BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.04.2008

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Crl.R.C.No.272 of 2006

P.Govindan ... Petitioner / Petitioner

Vs.

State
Rep. By Inspector of Police
CB CID
Dharmapuri ... Respondent / Respondent

This Criminal Revision Case has been filed by the Petitioner under Section 397 read with 401 of Criminal Procedure Code as against the order of the Judicial Magistrate, Krishnagiri dated 25.11.2005 made in Crl.M.P.No.1347/2005 in C.C.No.285/1998 and set aside the same.

For Petitioner : Mr.S.Ananthanarayanan

For Respondent : Mr.Muniappa Raj
Govt Advocate (Crl.Side)

O R D E R

This Criminal Revision Case is directed against the order of the learned Judicial Magistrate, Krishnagiri dated 25.11.2005 made in Crl.M.P.No.1347/2005 in C.C.No.285/1999 pending on the file of the Court of the Judicial Magistrate, Krishagiri.

2. The facts leading to the filing of the Criminal Revision Case, in brief, are as follows:-

a) Based on the complaint of Thiru.Mohan Piyare, I.A.S., the then Collector of Dharmapuri District, a case was registered on the file of CB-CID, Dharmapuri Unit, Dharmapuri District as Crime No.1/1997 against the petitioner herein and other persons for alleged offences punishable under Sections 466, 120-B and 379 IPC and also for an offence punishable under Section 4(1) read with Section 21 of the Mines and Minerals (Regulations and Development) Act, 1957. The Inspector of Police attached to the CB-CID, Dharmapuri unit conducted

investigation and submitted a final report under Section 173 of Criminal Procedure Code, accusing the petitioner and nine others of committing various offences. The petitioner was arrayed as the 4th accused in the said charge-sheet (final report) and was accused of committing the following offences:-

i) An offence punishable under Section 120-B read with Sections 447 and 379 IPC and Section 21(1) read with Section 4(1) of the Mines and Minerals (Regulations and Development) Act, 1957, 420 IPC, 434 IPC, 466 IPC, 468 IPC, 451 IPC, 480 IPC, 406 IPC and Section 201 IPC read with 109 IPC.

ii) An offence punishable under Section 434 IPC read with Section 109 IPC,

iii) Offence punishable under Section 420, 426 and 468 IPC,

iv) Offence punishable under Section 466 IPC and 468 IPC

AND

v) Offence punishable under Section 201 IPC read with Section 109 IPC

b) The said final report was taken on file by the learned Judicial Magistrate, Krishnagiri on his file as C.C.No.285/1999 and thus the offences came to be taken cognizance of by the said Judicial Magistrate. The petitioner herein/Accused No.4, thereafter submitted a petition for discharge under Section 227 of the Code of Criminal Procedure on the ground that the offences allegedly committed by him attracting the above said penal provisions were admitted to have been committed while discharging or purporting to discharge his official duty as a public servant employed as surveyor in the Survey and Settlement Department and that hence the offences should not have been taken cognizance of without obtaining sanction for prosecution as contemplated under Section 197(1) of Code of Criminal Procedure. The said petition was taken on file by the court below as Criminal M.P.No.1347/2005.

c) The respondent herein/the Investigating Officer filed a counter statement (written objections) contending that an order of sanction was, in fact, obtained from the District Collector and hence the petitioner/accused was not entitled to an order of discharge as prayed for by him. It was also contended therein that sanction for prosecution was not necessary since the petitioner had been charged with offences punishable under Sections 120B of IPC and 406 of IPC also. It was the further contention of the respondent that an order of sanction for prosecuting the petitioner had been made by the then District Collector of Dharmapuri in his R.C.No.1352/97/G3 dated 20.09.1998. A copy of the said order of the Collector was also produced along with the counter statement.

d. The learned Judicial Magistrate, Krishnagiri, after enquiry dismissed the said discharge petition holding that the question- whether sanction for prosecution was granted by the competent authority or not? - could not be decided in discharge petition in the light of the fact that a copy of the sanction order had been produced along with the counter statement. The learned Judicial Magistrate also held that the genuineness and validity of the sanction order could be canvassed in the trial and that the same could not be decided in a discharge petition. Based on the above said reasoning, the learned Judicial Magistrate, Krishnagiri chose to dismiss the discharge petition (Crl.M.P.No.1347/2005) by the impugned order dated 25.11.2005.

3. The correctness and legality of the said order of the learned Judicial Magistrate dated 25.11.2005 made in Criminal M.P.No.1347/2005 is questioned in the present Criminal Revision Case.

