

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.O.P.No.12119 of 2011

1. M.M.Mohan Raj
2. R.Jagadeeswaran

... Petitioners/Accused

Vs

State Rep. by its
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.

(Crime No.14/2008/AC/CB)

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in C.C.No.31 of 2014 dated 26.04.2009 on the file of the Special Judge/Chief Judicial Magistrate, Tirupur and quash the same. (Amended as per the Order of this Court dated 03.10.2015 made in M.P.No.2 of 2015 in Crl.O.P.No.12119 of 2015).

For Petitioner : Mr. S.Gopinath,
Senior Counsel

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

A1 and A2 in the Special Case in Spl.C.C.No.31 of 2014 on the file of the learned Special Judge under Prevention of Corruption Act (Shortly, hereinafter P.C. Act)/ Chief Judicial Magistrate, Tiruppur, under section 482 Cr.P.C. seeks quashing of the criminal proceedings initiated against him.

2. The defacto complainant is the elected President of Kottamangalam Panchayat, now in Trippur District. A1 and A2 are land promoters. They were in need of 'No Objection Certificate' (N.O.C.) to sell their plots.

3. The defacto complainant complained to Vigilance and Anti Corruption Unit, Coimbatore, that on 09.08.2008, A1 and A2 have offered him some money, to do them favour and issue

them N.O.C.

4. A case in Crime No.14 of 2008 was registered. Investigation was conducted. Evidence collected. The Investigating Officer filed the Final Report for an offence under section 12 of P.C. Act as against A1 and A2.

5. Upon hearing both and on consideration of the final report and the documents attached thereto, on 26.4.2011, the learned Special Judge charged them under section 12 of the PC Act. They have pleaded not guilty to the charges. The trial is yet to take off.

6. At this juncture, they seek quashing of the criminal proceedings.

7. The learned Senior Counsel for the petitioners contend that even taking the allegations as such, the charges framed against them is legally unsustainable. The learned Senior Counsel contended that to charge the petitioners under section 12 of the P.C. Act, the defacto complainant must be a public servant. However, in this case, he is not. The learned Senior Counsel referred to Section 2(c) of the P.C. Act defining a public servant and would submit that the defacto complainant is not in the service or employ of the Panchayat. And he is not receiving any salary or pay from the Panchayat.

8. In this respect, the learned Senior Counsel referred to Section 82 of the Tamilnadu Panchayats Act 1984, as per that the defacto complainant is not entitled to any salary or other remuneration except some allowances. The learned Senior Counsel would point out that in his reply under Right to Information Act, the Assistant Director, Rural Development, Tirupur District stated that the Panchayat President is not receipt of any salary.

9. The learned Senior Counsel appearing for the petitioner would also refer to Section 2(c)(viii) of the P.C. Act and submit that a combined reading of Section 83 and 84 of the Tamilnadu Panchayat Act 1984 would show that only the Executive Authority is empowered to regulate a layout and the defacto complainant is not the Executive Authority of the Panchayat. In this connection, the learned Senior Counsel referred to the reply received under the Right to Information Act, wherein it is stated that the President is not empowered to regulate any lay out.

10. The learned Senior Counsel would also cite

V.Balamurugan Vs. District Collector, Virudhunagar - 2007(3) CTC 56 (D.B.)

and submit that the Division Bench has held that the executive power of the Village Panchayat vest only with the Executive

Authority appointed by the Government and not by the President of the Panchayat.

11. The learned Senior Counsel for the petitioner would also contend that in his reply given under Right to Information Act, the official had replied that the defacto complainant is not a public servant.

12. On the other hand, the learned Additional Public Prosecutor would submit that the defacto complainant is a public servant. He would draw our attention to Section 2(b) of the P.C. Act, which is in amplification of Section 2(c) (viii) of the Act. He would further submit that the defacto complainant is engaged to do public duty.

