
(2012) 10 KL CK 0102

In the High Court Of Kerala

Case No : Criminal M.C. No's. 3283, 3284 and 3285 of 2012 (A)

M.K. Ushadevi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 205
Penal Code, 1860 (IPC) — Section 120(B)
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) CriLJ 1081

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : E.N. Vishnu Namboodiri, Sri. N.N. Elayath and Sri. S.P. Suresh, for the Appellant; R. Ranjith, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Petitioners are some of the accused in a pending case numbered as C.C. No. 48 of 2010 on the file of the Enquiry Commissioner and Special Judge, Kottayam. They are being prosecuted for offences punishable u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, Section 120(B) of the Indian Penal Code. The first accused was a Village Officer, and the fifth accused a Sub Registrar, and thus both of them were public servants. They entered into a criminal conspiracy with the other accused (A2-A4) and pursuant to such conspiracy in violation of Assignment Rules a property assigned in favour of the second accused with some restrictive covenants over its alienation was transferred in favour of the third accused and, later, mutation was effected in the revenue records recognizing such transfer, is the crux of the case to proceed against the accused, all of them, for the offences indicated above. After filing of the charge by the investigating agency one among them (A4) expired, and against the rest of the accused further steps for trial are pending before the Special Judge. Petitioners herein who are accused numbers 1-3 have moved separate applications setting forth a plea of discharge. Similarly, the fifth accused

who is not a party in the above petitions has also moved another petition. All the four petitions were heard together and a common order was passed by the learned Special Judge negating the plea of discharge canvassed by them. Learned Counsel for petitioners (A1-A3) reiterating the contentions advanced before the Special Judge, which were found against, has urged for invoking the inherent powers of this court to quash the criminal proceedings against the aforesaid accused contending that it is an abuse of process of the court. The main thrust of attack raised by the counsel to assail the criminal proceedings is that after the transfer of the land and a change of mutation effected in the revenue records, the Government have amended the relevant Rules by which alienation effected over such land was recognized with retrospective effect. In such circumstances criminal proceedings against the petitioners is wholly unjustifiable, that too where they are being prosecuted for grave offences punishable under the Prevention of Corruption Act, is the submission of the Learned Counsel. Learned Counsel has relied on State of Haryana and others Vs. Ch. Bhajan Lal and others, to contend that there was total non application of the mind by the Investigating Officer in as much as he has failed to take note of the amendments made later to the relevant Rules, while filing the report indicting the accused for offences under the Prevention of Corruption Act.

2. After considering the submissions made by the Learned Counsel with reference to the Annexures produced in the petitions as well, I find this is not a fit case where exercise of inherent powers of the court can be canvassed of, to quash the criminal proceedings against petitioners/accused. The reported decision relied by the counsel dealt with the registration of an F.I.R. in relation to a cognizable offence and what are the circumstances under which a crime registered under an F.I.R. could be quashed invoking the inherent powers of the High Court. In the present case, after completion of the investigation, the petitioners now stand indicted of grave offences punishable under the Prevention of Corruption Act and also a Penal offence. Their plea for discharge on the premise that the charges against them are groundless has been turned down by the learned Special Judge who had the opportunity in such enquiry to examine the report and the materials produced by the investigating agency. Principles applicable in examining the merit of a crime registered over a cognizable offence can no longer be applied when a challenge is raised over a report filed by the investigating agency after completion of the investigation u/s 173(2) of the Code of Criminal Procedure. So much so, suffice to state that the reported decision has no application to the facts of the present case. So far as the challenge canvassed by the counsel that subsequent to the registration of the crime and filing of a report the relevant Rules have been amended recognizing the alienation effected over similarly placed lands, by which retrospective effect to the alienations previously made is given, it is only to be pointed out that the crux of the case proceeded against A1 and A5 is abuse of their official position as public servants pursuant to a criminal conspiracy hatched with the other accused and in relation to the others (A2-A4) as parties to such conspiracy commission of the offences

under the Prevention of Corruption Act with the above referred two Public servants. Subsequently the relevant Rules have been amended providing retrospective effect to alienations made over the lands over which restrictive covenants prohibiting transfer was in force, is no ground to hold that offences alleged under the Prevention of Corruption Act or the Penal Code were not committed by the accused persons. I refrain from saying anything more to avoid prejudice being caused to the accused in the trial of the case. Learned Counsel for petitioners, at this stage, requested for issuing a direction to the Special Judge to grant them personal exemption during the trial of the case. It is open to the petitioners to move application u/s 205 of the Code stating the grounds entitling them to seek exemption from appearance, and if any such application is moved, the Special Judge shall consider and dispose it on its merits.

Subject to the above direction, the petitions are dismissed.