4. This court heard the arguments advanced by Mr.S.Ananthanarayanan, learned counsel appearing on behalf of the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Criminal side) appearing on behalf of the respondent. The materials available on record were also perused.

5. The petitioner in the revision case is accused No.4 in C.C.No.285/1998, at present pending on the file of the learned Judicial Magistrate, Krishnagiri. He had filed Criminal M.P.No.1347/2005 to discharge him from the said case contending that the cognizance of the offences allegedly committed by him was against law as there was no sanction order for prosecuting him as the petitioner was a public servant and the alleged acts constituting the offences were committed by him while discharging his official functions. The learned counsel for the petitioner argued that no sanction order was passed by the competent authority under Section 197(1) Criminal Procedure Code for prosecuting the petitioner for the offences alleged in the charge sheet submitted by the respondent herein; that the charge sheet did not contain any reference to such an order of sanction passed by the competent authority; that only after the petitioner filed the discharge petition under Section 227 of Criminal Procedure Code, the respondent chose to produce a copy of the alleged sanction order dated 25.09.1998 along with the counter statement filed in the said petition; that even thereafter, the original sanction order had not been produced and that therefore it was quite obvious that no sanction was accorded before the learned Judicial Magistrate took cognizance of the offences by taking the final report on his file as C.C.No.285/1999.

6. Per contra, the learned Government Advocate (Criminal Side), representing the respondent, submitted that in fact no sanction was necessary as the petitioner was charged with offences punishable under Sections 120-B IPC and Section 406 IPC also. The learned

Government Advocate also contended that though sanction for prosecution was accorded by the District Collector on 25.09.1998 itself, by mistake the same was omitted to be produced along with the charge sheet; that the said mistake was rectified by producing an authenticated copy of the same along with the counter statement; that the genuineness of the said sanction order could not be canvassed in the discharge petition filed under Section 227 of Criminal Procedure Code and that the same was a matter to be tried and decided in the trial of the case.

7. As an answer to the contention of the learned Government Advocate that by inadvertence the Investigating Officer failed to annexe the order of the District Collector according sanction for prosecution to the charge-sheet, the learned counsel for the petitioner submitted that factually the same was incorrect as it would be obvious from the fact that no reference to such sanction order had been made in the charge-sheet (final report). It is the further contention of the learned counsel for the Petitioner that Section 197(1) made it mandatory that sanction should have been accorded before the court took the cognizance of the offences based on the final report that the order of the learned Judicial Magistrate taking cognizance of the offences based on the final report (charge-sheet) not accompanied by the order sanctioning prosecution or by an authenticated copy of the same especially in the absence of any reference to such sanction order in the final report, was against law.

8. The petitioner had sought for an order of discharge not on the ground that the materials collected by the investigating agency were not enough to make out a prima-facie case against him for the offences alleged, but on the ground that necessary sanction for prosecuting him for the offences alleged had not been obtained. The respondent resisted the petition on the ground:

1) that since the petitioner is accused of commiting also the offences of criminal conspiracy punishable under Section 120-B and criminal breach of trust punishable under Section 406 IPC, the said acts cannot be construed as acts committed by the petitioner while acting or purported to act in discharge of his official duties; AND

3) that in fact an order of sanction had already been obtained from the District Collector but due to inadvertence the same was not produced along with the charge sheet.

9. In view of the first stand taken on behalf of the respondent this court has to go into the question - "whether Section 197(1) is attracted for prosecuting the petitioner for the offences alleged against him?" Though several offences are alleged and the learned Judicial Magistrate has taken cognizance of all the offences it is

conceded on behalf of the respondent that Section 197(1) Cr.P.C. is attracted in respect of all other offences cited in the charge-sheet excepting the offences punishable under Section 120-B and 406 IPC. Paragraph 9 of the final report (charge-sheet) deals with the alleged offence punishable under Section 406 IPC. Under the said paragraph, Subramanian (A1) and Nalliappan (A2) alone are alleged to have committed an offence punishable under Section 406 IPC whereas Raja (A3) and Loganathan (A10) are alleged to have committed an offence of abutment of criminal breach of trust punishable under Section 406 IPC read with 109 IPC. In the said paragraph there is no allegation that the petitioner had committed the offence punishable under the said penal provision. Paragraph 2 recites the acts allegedly committed by the petitioner. The relevant passage in paragraph 2 of the charge sheet dealing with the acts allegedly committed by the petitioner herein is extracted hereunder:-

