IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2017

Pronounced on : 21.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.6789 of 2017
and
Crl.M.P.Nos.4972 & 4973 of 2017

Sam Joseph .. Petitioner

Vs.

Mathew Varghese .. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in C.C.No.40 of 2016 on the file of the learned Judicial Magistrate, Gudalur and to quash the same.

For Petitioner : Mr.T.P.Manoharan, Sr. Counsel for Mr.K.P.Jotheeswaran

For Respondent : Mr.Karthic, Sr. Counsel for Mr.John Zachariah

O R D E R

This petition has been filed challenging the proceedings in C.C.No.40 of 2016 on the file of the learned Judicial Magistrate, Gudalur and to quash the same.

2.The brief facts of the case is as follows:

The petitioner was elected as a Secretary of Mar Thoma Educational Society under Rule X of the Rules and Regulations of the said society, the management and control of the society and its affairs are vested in its Governing Body under Rule XX (4) of the Rules and Regulations and that Treasurer is the custodian of the funds of the society under Rule XX (3) of the society, the bank account is operative by the Vice President and the Treasurer. On 27.01.2014, the Governing body has decided to give construction support to its diocese which decision was ratified by the General Body on 30.06.2014. The respondent herein has filed a private complaint for an alleged commission of an offence by the petitioner herein for an offence under Section 406 IPC on the ground that the petitioner had diverted a sum of Rs.3 lakhs from the income of the society for the construction support to the diocese. Challenging the same, the present petition has been filed.

3.Heard Mr.T.P.Manoharan, learned Senior counsel for the petitioner as well as Mr.Karthic, learned Senior for the respondent.

4.Mr.T.P.Manoharan, learned Senior counsel for the petitioner submitted that the private complaint itself is not maintainable since the respondent herein had filed the present complaint against the petitioner herein and not against the Governing body of the society which is responsible for the management and control of the society. According to him, under Rule X and under Rule X (c) (vii) of the Rules and Regulations of the Society, the Governing body is empowered to give gifts which it may deem necessary. Relying on the counter affidavits filed by the respondent herein, the learned Senior counsel submitted that the respondent himself is not clear as against whom the action has to be taken and having admitted that the cheque was signed by the Vice President and the Treasurer and that the Governing body has committed a breach of trust, the complaint against the secretary alone is not maintainable. According to the learned Senior counsel, the Society or the Governing body has not entrusted any funds or given any dominion with any funds to him and therefore, the offence under Section 406 IPC is not attracted.

5.Mr.Karthic, learned Senior counsel for the respondent on the other hand submitted that the action of diverting the funds of Rs.3 lakhs to the diocese is opposed to the objects of the society. The object of the society is to establish educational and training institutions for promoting knowledge and to give scholarships, establish hostels, meeting halls, centres of social welfare within the State of Tamil Nadu. According to the learned Senior counsel, amount has been paid to the diocese in Kerala for the construction work and since the object is for promoting knowledge within the State of Tamil Nadu, the petitioner has committed the offence of 406 IPC.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The questions that arise for consideration in the present petition is as follows:

a)Whether the objects of the Society is restricted within the State of Tamil Nadu?

b)Whether the action of donating Rs.3 lakhs to the diocese is against the objects of the society and whether it is opposed Rules and Regulations of the Society?

c) Whether the offence of Section 406 IPC has been made out in general and as against the Secretary in particular?

8. With regard to the first issue for the sake of convenience, the object of Society is extracted hereunder:

Objects:

"a) To promote the diffusion of useful knowledge by establishing schools, colleges, technical and vocational training institutions and to give scholarships, establish hostels, meeting halls, centres of social welfare within the State of Tamil Nadu.

b) To take over, establish, maintain and administer other educational or charitable institutions.

c) In pursuance of the said objects to administer, preserve and improve, acquire or dispose of the properties movable or immovable belonging to the said institution, for its benefit and use of the said institution, to raise loans on the security of the said properties and to give loans, exchanges, invest, withdraw, re-invest, collect donations and to do other acts to promote the objects of the society.

d) To do all such other things as are deemed incidental or conducive to the attainment of all or any of the above objects.

e) To enter into and carry out arrangements for joint working or for amalgamation with any other Association, Society or institution having objects of the society and to grant aids and supports to such institutions and societies.

f) The society will be independent of any political parties and will not participate in any political activities.

g) The society shall not undertake or carry out any activity with personal interests or with the objective of profit. Any income arising from out of the normal activities of the society or investment of funds of the society shall not be distributed at any time to the members of the society or its management committee by way of profit, dividend etc. The Rules and Regulations of the Society shall be an irrevocable one and the society shall continue its activities until such time of its dissolution when after satisfaction of all debts and liabilities of the society there remains any property, money or whasoever, the same shall be given or transferred to the Metropolitan of the Mar Thoma Syrian Church or his Successors-in-Office to be utilised for charitable purposes, similar to the objects of this Society. The activities of the Society shall be limited to the territories of Union of India and the benefits of the Society shall be open to all irrespective of caste, religion, sex etc.

