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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Crl.O.P(MD)No.1994 of 2013

and

M.P. (MD) .No.2 of 2013

J.Sargunam

... Petitioner/Accused

-Vs-

1.State thro

The Inspector of Police,

C.C.I.W(C.I.D),

Ramanathapuram,

Ramanathapuram District,

In Cr.No.01/2011

... Respondent No.1/Complainant

2.N.Somasundaram

... Respondent No.2/Defacto Complainant

PRAYER:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the entire records of the case in C.C.No.38 of 2012 on the file of the Judicial Magistrate No.I, Ramanathapuram in Cr.No.1 of 2011 on the file of the first respondent police and quash the same as per the final order in surcharge passed by the Deputy Registrar in tha.thee en:2/2011-12 sa.pa., dated 11.07.2012.

For Petitioners :Mr.J.Jeyakumaran

For R1 :Mrs.S.Prabha

(Government Advocate)

For R2

:No appearance

ORDER

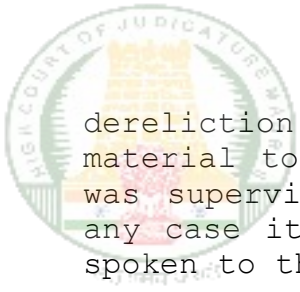
This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the entire records of the case in C.C.No.38 of 2012 on the file of the Judicial Magistrate No.I, Ramanathapuram in Cr.No.1 of 2011 on the file of the first respondent police and quash the same as per the final order in surcharge passed by the Deputy Registrar in tha.thee en:2/2011-12 sa.pa., dated 11.07.2012

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the first respondent.

3.The petitioner is arrayed as A2 for the alleged offences under Sections 408 and 477(A) of I.P.C., in Crime NO.1 of 2011. After investigation, charge sheet was filed and it has been taken on file in C.C.No.38 of 2012.

4.The case of the prosecution is that A1 while working as Secretary of the Society committed offence in purchasing paddy by creating a shortage. The petitioner was working as a Special Officer and his duty was supervisory. She was working in a temporary capacity. The allegation of the petitioner is that the petitioner has not checked the account resulting in A1 misappropriating the amount. It appears that A1 has also paid the entire amount in pursuance of the charge proceedings initiated, with adequate interest. The departmental proceedings have also been initiated against the petitioner. Insofar as the petitioner is concerned, though punishment was imposed earlier, it was set aside in the appeal.

5.The learned counsel for the petitioner submitted that there was



dereliction of duty on the part of the petitioner and there is no material to hold that she has committed the crime. As admitted her role was supervisory, she cannot be responsible for the crime itself and in any case it can be resolved in negotiation and none of the witness have spoken to the effect that the petitioner had acted in collusion with A1.

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6.The learned Government Advocate based upon the counter affidavit and on instructions submitted that after investigation, the charge sheet has been filed.

7.The fact that the petitioner has not verified the account and not signed as required by her are not in dispute. The mere fact that A1 has paid the amount would not exonerate the criminal liability.

8.The decision rendered by the Hon'ble Supreme Court in STATE (NCT OF DELHI) V AJAY KUMAR TYAGI reported in (2012) 9 SUPREME COURT CASES 685, exoneration in departmental proceedings ipso facto would not lead to exoneration or acquittal in a criminal case as the standard of proof in a departmental proceeding is lower than that of criminal prosecution.

9.The learned Government Advocate (Crl.side) has relied upon the judgment of the Hon'ble Supreme Court in STATE OF N.C.T. OF DELHI V AJAY KUMAR TYAGI in CRIMINAL APPEAL NO.1334 OF 2012.

10.Law is quite settled in the judgment referred supra, the mere fact that the question of exoneration in the departmental proceedings ipso facto would not result in quashing the criminal case.

11.However, in the case on hand, there is no specific allegation against the petitioner that she has acted hand in glove with A1. On the contrary, the allegation of the petitioner is that she has not verified the records and performed her role in supervision which lead to a collusion with A1. Such a stand cannot be sustained in the eye of law. Admittedly the offence was committed by A1 on his own. There is no material to hold that her role in supervision which lead to collusion with A1 and the petitioner and it cannot be stated that there is dereliction of duty on the part of the petitioner. Therefore, this Court is of the considered view that the charge framed against the petitioner cannot be sustained. Though the payment of money cannot be a ground, it can be taken into consideration to hold that A1 is solely responsible for the commission of offence. Therefore, in the absence of any material against the petitioner that she has abated the crime committed made by A1, the proceedings against him cannot be sustained. Accordingly, the criminal proceedings initiated against the petitioner in C.C.No.38 of 2012 on the file of the learned Judicial Magistrate No.I, Ramanathapuram is set aside and the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate No.I,
Ramanathapuram.

2.The Inspector of Police,
C.C.I.W(C.I.D) ,
Ramanathapuram,
Ramanathapuram District.

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

+5cc to M/s.J.Jeyakumaran, Advocate SR.No.23095 & 22483

sm:06.05.2015:3P/9C

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Cr1.O.P (MD) No.1994 of 2013
24.04.2015