*"While A4 Govindan, during the course of the said criminal conspiracy hatched by A1 and A2 and during the period between January 1996 and August 1996 and at Salem, Dharmapuri, Pochampalli and Nagojanahalli, joined in the criminal conspiracy to forge the field measurement sketches appended to lease deeds dated 10.06.1995 kept in Taluk office, Pochampalli and at the office of the Assistant Director, Geology and Mining, Dharmapuri for the purpose of cheating the Government of Tamil Nadu, after securing the field measurement book sketches appended to lease deed dated 10.06.2005 kept at Taluk office, Pochampalli by cheating the concerned Government official and to commit trespass by entering into the Government poramboke land adjoining the leased out land of M/s.Rajalakshmi Enterprises at Nagojanahalli and to commit mischief by meddling with the boundary stones fixed by the Government Authority and to screen A1 and A2 from legal punishment by giving false information respecting the offences of trespass and illicit mining done by A1 and A2."*

The above are the allegations made in the charge-sheet against the petitioner. But at the end of paragraph 2, it has been stated that the petitioner (accused No.4) also committed an offence of criminal conspiracy punishable under Section 120-B IPC read with several penal provisions including Section 406 IPC. A reading of the entire charge- sheet will show that apart from charging for the offence punishable under Section 120-B, there is no specific allegation that he himself committed an offence punishable under Section 406 IPC. Even assuming that the allegations are to the effect that he himself committed the offence of the criminal breach of trust by altering the field measurement book sketches attached to the lease deed dated 10.06.1995 kept at the Taluk Office, Pochampalli and at the office of the Assistant Director of Geology and Mining, Dharmapuri, the same cannot be said to be an act not committed by him while acting or purporting to act in discharge of his official duty. Therefore the contention raised on behalf of the respondent that no

sanction is necessary for prosecuting he petitioner for an offence punishable under Section 406 IPC has got to be discountenanced.

10. In support of his contention that no sanction for prosecution is necessary for prosecuting the petitioner in respect of the offence punishable under Section 120-B IPC, the learned Government Advocate (Criminal Side) relied on the judgment of a learned single judge (A.Selvam, J.) of this court in S.Ilayaperumal Vs. Inspector of Police, CBI (Anti-corruption) Branch, Chennai reported in 2001 (2) MLJ 471. In the said case, the learned single judge has observed that the offence under Section 120-B could not be construed to be one committed in discharge of official duty and that therefore no permission was required under Section 197(1) of the Code of Criminal Procedure to proceed against a Government servant for an offence under Section 120-B of IPC. The learned counsel for the petitioner however pointed out other judgments of the High Court as well as the Apex Court in which even in respect of offence punishable under Section 120-B IPC, it was held that sanction was necessary for prosecuting a public servant if such offence was committed while acting or purporting to act in discharge of his official duties. In fact, another learned single judge (S.Ashok Kumar, J.) of this Court in J.Murugesan Vs. State represented by Deputy Superintendent of Police, Vellore Range reported in 2004 (2) CLW 538 clearly held that even for an offence punishable under Section 120-B committed by a public servant in discharge of his official duties, sanction for prosecution under Section 197(1) of Code of Criminal Procedure was absolutely necessary. The Hon'ble Apex Court in B.Saha and others v. M.S.Kochar reported in 1979 (4) SCC 177 has observed as follows:

> *" The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purported to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision"*

The said judgment was referred to in a subsequent case namely *K.Kalimuthu vs. State represented by Deputy Superintendent of Police* reported in *2005 (3) CTC 313* by the Hon'ble Apex court. In the said case the following observation was made:

> *"Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty"*

11. It is obvious from various pronouncements of the Apex Court, there cannot be any general proposition that an act constituting an offence punishable under Section 120B shall not be said to be committed by a public servant while acting or purporting to act in discharge of his official duty. The nexus between the act and the official duty shall play a vital role in pointing out whether the offence was committed by the public servant while acting or purporting to act in discharge of his official duty. If the act constituting the offence is totally un-connected with the official duty then the same will be outside the purview of Section 197 Cr.P.C. and no sanction for prosecution shall be required. If at all the act complained of does have a reasonable nexus with the official functions, then not withstanding the fact that committing an offence is not part of the duty of the public servant, the same will attract the bar provided under Section 197 Cr.P.C.

12.In fact all the allegations made against the petitioner herein show that the offences allegedly committed by him were done by him while acting or purporting to act in discharge of his official functions. Therefore this court comes to the conclusion that the contention of the learned Government Advocate (Criminal Side) that no sanction for prosecuting the petitioner for the offences alleged is necessary has got to be discountenanced. The fact that the respondent has chosen to produce a copy of the alleged sanction order along with the counter statement and contend that though sanction for prosecution was obtained prior to the filing of the charge-sheet by inadvertence the same was not produced along with the charge-sheet will go to show that the respondent was also aware that the allegations made against the petitioner would attract Section 197(1) Cr.P.C.