h)The funds of the society to such extent and under such conditions as may be permitted by laws be invested or deposited in the forms and modes specified in Section 13(1)(d) read with Section 11 (5) of the Income Tax Act.

i)Further no amendment of the Memorandum and Bye-laws of the Society shall be carried out without the approval of the Commissioner of Income tax.

j)To undertake any other activities, to raise resources and to develop properties of the society and to use income arising from such activities solely for the objects of the society. However, the society shall not undertake any business activities, unless such business is carried on in the course of actual carrying out of the objects of the society and separate books of accounts are maintained for the same."

9.No doubt, the first object is to promote the diffusion of knowledge by establishing educational institutions and for giving scholarships, establishing hostels, meeting halls and centres of social welfare within the State of Tamil Nadu. However, 7(g) of the Rules and Regulations empowers the society to extend its activities within the territories of Union of India and the benefits of the society was left open to all irrespective of caste, religion and sex. Likewise, object (j) also states that the society shall undertake any other activities. As such, it cannot be said that the activities of the society is restricted to the territorial limits within the State of Tamil Nadu. On the other hand, the objects enables the society to extend its activities outside the territories of Tamil Nadu and limited to the territories of Union of India.

10.With regard to the second issue, the Rules and Regulations of the Society is very clear that its management and control is vested with the Governing body consisting of 9 members of which the secretary is one among them. Apart from the above powers, the Governing body also have the powers to accept or give gifts etc., as contemplated under Rule X(c)(vii). As such, it is the General body that takes the decision on all the activities of the society. In furtherance of the same, on 27.01.2014, the Governing body has decided to donate a sum of Rs.3 lakhs towards construction support to the diocese, which decision was ratified by the General body also on 30.06.2014. Pursuant to the decision and ratification, the amount of Rs.3 lakhs was donated to the diocese in Kerala. This decision of the Governing body as well as the consequential ratification by the Governing body is well within the powers vested in the Society's Rules and Regulations. Hence it cannot be said that the donation to the diocese is opposed to the object of the society and it can neither be said the decision to donate Rs.3 lakhs to the diocese was opposed to the object of the society nor is it against the powers vested with the Governing body.

11.With regard to the third issue, as to whether the offence of criminal breach of trust has been made in the complaint, it would be relevant to have a glance at Sections 405 & 406 of IPC:

> "405.Criminal breach of trust:Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
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> 406.Punishment for criminal breach of trust:-Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

12.The main ingredients in order to constitute a criminal breach of trust are

a)entrusting a person with property or with any dominion over property.

b)that the person entrusted had dishonestly misappropriated or converted that property to his own use or had dishonestly used or disposed of that property or wilfully suffering any person so to do in violation of a legal contract or of any direction of law.

13.In the instant case, the Treasurer is the custodian of the funds under Rule XX(iv) and admittedly, the cheque was signed by the Vice President and the Treasurer. The impugned complaint filed by the respondent herein also does not specifically implicate the petitioner herein who is the Secretary of having personally misappropriated or converted the said funds. The petitioner was not entrusted with the funds and he had neither misappropriated nor converted to its own use and neither is the action of the Governing body in donating the funds opposed to the Rules and Regulations of the society in view of my discussions in the earlier paragraphs. While that being so, by no stretch of imagination can it be said that the ingredients of Section 405 has been made out in the present complaint and the offence of criminal breach of trust either against the society or against the petitioner in particular. Apart from the above, the impugned complaint filed by the respondent also does not make out the offence of criminal breach of trust. It would be relevant to mention that the respondent herein had earlier given a criminal complaint which came to be registered against the petitioner on 24.11.2015. Subsequently, after investigation, the said complaint came to be closed as mistake of fact through a final report dated 04.07.2015. At the instance of the respondent herein, an order came to be passed in W.P.No.22642 of 2016 dated 30.06.2016, in consequence of which, the Additional Chief Secretary to Government (FAC), Commercial Taxes and Registration Department, Secretariat, Chennai had through a letter dated 08.02.2017 observed that the allegation of financial mismanagement to the tune of Rs.3 lakhs was treated as 'not proved'. It is in this background, the impugned complaint has been filed. In the absence of any allegations and in the background of the police-report as well as the findings of the Government that there was no illegality in the gift of Rs.3 lakhs, I am of the view that the respondent herein has not made out a case to constitute offence under Section 406 IPC in order to maintain the private complaint.

14.In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.40 of 2016 on the file of the learned Judicial Magistrate, Gudalur is hereby quashed. Connected Miscellaneous Petitions are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

1.The Judicial Magistrate,
Gudalur.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K.P.Jotheeswaran , Advocate sr 82415.

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SP(29/11/2017)