

IN THE HIGH COURT OF JUDICATURE AT MADRAS**CORAM****THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN****RESERVED ON :03.08.2017****PRONOUNCED ON :05.12.2017****CRL.RC. No.67 of 2012****and****M.P.No.1 of 2012**

S.Gunasekaran

..

Petitioner

..Vs..

The State by Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
Crime No.305 of 2008

..

Respondent

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records pertaining to the order dated 16.12.2011 made in C.M.PNo.1865 of 2011 in C.C.No.14 of 2010 on the file of the Judicial Magistrate No.II, Udumalpet and set aside the same by allowing the Criminal Revision Petition.

For Petitioner :Mr.K.Selvakumariswami

For Respondent :Mr.B.Ramesh Babu

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to call for the records pertaining to the order dated 16.12.2011 made in C.M.PNo.1865 of 2011 in C.C.No.14 of 2010 on the file of the Judicial Magistrate No.II, Udumalpet and set aside the same by allowing the Criminal Revision Petition.

2. The case of the prosecution is that on 16.09.2008 one Radhakrishnan Iyer lodged a complaint before the respondent alleging that this petitioner is the Head Master of Sri Venkatakrishna Higher Secondary School, Kaniyur and he illegally obtained money under District Rural Development Agency, (DRDA) to the tune of Rs.25 lakh stating that the school is a Government Higher Secondary School, misused the fund and also collected money from students and cheated their parents and the Government.

3. From the final report, it is seen that, after investigation, after recording the statement of 41 witnesses and charge sheet is filed on 30.10.2009.

4. The petitioner/accused moved the Application under Section 239 of Cr.P.C., praying for discharge from the criminal case on the ground that, there is no sufficient material to prove the alleged entrustment and it's misappropriation therefor.

5. The learned counsel for the Revision Petitioner could contended that the accused did not misappropriate a sum of Rs.25 lakh; but to the contrary, in the charge sheet it is stated that the accused only collected a sum of Rs.1,16,964/- from students of VI standard to XII standard for expenses of Bus Pass cover, Application Forms, Miscellaneous charges for note books.

According to the charge sheet, the investigating Officer has stated that the accused returned above said amount back to the students in between 09.04.2008 and 05.06.2008 i.e., even before the registration of the FIR and thereby he temporarily misappropriated the amount from 2007 till the amount was repaid to the students.

6. The case of the defence is that at the time of filing the F.I.R, offence alleged was not existence since even before the registration of FIR itself the money collected from the student for genuine purpose was repaid tot he students in view giving bad colour attested by the defacto complainant who has made such a said allegations with eye to catch the school adminstration.

7. The learned counsel further contended that the alleged collection of Rs.25 lakh is a motivated complaint by a person who wanted to take over management of the aided school in which, the petitioner is working as a Head Master and placing reliance upon the prosecution witnesses L.W.1 to L.W.14, (official witnesses) a sum of Rs.25 lakh has been sanctioned by the District Collector who is also Chairman of the DRDA to construct class room and toilets for girl students in a co-education Institution and all their statements as disclosed in the statement under Section 161 Cr.P.C., given to the police annexed with the final report are consistent to the fact that the petitioner who is innocent and nothing to do with the said amount.

8. The learned Public Prosecutor (Crl.side) appearing for the respondent made submission supporting the order of the trial Court. The learned Public Prosecutor also stated that during the investigation, it is found that, the petitioner/accused has returned some amount to the students of their school and reason for the return of the amount was not disclosed and hence, submitted that it is a misappropriation requiring for trial.

9. On consideration of rival submissions and also documents produced along with the final report. It appears that the trial Magistrate has observed that non-production of documents at this stage is not fatal to the case of the prosecution and prosecution need not produce document at this stage to demonster the entrustment and the mis-appropriation of the said entrusted amount and rejected the case of the petitioner.

10. Points for consideration:

i) Whether there is a sufficient material for framing the charge against the petitioner herein for alleged offence under Sections 406 and 409 of I.P.C?

ii) Whether the order of trial Court is sustainable in law?

11. Before proceeding with the case, it remains to be stated that the petitioner is working as a Head Master in C.Venkatakrishna Iyer

Secondary School, kanoor and the District Collector as a Chairman of the District Rural Development Agency has sanctioned Rs.25 lakh for the construction of the sheds and toilets for the students.

12. From the records, it is seen that the school in question is an aided school and amount was sanctioned for the construction of the some building for the above said purpose. L.W.1 K.Y.Radhakrishna Iyer made a complaint to the police alleging misappropriation of fund by the Head Master who is also an Ex-officio member of the Parent Teachers Association and thereby Criminal Law was set into motion.