13.The next line of argument advanced by the learned Government Advocate (Criminal Side), representing the respondent, is that even assuming that sanction for prosecution is necessary the order of discharge sought for cannot be granted as actually an order of sanction had been passed on 25.09.1998, i.e. even before the filing

of the charge-sheet. It is the case of the respondent that though such an order of sanction was obtained from the District Collector on 25.08.1998, by mistake the same was not enclosed along with the charge-sheet. Per contra, the learned counsel for the petitioner would contend that the learned Judicial Magistrate should not have taken cognizance of the offences when the sanction order was not produced along with the charge-sheet. It is his further contention that the respondent has not produced the original sanction order till this day and that they have prepared an ante-dated sanction order after filing of the discharge petition and produced only a true copy of the said order.

14. A perusal of the copy of the sanction order annexed to the counter statement filed in Crl.M.P.No.1347/2005 will show that the true copy was signed by the Assistant Director of Survey, Dharmapuri only on 18.03.2005. The charge sheet was filed in October 1998 and the same was taken on file as C.C.No.285/98 showing that cognizance of the offences alleged against the petitioner was made in 1998 itself. If at all an order of sanction for prosecution was obtained before the charge-sheet was filed, the said order of sanction passed by the Collector should be available with the respondent. The said order itself is stated to have been addressed to the respondent, namely the Inspector of Police, CB CID, Dharmapuri Unit with a copy marked to the Additional Director General of Police, Crime Branch. What happened to that order of sanction sent to the respondent? - has not been explained. If at all only a true copy of the sanction order was received by the Inspector of Police, such a copy certified to be true copy should have been received prior to 06.10.1998, the date of filing of the charge-sheet. But the copy of the order annexed to the counter statement is the one certified by the Assistant Director of Survey, Dharmapuri on 18.03.2005. The learned counsel for the petitioner pointing out the above said facts argued that the same would show that the respondent could not have got any order of sanction prior to the said date. The said submission made by the learned counsel for the petitioner has got to be countenanced.

15. The learned counsel for the petitioner contended further that even if it is assumed that the District Collector passed an order sanctioning prosecution on 20.06.1998 itself and the copy communicated to the respondent had been misplaced, the said order (prosecution of the petitioner for the alleged offences) relied on by the respondent was a legally invalid sanction order. The grounds alleged by the learned counsel for the petitioner for the above said submission are:

1) the said order does not disclose the application of mind by the sanctioning authority;
2) District Collector not the appointing authority for Firka Surveyor and hence he is not the competent authority to sanction prosecution; And

3) the very same officer namely, Mr.Mohan Piyare, I.A.S. District Collector, Dharmapuri District happened to be the complainant as well as the sanctioning officer.

16. The copy of the sanction order relied on by the respondent is a single sentence order which reads as follows:

"Concurrence under Section 690(1) of the Police Standing Orders is hereby issued to prosecute Thiru P.Govindan, Firka Surveyor against the alleged offences committed by him while he was discharging his duties as Firka Surveyor, Nagarasampatti, before the competent court by the CB-CID".

What are the allegations made against the petitioner? what are the materials collected by the investigating agency placed before the sanctioning authority? - have not been mentioned in the said order. The penal provisions as well as the particulars of offences allegedly committed by the petitioner have not been adverted to in the order. What are all the offences for which sanction for prosecution was accorded? - have not been spelt out in the order. Therefore, this court has to accept the contention of the learned counsel for the Petitioner that there is total non-application of mind in according sanction for prosecution.

17. According sanction for prosecution should not be understood to mean a mere ritual or formality. The principle underlying the requirement of sanction for prosecution under Section 197(1) is that public officials should not be unnecessarily harassed by launching prosecution for their acts committed while acting or purporting to act in discharge of their official functions without the sanction of the competent authority. The said right of the public servants that they should not be prosecuted for any such offence committed by them while acting or purporting to act in discharge of their official functions without obtaining sanction for prosecution under Section 197(1) Cr.P.C., is a valuable right which cannot be whistled down by a stereo-type order devoid of necessary particulars. The order shall indicate the application of mind by the sanctioning authority. It should also contain the particulars of the materials considered by the sanctioning authority. It is quite clear that the copy of the order produced along with the counter statement is devoid of all such particulars. When the sanction order, at the outset, is bereft of all such particulars and it is patent that there is non-application of mind, it shall not be justifiable to direct the accused (petitioner herein) to face trial despite the apparent vitiating factors found in the sanction order. Therefore as rightly pointed out by the learned counsel for the petitioner, the petitioner shall be entitled to an order of discharge as prayed for by him.