13. The learned Additional Public Prosecutor would also submit that in the reply given under the Right to Information Act, it is not stated that the President is not a public servant under the P.C. Act. He had also referred to Section 280 of the Tamilnadu Panchayat Act 1984, wherein obtaining of sanction from the Government to prosecute the Panchayat President has been contemplated. He has also submitted that the decision cited is not applicable to the facts of this case.

14. I have anxiously considered the rival submissions, perused the materials on record and the relevant provisions of the enactments cited and the decision cited.

15. Now, the question is whether the defacto complainant, namely, President of Kottamangalam Panchayat in Tiruppur District is a "public servant" within the meaning of Section 2 (c) of the P.C. Act.

16. The phraseology, 'public servant' defined in section 21 of Indian Penal Code, 1860, cannot be imported into the provisions of the P.C. Act. Further, the reply given by an official under Right to Information Act will not be a decisive to determine the term 'public servant' given in the P.C. Act.

17. Under the Section 2(b) of the P.C. Act, the term "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation - In this clause "State" includes a corporation established by or under a Central Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

18. Under the P.C. Act, a 'Public Servant' has been defined in section 2(c) of the Act as under :

(i) any person in the service or pay of a local

authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;"

19. A person to fall under the said section 2(c)(ii) of the P.C. Act, he must be the employee or in service or pay of a local authority such as Corporation of Chennai, a Municipal Corporation or village or other panchayat governed under the Tamilnadu Village Panchayat Act or in other analogous Act. Section 82 of the Tamilnadu Village Panchayat Act says that the Panchayat President is not under the control of the panchayat and he is not paid salary or remuneration. A Panchayat President is not an employee of the panchayat. The service rules applicable to the employees of the panchayat will not be applicable to him. He will not be a staff. Therefore, he cannot be dubbed a public servant under section 2(c)(ii) of the P.C. Act.

20. As per section 2(c)(viii) of P.C. Act, a person holding an office by virtue of his such office when he is entitled to, authorized to, required to perform a public duty is also a public servant.

21. What is 'public duty' has been explained in Section 2(b). Service to Public or service to community at large, community having an interest in discharging of the duty is a public duty. Such a duty is performed by a village Panchayat President.

22. Now in this case, as per Section 83 and 84 of the Tamilnadu Panchayat Act 1984, the defacto complainant is not an executive authority appointed by the Government which alone is authorized to regulate the unapproved plots and issue 'No Objection Certificate'. But the issue before us should be viewed from another angle, with larger perspective. For the purpose of Section 2(c)(viii) of the P.C. Act an individual act will not be a relevant factor to decide the issue whether Village President is a public servant or not. Any kind of discharge of duties for the benefit of the public or any act having an element of community interest will make the Panchayat President a 'public servant' under the P.C. Act.

23. In V.Balamurugan Vs. District Collector, Virudhunagar 2007(3) CTC 56 the Division Bench was concerned with the question relating to power of the Panchayat to remove the encroachment from a road poramboke. In that context, the Division Bench had held that the power to take

such action is vest with the Executive Authority as stated in section 82 of the Act. Thus Balamurugan [supra] is not applicable to the facts of this case.

24. In winding up our discussion, we hold that the defacto complainant, namely, the President of Kottamangalam Panchayat, Tirupur District is a 'Public Servant' within the meaning of Section 2(c) of the Prevention of Corruption Act.

25. In the circumstances, this Criminal Original Petition fails and it is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Special Judge
under P.C. Act/Chief Judicial Magistrate,
Tirupur District.
2. The Additional Public Prosecutor,
High Court, Madras.
3. The Inspector of Police,
Vigilance and Anti-Corruption,
Tirupur District.

+1cc to Mr.V.Perumal, Advocate, S.R.No.9850
+1cc to the Public Prosecutor, S.R.No.9808

Cr1.O.P.No.12119 of 2011

PPA(CO)
CA(03/03/2016)

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