13. After going through the statement of the L.W.2 R.Subramanian, Accounts Officer(Audit) and L.W.3 Anandharaj, Additional Collector, DRDA and L.W.4 P.Duraisamy, B.D.O and L.W.5 Iyyamperumal, Inspector of Local Fund Audit. It is a specific evidence that the Head Master of the school has no nexus to the said construction activities of the fund sanctioned by the District Collectors. It is totally vested with the Collectorate and both L.W.2, Additional Collector and L.W.3 Additional Collector and L.W.4 B.D.O and L.W.5 Inspector of Local Fund Audit have categorically gave a statement that in respect of the fund granted by the Collector for the construction of toilets and as well as the school buildings, the school Head Master has no role to play assumes significance. So also, it appears that L.W.17, the District Education Officer who had conducted a preliminary enquiry, based upon the complaint given by the defacto-complainant herein, have stated that the amount has been

collected for the bus pass cover and after enquiry, she had issued certain instructions to the administration and according to the instructions given by the said District Educational Officer has been complied with and the amount collected from the students for the bus pass cover and other statutory charges are duly returned and hence, she has deposed regarding the compliance of Administrative instructions issued by her has been duly complied with.

14. The L.W.15 Shanmughavadivel, Assistant Head Master who had prescribed the entire process of construction carried on, based upon the scheme provided by the Central Government, 25% has to be paid by the Parent Teachers Association. While, 75% has to be obtained District Collector under the DRDA programme and he also narrated the mode of collection of the fund from the Parent Teachers Association and which was subjected to the audit of the Accounts Officer Directorate of School Education, Coimbatore and maintenance of the entire amount in the Savings Account number 5933 in the Indian Overseas Bank, Kaniyur and also stated that, there is no irregularity in the collection and maintenance of the amount and rendition of the accounts by the Parent Teachers Association and further stated that a person who has no role to play in the administration of the school having a personal grudge against the administration want to create a ruckus in the committee and wanted to take over the administration of the school has preferred complaint before the Investigation Officer assumes significance.

15. The L.W.42, Sethuraman, President, Parent Teachers Association has clearly stated about the mode of collection of money of the fund by the Parent Teachers Association for the construction of the shed and the toilet for the girl students and resolution passed thereon and thereafter, District Collector who in the capacity of Chairman of the DRDA has sanctioned amount for the construction of the toilet for the girl students wherein more than 2000 students are studying in the co-education scheme and so is witness the statement L.W.43, Narayanan Pillai, Vice President of the Parent Teachers Association.

16. At this juncture, it is pertinent to note that the Public Prosecutor has drawn the attention of this Court to the statement of witness of L.W.17, S.Durairaj, an Advocate who was appointed as an Enquiry Officer in the matter of domestic enquiry against the petitioner herein (Headmaster of the school) have gave a 3 finding as to collection of the fees for the application for the new admission and also collection of the fund for the free bus pass cover and collection of charge for the supply of additional papers in the examination.

17. The L.W.17 S.Durairaj, who has conducted an enquiry in the domestic enquiry against the accused herein have gave a finding as to the administration irregularity and however not given any finding as to the

financial irregularity in collecting the charges for the bus pass cover and have additional answer sheets supplied during the examination and there is no finding against this petitioner/accused that he was collecting the money with criminal intention of misappropriation assumes significance. However, as stated supra, the District Educational Officer, who conducted the further enquiry has held that the entire amount collected for the free bus pass has been returned in view of the controversy and all the parents and the students who are alleged to have given the sundry amount have also given a statement that amount has been returned even before the filing of the complaint.

18. The learned counsel for the petitioner relied upon the decision reported in 2011 criminal law journal 4264, 2008(10) SCC 394 and 1990 (4) SCC 76, wherein the Apex Court held that

“ The Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima case against the accused has been made out. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonable possible”.

19. As stated supra, the revenue witnesses L.W.2,L.W.3,L.W.4 and L.W.5 have categorically stated that in respect of the amount sanctioned by the District Collector as Chairman of the DRDA has sanctioned the amount for the construction of the class room shelters and toilet for the girl students is well within a scheme and the petitioner/accused has no role to play coupled

with the finding given by the L.W.6 District Educational Officer, Pollachi goes to show that even as per the unrebutted statement of those L.W.2 to L.W.6 revenue witnesses, there is no nexus with the alleged amount with that of the accused.

20. Furthermore, according to the above said revenue witnesses, there is no financial irregularity involved in the said construction of class rooms and toilets and hence, the trial Court is miserably failed to see that even to go by their statements, there is no financial irregularity much less any misappropriation of the said fund by this accused stands fortified. When such being the case, there cannot be a entrustment of fund with the accused as defined in the I.P.C. In the absence of any positive material much less any material showing and demonstrating entrustment of the fund in the hands of the headmaster, the said contention of the learned counsel for the petitioner is found to have force.