18. Yet another ground, a more vital one, on which the launching of the prosecution against the petitioner is challenged is that the

order of the District Collector sanctioning prosecution is vitiated because of violation of the principles of natural justice. The violation pointed out by the learned counsel for the petitioner is that the very same person, on whose complaint the case was registered happened to be the sanctioning authority. The criminal case itself was registered on the file of CB-CID, Dharmapuri unit based on the complaint of Thiru.Mohan Piyare, I.A.S., the then District Collector of Dharmapuri district. When he happened to be the complainant one cannot expect an unbiased or disinterested approach to the question whether sanction for prosecution could be accorded or not. The complainant himself cannot be the sanctioning authority also.

19. In Megha Singh vs. State of Haryana reported in AIR 1995 SC 2339, the Hon'ble Supreme Court has observed that a Head Constable, being the complainant on whose complaint a formal FIR was lodged and the case was initiated, should not have proceeded with the investigation of the case and that there was occasion to suspect fair and impartial investigation as he was not only the complainant but also the person who carried on with the investigation and examined the witnesses. Referring to the said observation made by the Hon'ble Supreme court, a learned Single Judge of this Court (V.Kanagaraj, J.) in Rathinam vs. State by Forest Range Officer, Vazhapadi, Salem District reported in 2001-1-LW(Crl) 143 also observed, *"this telling judgment of the Apex Court leaves no room to entertain any other thought and hence this proposition of law has to be accepted in toto"*. It was also observed therein as follows:

> *"It is held that a complainant himself cannot be the investigating officer in the case initiated by himself. Such of the acts assumed adopted by the Investigating Officers, since being opposed to fair and impartial investigation, they are hereby discredited. Hence at this score also, the prosecution fails to save its head."*

20. Another single judge of this court (A.Ramamurthi, J.) in S.Chandran V. State rep. by Inspector of Police, Sivakasi Town Police Station reported in 2001-1-L.W.(Crl.) 230 has expressed the very same view. The said principle will apply with even a greater force in respect of the question of sanction for prosecution to be accorded under Section 197(1) of Cr.P.C. The allegation made by the complainant and the materials collected by the investigating agency during investigation should be independently considered by the sanctioning authority to take a decision as to whether sanction for prosecution on the basis of the available materials could be granted. When the complainant himself happens to be sanctioning authority, there cannot be any such independent, unbiased and impartial consideration. Therefore, it is quite obvious that the order of sanction accorded by Thiru Mohan Piyare, I.A.S., the then collector of Dharmapuri District, who incidentally happened to be complainant based on whose complaint the criminal case was registered, is

vitiated and shall be ineffective in the eye of law. For the said reason alone, the petitioner shall be entitled to an order of discharge as prayed for.

21. The learned Judicial Magistrate seems to have made a wrong approach to the problem and dismissed the discharge petition filed by the petitioner herein which order is definitely incorrect, unsustainable in law and capable of being set aside in exercise of rivisional powers of this court. Therefore, this court comes to the conclusion that the order of the learned Judicial Magistrate, Krishnagiri dated 25.11.2005 made in Crl.M.P.No.1347/2005 in C.C.No.285/1998 should be set aside and the said Criminal M.P should be allowed discharging the petitioner/4th accused from C.C.No.285/1998. However, it is made clear that this order shall not come in the way of the respondent applying to the competent authority once again for sanction and prosecute the petitioner after getting such an order of sanction for prosecution.

22. For all the reasons stated above, the Criminal Revision Case succeeds and the order of the Judicial Magistrate made in Crl.M.P.No.1347/2005 in C.C.No.285/1998 is set aside. Crl.M.P.No.1347 of 2005 on the file of the court below shall stand allowed and the petitioner/Accused No.4 is discharged. However, it is made clear that the Respondent shall be at liberty to apply to the competent authority once again for sanction, get necessary order of sanction and then prosecute the petitioner.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1)The Judicial Magistrate, Krishnagiri
2)The Inspector of Police, CBCID, Dharmapuri
3.The Public Prosecutor, Madras High Court, Madras.



+3 Ccs to Mr.S.Ananthanarayanan, Advocate, S.R.No.25865

Crl.R.C.No.272/2006

ASM(CO)
SRA (12/05/2008)