G. Mani Vs. The State Rep. by the Inspector of Police, Vigilance and Anti Corruption Vellore Detachment

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Court : Chennai

Decided On : Dec-23-2016

Judge : P. Velmurugan

Appeal No. : Crl. OP. No. 22037 of 2015

Appellant : G. Mani

Respondent : The State Rep. by the Inspector of Police, Vigilance and Anti Corruption Vellore Detachment

Judgement :

(Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Cr.No.7 of 2012 on the file of the respondent and quash the same.)

1. This petition has been filed praying to quash the FIR in Cr.No.7 of 2012 on the file of the respondent/Inspector of Police, Vigilance and Anti Corruption, Vellore Detachment, Vellore.

2. The case of the petitioner is that he joined service in the year 1980 as Assistant Engineer in the Engineering wing, Agricultural Department, thereafter he was promoted to the post of Assistant Executive Engineer and finally as Executive Engineer in the year 2008 and attained superannuation on 30.06.2015, but the very last day of his service i.e, on 30.06.2015, the petitioner was not permitted to

retire from his service and he was placed under suspension, on the ground that the FIR registered by the respondent police was pending. The petitioner was not aware of the FIR dated 24.02.2012, till April 2015. The petitioner came to know when the process of getting NOC from the Vellore Division where he was served. Though the FIR was lodged on 24.02.2012, he was not called or summoned by the respondent either for enquiry or for investigation.

3. The petitioner was arrived as A1 in the FIR, the allegations in the FIR is that in the implementation of the Agricultural Mechanization Scheme certain irregularities had happened and A1 to A9 had conspired to commit misappropriation of funds, the Government had introduced the scheme for replacement of old pump sets with new pump sets to save consumption of electricity. The said scheme has to be directly implemented by the Assistant Executive Engineer of the respective sub-divisions with the help and support of the Assistant Engineer/Junior Engineer working under them. The officials viz., Executive Engineer and the Superintending Engineer have no role to play in implementing the scheme. The evidence gathered would clearly show that the Assistant Executive Engineer and other subordinate officials who connived the electrical shop keepers in siphoning off the subsidies granted for agricultural farmers. There is no evidence against the petitioner for implicating him in any manner, the charges are levelled against the petitioner for the offences under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120B, 467, 468, 471 and 420 of IPC, the Court stands as legal scrutiny as none of the ingredients therein are satisfied. The continuance of criminal proceedings in the above said crime number would tantamount to miscarriage of justice and cause irretrievable mental agony and prejudice to the petitioner. Hence, the petitioner filed the present petition to quash the FIR pending on the file of the respondent police.

4. The main grounds raised by the petitioner is that the allegations do not constitute any offence, in so far as the petitioner is concerned. The evidence gathered by the respondent at the time of investigation does not implicate him in any manner and hence the allegation against the petitioner cannot stand in the eye of law. The evidence gathered implicating the concerned Assistant Executive Engineer, Assistant Engineer and the Junior Engineer of the respective sub-

divisions who are with the connivance of the shop keepers created bogus applications in the name of the fictitious beneficiaries, resulting in the subsidy being claimed by the electrical shop keepers. The petitioner being an Executive Engineer has absolutely no role to play and he has been unjustifiably arrayed as accused. During July 2009, in the Agricultures Grievance day, some complaints were received for non replacement of old pump sets and the petitioner issued memo dated 18.07.2009 to the Assistant Executive Engineers who are working under his control and directed to conduct enquiries and to furnish explanation.

5. Even after registering the FIR, the petitioner was not examined and he was not aware of the said FIR filed against him, on the day of his superannuation i.e., 30.06.2015, that too after completing more than 34years of unblemished service, the petitioner was not allowed to retire on account of the pendency of the FIR, he was placed under suspension and none of the terminal benefits admissible to him have not been released. The entire service rendered by him in the work and the performance has never came to adverse notice. The allegations made against the petitioner are false, baseless and balled in nature and the FIR registered for the offences under Sections 13(1)(d) of the Prevention of Corruption Act 1988 and Sections 120B, 467, 468, 471 and 420 of IPC are liable to be quashed.

