

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.Nos.1022, 1023, 1024, 1025 and 1026 of 2015

P.Durairaj ... Petitioner
(in all petitions)

vs

1.The State rep. By
The Inspector of Police,
District Crime Branch,
Thiruvarur,
Thiruvarur District.
(Crime No.4/2012)

2.The Block Development
(Regular)
Block Development Officer,
Needamangalam Taluk & Post,
Thiruvarur District.

... Respondent
(in all petitions)

PRAYER IN CRL.RC.NO.1022 OF 2015 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the District Munsif Court cum Judicial Magistrate, Needamangalam made in Crl.M.P.No.956 of 2015 in C.C.No.11 of 2015 dated 08.09.2015 and discharge the petitioner in Crime No.4 of 2012.

PRAYER IN CRL.RC.NO.1023 OF 2015 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the District Munsif Court cum Judicial Magistrate, Needamangalam made in Crl.M.P.No.928 of 2015 in C.C.No.9 of 2015 dated 08.09.2015 and discharge the petitioner in Crime No.4 of 2012.

PRAYER IN CRL.RC.NO.1024 OF 2015 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the District Munsif Court cum Judicial Magistrate, Needamangalam made in Crl.M.P.No.931 of 2015 in C.C.No.13 of 2015 dated 08.09.2015 and discharge the petitioner in Crime No.4 of 2012.

PRAYER IN CRL.RC.NO.1025 OF 2015 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the District Munsif Court cum Judicial Magistrate, Needamangalam made in Crl.M.P.No.929 of 2015 in C.C.No.10 of 2015 dated 08.09.2015 and discharge the petitioner in Crime No.4 of 2012.

PRAYER IN CRL.RC.NO.1026 OF 2015 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the District Munsif Court cum Judicial Magistrate, Needamangalam made in Crl.M.P.No.930 of 2015 in C.C.No.12 of 2015 dated 08.09.2015 and discharge the petitioner in Crime No.4 of 2012.

For Petitioner : Mr.S.Ayyathurai
For Respondent-1 : Mr.R.Ravichandran
Government Advocate (Crl.Side)

C O M M O N O R D E R

These Criminal Revision Cases have filed against the order dated 08.09.2015 in Crl.M.P.Nos.956, 928, 931,929 and 930 of 2015 in C.C.Nos.11, 9, 13, 10 and 12 of 2015, by the learned District Munsif cum Judicial Magistrate, Needamangalam.

2. The petitioner is the President of a Village Panchayat. He has been charged with for the offences under Sections 409, 420, 465, 467, 468 and 477(A) of IPC. The allegation against the petitioner is that while the petitioner was functioning as president of the Perambur Panchayat, he has misappropriated the panchayat funds to the tune of Rs.3,42,988/- and hence enquiry was conducted and based on the enquiry, the crime has been registered against the petitioner, after investigation, a final report has also been filed. Thereafter, the petitioner filed a petition to discharge him from the above charges contending that except the Audit report, there is no evidence to show that the petitioner has misappropriated the funds, and under Section 227 of the Tamil Nadu Panchayat Act, the complaint should have been filed within a period of three months from the date of misappropriation of funds, but the complaint has been filed after a long time which is barred by limitation. Apart from that under Section 234 of the Tamil Nadu Panchayat Act, a previous sanction is required for initiating the prosecution against the petition, but without obtaining any sanction, the present complaint has been filed. The Court below, considered all the three issues, dismissed the petition holding that apart from audit report and as many as 27 witnesses were examined and their statements were recorded by the Investigating Officer. So far as Section 227 of the Tamil Nadu Panchayat Act is concerned,

limitation is applicable only for the offence relating to violation of T.N. Panchayat Act, and for offences committed under the Act. So far as the sanction is concerned, the District Collector has given a sanction, apart from that since the charge relates to misappropriation of the funds of the Panchayat, the petitioner is not discharging the function of the public office hence no sanction is required. Now, challenging the above said order, the present criminal revision case is filed.

3. I have heard Mr.S.Ayyathurai, the learned counsel appearing for the petitioner and Mr.R.Ravichandran, the learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

4. The learned counsel appearing for the petitioner would submit that from the material available on record, there is no prima facie has made out against the petitioner and the complaint is also barred by limitation. Apart from that under Section 230 of Tamil Nadu Panchayat Act, before filing the complaint, a previous sanction of the District Collector is required. Hence, in the absence of any sanction, the Court below ought not to have taken cognizance of the offence and he prays for allowing this criminal revision case.

5. Per contra, the learned counsel appearing for the respondents would contend that apart from the audit report, as many as 27 witnesses were examined and their statements were recorded. The provision under Section 227 of Tamil Nadu Panchayat Act is not applicable to the offence and the previous sanction has already obtained. Since it is the case of misappropriation, the petitioner is not discharging any public duty, previous sanction is not necessary and he sought for dismissing the criminal revision case.

6. I have considered the rival submissions.

7. So far as the first contention of the learned counsel appearing for the petitioner is that except the audit report there is no other evidence available on record to show that the petitioner had misappropriated the panchayat funds. I have gone through the entire records and I find that the respondents obtained statement from so many witnesses which are prima facie show that the petitioner has misappropriated the panchayat funds.

8. So far as the next contention of the learned counsel appearing for the petitioner is that the complaint is barred by limitation under Section 227 of Tamil Nadu Panchayat Act is concerned, the limitation prescribed under Section 227 of the

Tamil Nadu Panchayat Act is applicable for any offence committed under the Tamil Nadu Panchayat Act and Rules and by law made there under and the petitioner has been charged with for the IPC offence, not under the Panchayat Act, hence, Section 227 of the Tamil Nadu Panchayat Act is not applicable to the petitioner's case.

9. So far as the sanction is concerned, now it is settled law that while a person has been charged with misappropriation of public funds, he is not be discharging of public duty. The Hon'ble Supreme Court in number of cases has held that a person indulging in misappropriation of funds is not discharging the public function, hence, no sanction is required. Apart from that it is also stated that the District Collector has already given a sanction for prosecution. In the above circumstances, I find no merit in the arguments advanced by the learned counsel for the petitioner. The Court below has elaborately considered all the issues and dismissed the petition. Therefore, I find no illegality or irregularity in the order passed by the Court below and hence the criminal revision cases fail and the same are liable to be dismissed.

10. In the result, the criminal revision cases are dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif Cum Judicial Magistrate,
Needamangalam.

2.The Inspector of Police,
Thiruvarur, Thiruvarur District.

3.The Block Development Officer,
Needamangalam Taluk & Post,
Thiruvarur District.

+lcc to Mr.S.Ayyadurai, Advocate Sr.25354

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1025 and 1026 of 2015

sj[co]
srg 07/06/2017