

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.23600 of 2016 & Crl.M.P. No.11106 of 2016

1 Mannuel Bakkiyaraj
2 Joswa Karam Chandar
3 Prince Calvin
4 Peter G.B. Vethamuthu
5 Anna Christina Petitioners

vs.

1 State of Tamil Nadu
represented by its
Inspector of Police
Crime Branch CID
The Nilgiris District
2 Prem Kumar Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in respect of the case in C.C. No.209/2012 now pending on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

For petitioners Mr. A. Thirumaran

For R1 Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records in respect of the case in C.C. No.209/2012 now pending on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

2 On the complaint made by Prem Kumar (de facto complainant/second respondent herein), the first respondent police registered a case in Cr.No.5 of 2010 and after completing the investigation, filed a final report in C.C. No.209 of 2012

against Manickam Durai (A1), Manuel Bakkiyaraj (A2), Joswa Karam Chandar (A3), Prince Calvin (A4), Peter G.B. Vethamuthu (A5), Anna Christina (A6) and Devadasan (A7), challenging which, Manuel Bakkiyaraj (A2), Joswa Karam Chandar (A3), Prince Calvin (A4), Peter G.B. Vethamuthu (A5), Anna Christina (A6) and Devadasan (A7) are before this Court.

3 The gravamen of the allegation against the petitioners is as follows:

"I Charges against A-1 to A-5:

In between the period 01.08.2009 and 30.11.2009, the accused A-1 Manickam Dorai, who was charge sheeted in Coimbatore District CBCID Cr. No.1/2009, u/s 120-B, 468, 471, 477(A) and 409 IPC had withdrawn Rs.5 lakhs by way of D.D. No.569518 (for Rs.4,48,350/- excluding TDS amount Rs.51,650/- in Cheque No.522045, dated 21.11.2009) dated 21.11.2009 in favour of Advocate Natarajan, from the CSI Coimbatore Diocese IOB S/B Account No.01 for getting anticipatory bail in Crl.O.P. No.712/2010 M.P. No.1 and 2 of 2010 dated 08.02.2010 and filing FIR Quash Petition in Crl.O.P. Nos.15660 and 16079/2009 in the Hon'ble High Court of Madras. Though the above criminal case is registered for misappropriation of Coimbatore CSI diocese fund to the tune of Rs.3 crore, the accused had fraudulently withdrawn the diocese fund conspiring with A-2 Manual bakkiyaraj, A-5 Peter G.P. Vedhamuthu. The accused A-2 Manual Bakkiyaraj is the main signatory in the above cheque and A-5 Peter G.P. Vethamuthu is the co-signatory.

ii The accused A-1 Manickam Dorai, for the purpose of meeting legal expenses fraudulently had withdrawn (i) Rs.26,148/- by wway of cheque no.428224, dated 07.10.2009, (ii) Rs.6,230/- by way of cheque no.522 001 dated 10.11.2009 (iii) Rs.4,000/- by way of cheque no.601745 dated 14.08.2009 in favour of J.D. Socraties, Advocate, who rendered legal advise in the above criminal case for filing quash petition in the name of the co-accused in the above criminal case Samidoss in Crl.O.P. No.16079/2009 by conspiring with A-2 Manual Bakkiyaraj, A-3 Josuva Karamchandrar. The accused A-2 Manual Bakkiyaraj is the main signatory in the above cheque and A-3 Josuva Karamchandrar is the co-signatory. The advocate Socraties received in total Rs.40,400/- by way of the above three cheques including TDS of Rs.3,852 + Rs.170/- which was paid to income tax department by way of cheque nos.428225 for Rs.3852/- and Cheque No.522002 for Rs.170/-.

iii The accused A-1 Manickam Dorai, for the purpose of meeting legal expenses fraudulently withdrawn (i) Rs.10,000/- by way of cash dated 21.09.2009 (ii) Rs.1,12,764/- by way of cheque no.601793 dated 31.08.2009 (iii) Rs.44,340/- by way of cheque No.511228 dated 17.09.2009 (iv) Rs.8,000/- by way of cheque no.520519 dated 4.11.2009 (v) Rs.7,643/- by way of cheque no.520520 dated 4.11.2009 in favour of Immanuel, Advocate, who appeared for A-1 Manickam Dorai in Madras High Court for the quash petition in CrI.O.P. No.15660/2009 in the above criminal case by conspiring with A-2 Manual Bakkiyaraj, A-3, Josuva Karamchandrar. The accused A-2 Manual bakkiyaraj is the main signatory in the above cheques and A-3 Josuva Karamchandrar is the co-signatory. The advocate Immanuel received in total Rs.2,09,661/- by way of the above four cheques including TDS, which was paid to income tax department by way of cheques nos.601794 for Rs.19,261/- and cheque no.511229 for Rs.5,665/- and cheque nos.601794 for Rs.19,261/- and Cheque No.511229 for Rs.5,665/- and cheque no.520521 for Rs.1,998/-.

iv The accused A-1 Manickam Dorai, for the purpose of meeting legal expenses fraudulently withdrawn (i) Rs.10,000/- by way of cheque no.522046 dated 21.11.2009 in favour of Kingsly Solomon, Advocate, who appeared for A-1 Manickam Dorai in Madras High Court for the quash petition in CrI.O.P. No.15660/2009 in the above criminal case by conspiring with A-2 Manual Bakkiyaraj and A-4 Prince Calvin. The accused A-2 Manual Bakkiyaraj is the main signatory in the above cheque and A-4 Prince Calvin is the co-signatory. Thus, the accused A1 to A-5 misappropriated the Diocesan funds to the tune of Rs.7,60,061/-. Thus, the accused A-1 to A-5 committed the offences punishable u/s 120-B, 409 IPC."

