

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Cr1.O.P.No.23463 of 2015
and
M.P.Nos.1 and 2 of 2015

S.Krishnamurthy
formerly assistant
O/o. Deputy Director of Medical and Rural
Health Service and Family Welfare, Ooty ... Petitioner/Accused

Vs.

State of Tamil Nadu,
represented by
the Inspector of Police,
G-1, Town West Police Station,
Ooty. ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C to call for the records and quash the charge sheet in CC
No.192 of 2014 pending trial on the file of the learned Judicial
Magistrate, Uthagamandalam, as the same is an abuse of process
of law.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

The present Criminal Original Petition has been filed to
call for the records and quash the criminal proceedings in CC
No.192 of 2014 pending on the file of the learned Judicial
Magistrate, Udhagamandalam.

2. The facts relevant for the disposal of this petition, in
a nutshell, are that on the basis of the complaint lodged by the
Deputy Director of Medical and Rural Health Service and Family
Welfare, Ooty, a case in Crime No.179 of 2011 was registered
against the petitioner for the alleged offence punishable under
Section 409 IPC. It was alleged in the complaint that after

receiving the suspension order dated 14.03.2011, the petitioner did not hand over the Government properties, such as, documents, registers and keys of the concerned section, which were entrusted to him. When he was asked to hand over the same, he has stated that he will do so, after meeting the Director of Family Welfare, Chennai. It was further alleged therein that while leaving the office, the petitioner had taken some official files along with him. Despite the repeated requests, he did not return the same. After investigation, charge sheet was filed before the learned Judicial Magistrate, Udthagmandalam for the aforesaid offence and the same was taken on file as CC No.192 of 2014, which is pending trial. At this stage, the petitioner is before this court with the present petition for the above stated prayer.

3. Learned counsel for the petitioner contended that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Learned counsel further contended that subsequent to the filing of the charge sheet, the Joint Director of Family Welfare, Chennai had sent a communication dated 08.09.2014, to the Deputy Director, Medical and Rural Health Service and Family Welfare, Ooty District, instructing to take steps to withdraw the case initiated against the petitioner, as the misplaced documents were already handed over to the Chief Accounts Officer, for auditing. As such, the registration of the FIR and the resultant charge sheet against the petitioner, is nothing but an abuse of process of law. In the event of the said criminal proceedings being allowed to go on, no useful purpose will be served and it would amount to waste of judicial time. Therefore, learned counsel prayed for quashing the criminal proceedings against the petitioner, by invoking the powers of this Court under Section 482 Cr.P.C.

4. Heard the learned Additional Public Prosecutor appearing for the respondent, who supports the case of the prosecution. However, he has no serious objection in quashing the criminal proceedings based on the letter sent by the department instructing to withdraw the case.

5. Now, the issue that arises for consideration before this Court is as to whether the petitioner has made out any ground to quash the proceedings for the offence under Section 409 IPC.

6. It is well settled in law that "to bring home a charge under section 409 IPC, what is necessary to be proved is that the accused is a public servant and in such capacity, he was entrusted with the property in question or with dominion over it and that he committed criminal breach of trust in respect of it. The necessary element constituted in the offence must be strictly proved by the prosecution".

7. In the instant case, the main allegation levelled against the petitioner in the complaint is that while leaving the office, he did not hand over the Government properties entrusted to him. Based on the same, criminal law is set in motion against the petitioner. However, after filing the charge sheet before the learned Judicial Magistrate, Udhagamandalam, by a letter dated 08.09.2014, the Joint Director of Family Welfare, Chennai has informed the complainant i.e., Deputy Director, Medical and Rural Welfare Service and Family Welfare, Udhagamandalam that the misplaced documents were already handed over to the Chief Accounts Officer for the purpose of auditing and therefore, the Deputy Director was instructed to take steps to withdraw the FIR registered against the petitioner. Thus, the said letter, the copy of which is enclosed at page 11 of the typed set of papers filed along with this petition, would go to show that no case has been made out against the petitioner. Therefore, this Court is of the opinion that there can be no question of registering the FIR against the petitioner for the offence under Section 409 IPC.

8. In such view of the matter, this Court comes to a conclusion that the continuation of the criminal proceedings against the petitioner for commission of the alleged offence under Section 409 IPC is a pure abuse of process of law and Court and the trial would be futile exercise, as such, the same deserves to be quashed in the interest of justice.

9. Accordingly, this Criminal Original Petition is allowed by quashing the criminal proceedings in CC No.192 of 2014 on the file of the learned Judicial Magistrate, Udhagamandalam. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Udhagamandalam.
2. The Chief Judicial Magistrate,
Udhagamandalam.

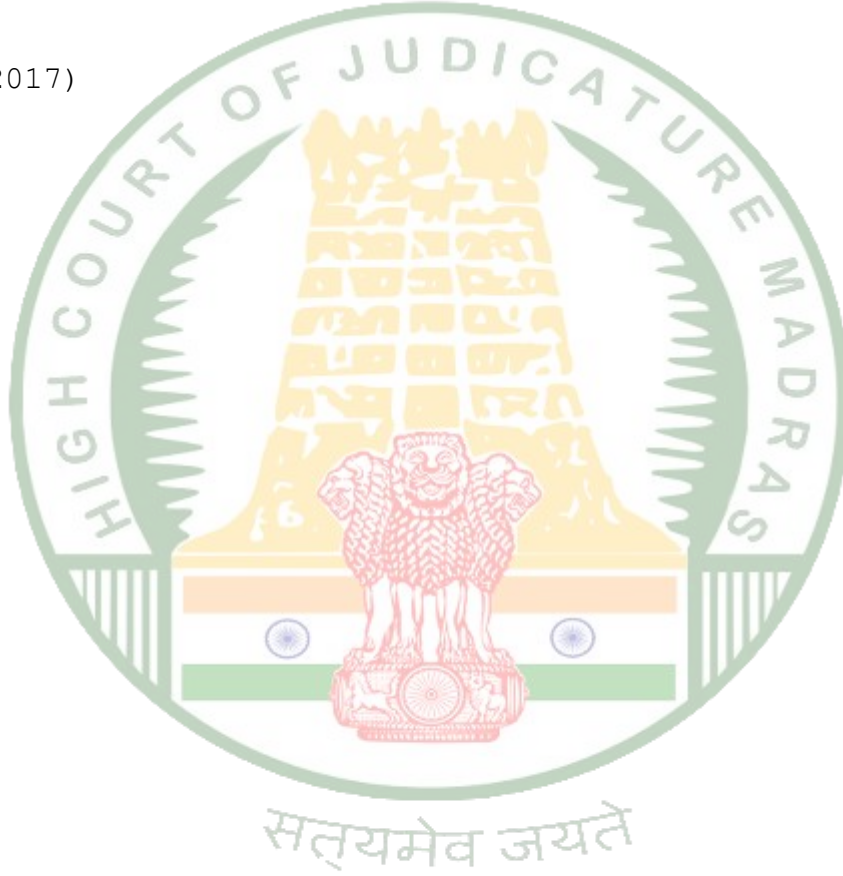
3. The Inspector of Police,
G-1, Town West Police Station,
Ooty.

4. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.M.Ravi, Advocate, S.R.No.3327

Cr1.OP.No.23463 of 2015

VGI(CO)
CA(31/01/2017)



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