6. The case of the respondent is that the Tamil Nadu Government had implemented an Agricultural Mechanisation Scheme for electricity consumption, by replacing the old electric motors installed by the farmers in their pump sets with new pump sets with subsidy. The farmers belonging to SC/ST are eligible for Rs.6,000/- and the farmers belong to OBCs are eligible for Rs.4,500/- towards subsidy. The scheme was implemented in Walajapet Division during 2007-2008, as per records of M.Ramalingam, Assistant Executive Engineer, 344 farmers were benefited under the scheme. The cost of 344 replaced electric motors comes to Rs.76,46,085/- out of which subsidy portion is Rs.19,81,196/-. The accused/A1 and 8 others conspired together to misappropriate the Government funds with connivance of some private electric motor dealers and created false and forged records by misappropriating entire portion of subsidy sanctioned under the scheme of Agricultural Mechanisation scheme and integrated waste land development programme. The FIR was registered by the respondent police in

Cr.No.7 of 2012 under Section 13(1)(d) of Prevention of Corruption Act, 1988 and Sections 120(b), 467, 468, 471 and 420 of IPC, against A1 to A9 on 24.02.2012.

7. After registering the FIR, the petitioner was examined by the respondent on 26.09.2012, itself. Even before registration of FIR, the petitioner came to know that a detailed enquiry was conducted by the respondent and admitted that the DVAC officials asked him to hand over all the files and records in connection with the said scheme for enquiry. The scheme has to be executed only under the effective supervision of the higher officials, in the diary maintained by the petitioner during the relevant period the petitioner had stated that he visited the scheme villages where the scheme was implemented. But, the petitioner failed to verify the beneficiaries whether they actually received the new pump sets as found in the records, this shows that the petitioner was actively conniving with the other accused. Despite visiting the scheme villages, because of the conspiracy with his subordinates and with the shop keepers, the petitioner knowing about the investigation process deliberately omitted to initiate action on the subordinate officers. Coming to know about the vigilance enquiry, the petitioner hurriedly issued memos to the subordinates and in their explanations it is stated that electrical shop owners were alone responsible and the petitioner ordered only for recovery of money from the shop owners and failed to initiate any action on the subordinates, this clearly shows that the petitioner had done so only with an intention to safeguard himself and others from the clutches of law. Therefore, the complainant has raised the allegations against the petitioner and others and FIR was also registered by the respondent against the petitioner and other accused.

8. The learned counsel for the petitioner would submit that the alleged beneficiaries complained of non replacement of their pump sets, the evidence gathered implicated the concerned Assistant Executive Engineer, Assistant Engineer and the Junior Engineer of the respective sub division, who with the connivance of the shop keepers created bogus applications in the name of fictitious beneficiaries resulting in the subsidy being claimed by the electrical shop keepers. This was the modus operandi adopted in claiming subsidy by the concerned shop keepers. The petitioner herein is the Executive Engineer has absolutely no role to play and he has been unjustifiably arrayed as accused in the

FIR. On 02.09.2009, the Assistant Executive Engineer, Walajah and the Assistant Engineer/Junior Engineer submitted explanation that they had indeed been some irregularities in the distribution of pump sets and the enquires conducted by them would show that the electrical shop keepers had fabricated and impersonated the names of the beneficiaries and wrongfully claimed subsidy amount. They, further stated that they had been cheated by such impersonation and wanted stringent action to be taken against the electrical shop keepers for such misdeed. Based on the direction given by the petitioner a sum of Rs.1,92,701/- was recovered from the monthly salaries of the concerned officials. The petitioner had also recommended for initiation of departmental action, on 08.12.2009, the DVAC officials wanted the petitioner to hand over all the files and records available with him, therefore no departmental action could be initiated against him.