4 From a reading of the above, it is seen that Manickam Durai (A1), Bishop of the Coimbatore Branch of the CSI Diocese, was involved in a criminal case and in order to meet the legal expenses, the petitioners have been withdrawing money from the church funds to the tune of Rs.7,60,061/-.

5 The learned counsel for the petitioners submitted that the petitioners have signed the cheques only on the directions of the Bishop, who is their spiritual and temporal head and therefore, they cannot be criminally prosecuted. He also submitted that CSI is a company registered under the Companies

Act, 1956 and therefore, action could have been taken within the powers under the Companies Act.

6 Heard the learned counsel on either side.

7 The church funds are collected from devotees and they cannot be used for any purpose other than religious and spiritual purposes. The fact that the amounts in question were withdrawn from the church funds prima facie shows that the funds of the church have been misused. When there are sufficient materials in the charge sheet, this is not a fit case to quash the prosecution.

8 The learned counsel for the petitioners submitted that the presence of Manuel Bakkiyaraj (A2), Joswa Karam Chandar (A3) and Peter G.B.Vethamuthu (A5), before the Trial Court may be dispensed with on account of their old age.

9 Acceding to the submission of the learned counsel for the petitioners, all the petitioners are directed to surrender before the Trial Court within a period of two weeks from the date of receipt of a copy of this order. On their surrender, they shall be released on bail on the same day on they executing a bond for Rs.10,000/- with two sureties, who can be common sureties as well. Thereafter, the Trial Court shall dispense with the personal appearance of Manuel Bakkiyaraj (A2), Joswa Karam Chandar (A3) Peter and G.B. Vethamuthu (A5), on condition that they shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. They shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that the counsel named by them will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Cr1.) 288]. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. Further, if the petitioners abscond, it is open to Trial Court to have an FIR registered against them under Section 229-A IPC. It is made clear that the observations made herein are only for the limited purpose of deciding this quash application and the Trial Court shall proceed with the case uninfluenced by any of the observations made in this order.

With the above directions and observations, this Criminal Original Petition stands dismissed. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad
To

1 The Chief Judicial Magistrate
Coimbatore

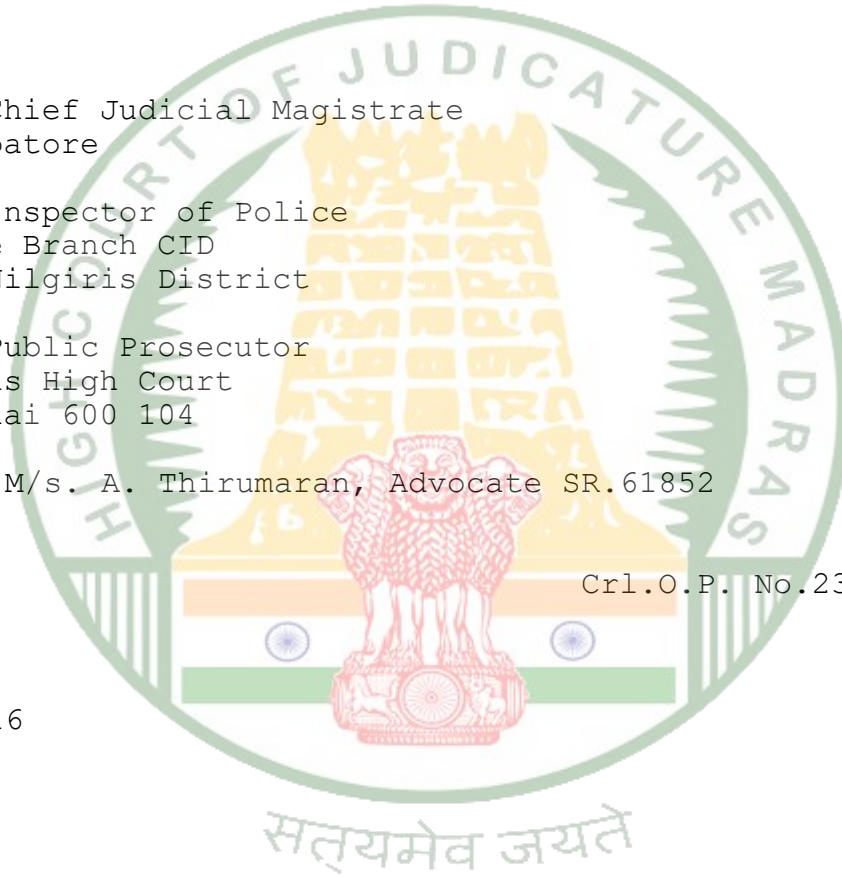
2 The Inspector of Police
Crime Branch CID
The Nilgiris District

3 The Public Prosecutor
Madras High Court
Chennai 600 104

+ 1 cc to M/s. A. Thirumaran, Advocate SR.61852

Crl.O.P. No.23600 of 2016

RP(CO)
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