21. In the decision reported in CDJ (2003) 9 SCC 793 (Kailash Kumar Sanwatia Vs. The State of Bihar & another) has held that:-

8. "What amounts to criminal breach of trust is provided in Section 405 I.P.C. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:-

i) Entrusting any person with property, or with any dominion over property

ii) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation

i) of any direction of law prescribing the mode in which such trust is to be discharged; or

ii) of any legal contract made touching the discharge of trust

7. Section 409 IPC deals with criminal breach of trust by public servant, or by banker, merchant or agent. In order to bring in application of said provision, entrustment has to be proved. In order to sustain conviction under Section 409, two ingredients are to be proved. They are:-

i) the accused, a public servant, or banker or agent was entrusted with property of which he is duty bound to account for; and

ii) the accused has committed criminal breach of trust

9. The basic requirement to bring home the accusations under Section 405 are the requirements to prove con-jointly (1) entrustment and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.

22. In the instant case, the statement of revenue witnesses L.w.2 to L.W.5, coupled with the report of L.W.6, District Educational Officer and also the statement of the Parent Teachers Association-President and Secretary L.W.17 and L.W.15 have demonstrated to the fact that the accused herein except being the Headmaster of the school has no role to play in the said construction activity when no material has been placed before the trial

<http://www.judis.nic.in> Court to frame a charge under Section 409 of I.P.C, this Court is unable to

concur with the finding of the learned trial Magistrate that it is matter for trial, cannot be sustained.

23. From the statement of witnesses and other documents produced along with final report, this Court finds that there is no material available on record to show that the person/accused of is entrusted with the money for carrying out the job when there is no sufficient material to demonster the alleged entrustment and criminal intention to convert the same to the personal use, the petitioner/accused cannot be asked to stand for trial in the absence of positive material to frame the charges.

24. From the statements of the parents and teacher as disclosed in the various listed witnesses , the petitioner as a Headmaster has collected the money for the good intention of helping the students to provide the cover for the bus pass and also for assisting the students in writing the examination by supply of additional sheets. However, only due to the repeated complaint given by the defacto-complainant, it appears that the genuine attempt by the Headmaster to the help students has been discontinued and due to the unwanted controversy, the parent Teachers association as requested them to drop the idea and return the amount and accordingly the entire amount and charges collected in the above said heads have been duly returned even before the date of filing of the complaint and hence, the entire charge sheet filed by the respondent police does not disclose any criminal intention of

misappropriation attracting the provision of Section 409 of I.P.C and furthermore, even the disputed amount collected by the Parent Teachers Association has also returned even before the registration of the F.I.R and hence, the alleged offence does not exist at the time of the offence also assumes significance and thus, as the material available on record does not disclose alleged commission offence of temporarily misappropriation and prosecution has not brought out any material that the petitioner is temporarily misappropriated or diverted amount nor alleged conversion of amount for his personal use and hence, the alleged charge under Section 407 of I.P.C is not made out and entire final report is devoid of merits since the same is not reflected in statement of witness, associated with Parents Teachers Association, as alleged.

25. While, dealing with the matter under Section 227 Cr.P.C for discharge of the accused, the test that has been applied is elaborated the decision reported in (2008) 10 Supreme Court Cases 394 (Yogesh Alias Sachin Jagdish Joshi Vs.State of Maharashtra) has held that:-

"By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible."

26. Applying the above ratio to the facts and circumstances of the

case as culled out from the statement of witnesses for the reasons stated in the preceeding paragraphs, this Court is of the considered view that the prosecution has not brought out sufficient material to show the alleged entrustment with the petitioner/accused nor alleged misappropriation by the petitioner/accused for his personal use and hence, in the absence of any positive material much less any material indicating the entrustment and misappropriation therefor, this Court is of the considered view that as there is no sufficient material for the alleged charges, the petitioner has to be discharged from the criminal case and hence, the order passed by the trial Court is liable to be set aside.

Accordingly,

- i) this Criminal Revision Petition is allowed
- ii) The order passed in Cr.M.P.No.1865 of 2011, in C.C.No.14 of 2010, on the file of Judicial Magistrate No.II, Udumalpet is set aside.
- iii) The petitioner is discharged from the proceedings in C.C.No.14 of 2010. Consequently, connected Miscellaneous Petition is closed.