9. The petitioner had put in more than 34 years of service and reached his superannuation on 30.06.2015, but he was not allowed to retire on account of pendency of FIR, the petitioner has been placed under suspension and none of the terminal benefits admissible to him have been released. In his entire career spanning 34years he has rendered unblemished service and his work and performance has never come to any adverse notice.

10. The allegations in the FIR do not constitute any offence against the petitioner, the evidence gathered by the respondent at the time of investigation does not implicate the petitioner in any manner. The petitioner was not aware of the FIR registered on 24.02.2012, till April 2015, when in the process of getting NOC from Vellore Division where the petitioner served, there only the petitioner came to light that a FIR was pending against him, no ingredients of the alleged offences is made out against the petitioner, the FIR registered against him is liable to be quashed.

11. In support of his contention, the learned counsel for the petitioner relied on the following judgments of the Hon'ble Supreme Court :

AIR 1992 SC 604 State of Haryana and others V. Ch.Bhajan Lal and others.

AIR 1996 SC 2452 Central Bureau of Investigation, SPE, SIU(X), New Delhi V. Duncans Agro Industries Ltd., Calcutta

(2005) 12 SCC 631 K.R.Purusothaman V. State of Kerala

(2006) 1 SCC 401 T.Subramanian V. State of T.N.

12. The learned Additional Public Prosecutor appearing for the respondent would submit that prima facie allegations are made out against the petitioner. After registration of FIR on 24.02.2012, the petitioner was examined on 26.09.2012. Even before registration of the said FIR, the petitioner knew that a detailed enquiry was conducted by the respondent and the petitioner admitted that the DVAC officials wanted him to hand over all the files and records in connection with the said enquiry. Having knowledge about the vigilance enquiry the petitioner hurriedly issued memo to his subordinates and on receipt of their explanation stating that the electrical shop owners are alone responsible, the petitioner ordered recovery of money from them, without framing charges against the subordinates. This clearly shows the intension of the petitioner in safe guarding himself and others from the clutches of law. Hence, the arguments advanced by the learned counsel for the petitioner is not acceptable on the ground that the petitioner was not aware of the registration of the FIR and no enquiry has been conducted by the respondent and no summons has been served on him is liable to be rejected.

13. During the course of arguments, the learned Additional Public Prosecutor filed status report of this case, wherein it has been stated that the case registered in Cr.No.7 of 2012 on 24.02.2012, for the offences under Sections 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120B, 420, 467, 468 and 471 of IPC, against the petitioner herein/Mani, Executive Engineer, Agricultural Engineering Department and other officials in the capacity of Assistant Executive Engineers, Assistant Engineers and Junior Engineers who are working the department of Agricultural Engineering, Walajah, Sub Division and against some private pump set dealers. The allegations are that the petitioner and other accused in connivance with each other have created false and forged records in the names of farmers for replacement of old pump sets and claimed subsidies during 2008-2009 under the Agriculture Mechanisation Scheme, by creating forged bills and

vouchers under Integrated Waste Land Development Programme. Likewise, misappropriated the funds and claimed the bill amount during the period 2007-2008. Further, it reveals that the involvement of the officials viz., the petitioner/A1 and 14others (ie., A1 to A15) in connivance with each other by creating false and bogus records in the names of the farmers in replacing the old pump sets by claiming subsidies during 2008-2009 under Agriculture Mechanisation Scheme. Hence, the allegations against all the 15 accused including the petitioner have been clearly established and the prosecution registered the case against all the accused for the offences under Section 13(2) r/w.13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 and Sections 120B, 409, 467 r/w.471-A, 167 and 420 IPC.

