection under Section 197 Cr.P.C and there is no sanction under Section 197 Cr.P.C obtained. This contention of the petitioner is not



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sustainable for the reason that the sanctioning authority after going through the entire statement of witnesses and documents collected, independently arrived at a satisfaction that the petitioner committed the offence along with other accused and accorded sanction for prosecution under Section 19 of Prevention of Corruption Act, 1988. The offence under the Prevention of Corruption Act, 1988 is not in isolation, it is culmination of facts attracting other offences. The object of Section 197(1) Cr.P.C is to protect the public servant from prosecution and it ensures that the public servants are not prosecuted for anything they do in discharge of their duties.

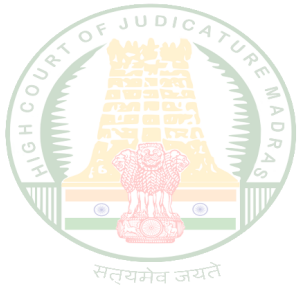
18.In this case, the samplings distributed to 134 farmers and the beneficiaries of the scheme incurred own expenditure for transportation and plantation of the samplings in their lands. From the documents produced by the prosecution, it is seen that after preparation of the four cheques, the same entered in the running account bills, thereafter the four cheques handed over to A3. After receipt of the same, A3 encashed a meagre amount of Rs.76,210/- to 48 farmers and misappropriated the remaining amount of Rs.10,01,261/-. In this case, no proper reason could be given by the petitioner in this regard, hence it cannot be termed



discharge of official duty. In such circumstances, the petitioner cannot seek any protection under Section 197 Cr.P.C, there are evidence and materials against the petitioner and other accused to proceed with the case. The points raised are the defence of the petitioner and the points raised by the petitioner are factual which has to be necessarily decided during trial.

19.The decision referred by the petitioner pertains to Prevention of Money Laundering Act, 2002, the issue decided in that case is whether Section 71 will have a overriding effect over Section 67 of Prevention of Money Laundering Act, 2002. Hence, the same is not applicable to the facts and issues of the present case.

20.In view of the above, no case is made out to quash the criminal proceedings against the petitioner and this Criminal Original Petition is liable to be dismissed. The Trial Court to proceed with the trial and decide the case on its own merits independently uninfluenced with the observations made herein.



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WEB COPY 21. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Criminal Miscellaneous Petition is closed.

15.04.2025

Index: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

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To

1. The Special Judge,
Special Court for Cases under the Prevention of Corruption Act,
Coimbatore District.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
3. The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
CrI.O.P.No.30592 of 2024

15.04.2025