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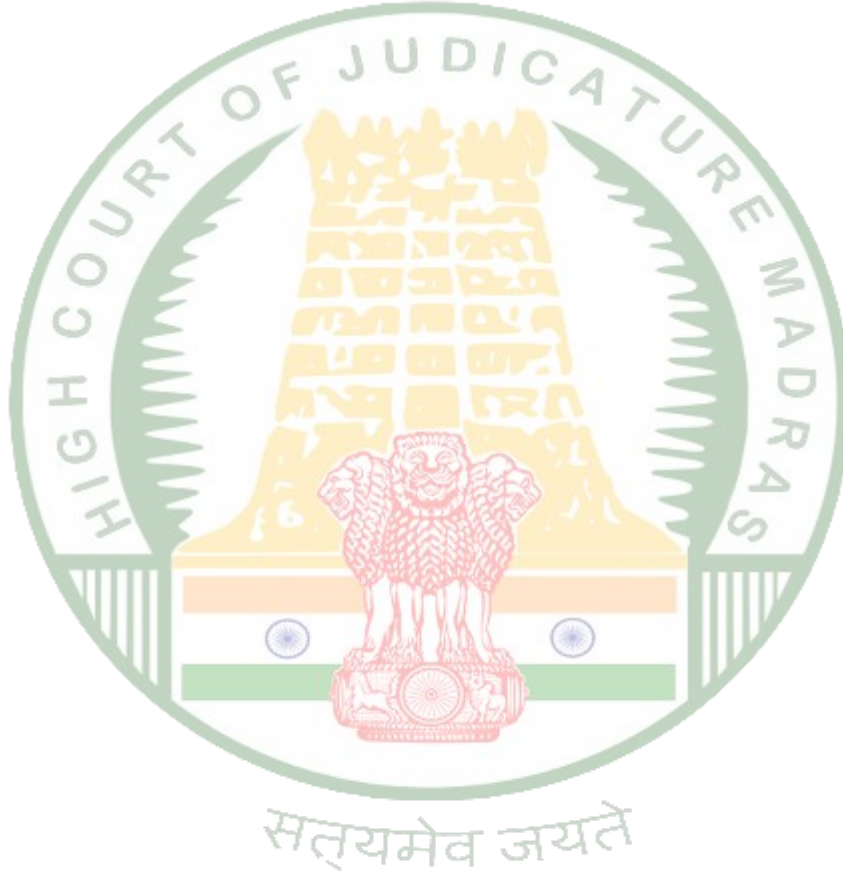
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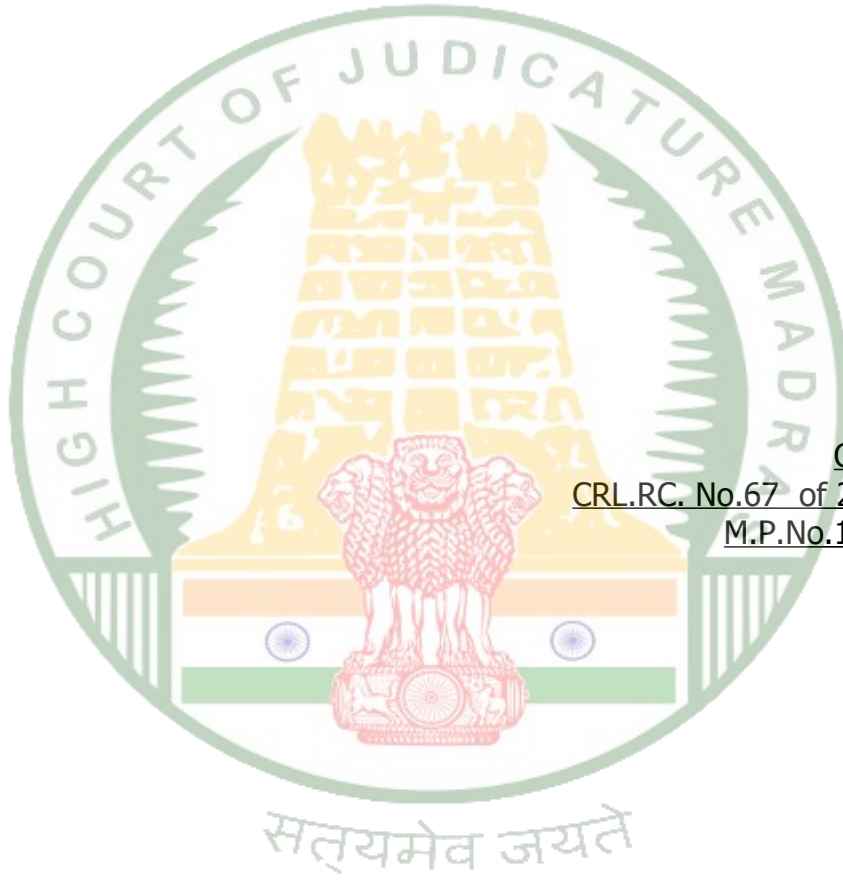
To

- 1.The Judicial Magistrate No.II, Udumalpet
2. The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
- 3.The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,
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Order in
CRL.RC. No.67 of 2012 and
M.P.No.1 of 2012

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