14. Heard both sides, this Court perused the available records.

15. It is the case of the petitioner that while he was working as Executive Engineer, a case was registered against him in Cr.No.7 of 2012 for the offences cited supra. The petitioner attained superannuation on 30.06.2015. On the day of superannuation, he was not permitted to retire and he was placed under suspension, then only he came to know that a FIR was registered against him and the same was pending investigation. The petitioner was not enquired or summoned by the respondent for the alleged offences and no specific allegations has been levelled against him in the alleged FIR.

16. According to the prosecution, while the petitioner was working as Executive Engineer, the Government had introduced Agricultural Mechanization Scheme for replacement of old pump sets with new pump sets for farmers to reduce the electricity consumption. During the relevant point of time, the petitioner is the superior officer to supervise the scheme. The scheme has to be executed under the effective supervision of the higher officials. In the diary maintained by the petitioner, wherein it is stated that he visited the scheme villages and failed to note down, whether the beneficiaries have received the new pump sets, this clearly shows the malafide intention and connivance of the petitioner with other accused and failed to note down the details of the beneficiaries under the scheme. Though, the petitioner visited the scheme villages and having knowledge about the

investigation, deliberately omitted to take action, because of the conspiracy with his subordinates. In the counter, it is specifically averred that the petitioner having knowledge about the vigilance enquiry, the petitioner hurriedly issued memos to the subordinates and in their explanations it is stated that electrical shop owners were alone responsible and thereafter, petitioner ordered only for recovery of money from the shop owners and failed to initiate any action on the subordinates. This clearly shows that the petitioner had done so, only with an intention to safeguard himself and others from the clutches of law.

17. On careful perusal of FIR, there are allegations against the petitioner and the other co-accused i.e., A1 to A9 conspired together to misappropriate the Government fund with connivance of some private electric motor dealers by creating false and forged records, misappropriated the entire subsidy portion sanctioned under the Agricultural Mechanisation Scheme and Integrated waste land development programme.

18. In the status report, the respondent has stated that some accused are found to be public servants including the petitioner herein, the prosecution have to accord sanction against those officials from the authority concerned, to proceed further. After completion of enquiry, out of 14 accused, the prosecution had obtained sanction order for few officers from the authority, including the petitioner and they are awaiting sanction order for some other officials and after obtaining sanction order for remaining officials, the prosecution will submit their final report before the Special Court. Further, it is stated in the status report that during the course of investigation some of the witnesses have spoken about the active involvement and participation of the petitioner in this case. Since, the final report had not yet been filed, this petitioner does not know what are the incriminating materials are available against him and there are specific allegations are also made out against the petitioner in the FIR. Though, there are specific allegations raised against the petitioner in the FIR, the final report has not yet been filed before the competent Court, from the status report and also from the statement recorded during the course of investigation, some of the prosecution witnesses have clearly spoken about the active involvement and participation of the petitioner in this case.

19. Since there is specific allegation raised against the petitioner in the FIR to the effect that the petitioner along with other accused conspired together to misappropriate the entire subsidy portion sanctioned under the Agricultural Mechanisation Scheme and Integrated Waste land development programme thereby offences under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120B, 467, 468, 471 and 420 of IPC are attracted. Before filing the charge sheet report under Section 173 Cr.PC, how the petitioner came to know about that "the evidence gathered would clearly show that the Assistant Executive Engineer and other subordinate officials who connived the electrical shop keepers in siphoning off the subsidies granted for agricultural farmers. There is no evidence against the petitioner for implicating him in any manner, the charges are levelled against the petitioner for the offences under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120B, 467, 468, 471 and 420 of IPC, the Court stands as legal scrutiny as none of the ingredients therein are satisfied". Therefore, the judgments cited on the side of the petitioner counsel is not applicable to the facts of the present case in hand. This Court finds there are sufficient incriminating documents available on the side of the prosecution to proceed further against the petitioner and the petition filed by the petitioner to quash the FIR in Cr.No.7 of 2012 is liable to be dismissed and the same is hereby dismissed.

20. In the result, the criminal original petition is dismissed.