

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.5251 of 2011

and

M.P.No.1 of 2011

1.Thennarasu

2.Kalarani

... Petitioners

vs.

1.State rep. by
Inspector of Police,
Gingee Police Station,
Villupuram District.
(Crime No.443 of 2008)

2.The Block Development Officer,
Vallam Panchayat Union,
Vallam, Gingee Taluk,
Villupuram District.

... Respondents

(Impleaded the 2nd respondent as per the
order of this Court dated 24.04.2017 in
Crl.M.P.no.5857 of 2017 in Crl.OP.No.5251/2011)

Prayer: Criminal Original Petitions filed under Section 482 of
Cr.P.C., to call for the records in C.C.No.342 of 2009, on the
file of the Judicial Magistrate, Gingee and quash the same in
respect of the petitioners.

For Petitioners: Mr.S.K.Selvarangan

For Respondents: Mr.B.Ramesh Babu

Government Advocate (Crl.Side)

JUDGMENT

The petitioners who are A1 and A2 were filed this petition
in Crl.O.P.No.5251 of 2011 to call for the records in Cr.No.210
of 2008, on the file of the learned Judicial Magistrate, Gingee
and quash the same in respect of the petitioners A1 and A2.

2.The case of the petitioners is that the 1st petitioner was
elected as Village Panchayat President of Thaiyur Panchayat and
the 2nd petitioner was elected as Vice President of the said

Panchayat during the period of 2001 to 2006.

3.The prosecution case is that the Government of Tamilnadu has allotted a sum of Rs.8,00,000/- under the National Rural Employment Guarantee Scheme for the year 2006-2007 to Thaiyur Village Panchayat to improve cannel and lake within jurisdiction of Thaiyur Panchayat and to lay road for Iyankulam lake, but the petitioners, who are the Panchayat President and Vice-President were alleged to have misappropriated a sum of Rs.5,70,548/- by preparing false Bill without carrying the work and without permission of Block Development Officer.

4.Pursuant to that the complaint has been given by the Block Development Officer, Vallam by stating the above allegations that both the petitioners are misappropriated a sum of Rs.5,70,548/-. Based on the complaint given, a case has been registered in Crime No.210 of 2008, on the file of the 1st respondent police for the offences under Sections 406, 409, 467 and 471 IPC and later on final report has been filed for the offences alleged above and the same is pending before the learned Judicial Magistrate, Gingee. The learned Magistrate also taken the final report on file and numbered as C.C.No.342 of 2009 and now the said case is pending before the learned Judicial Magistrate, Gingee. Challenging the said charge sheet filed in C.C.No.342 of 2009, the present quash petition has been filed.

5.It is the case of the petitioners is that admittedly the petitioners were executed the work and they have maintained the accounts properly and they have paid wages to the workers as per the scheme namely, National Rural Employment Guarantee Scheme.

6.The District Administration were not allotted the fund to work carried out by the petitioners Panchayat and that the same was brought to the notice of the Secretary, Government of Tamilnadu Rural Development Department for the work done under the NRGSA Scheme and later on the Secretary, Government of Tamilnadu Rural Development as directed to release the fund for the work done by the petitioners Panchayat. Thereafter, the National Rural Employment Guarantee Act social audit was conducted and it was found that no amount was misappropriated by the petitioners, since they have paid the amount to the workers.

7.Apart from this, the petitioners also states that the main object of National Rural Employment Guarantee Act in to provide daily wage for workers for 100 days to eradicate unemployment

and the petitioners paid Rs.80/- for each worker and they maintained register signed by the workers and no misappropriation of the fund allotted under the said scheme. Now the de-facto complainant gave report based on the Assistant Engineer report in respect of actual work after measuring the earth work which is contrary to scheme under the act. But the authority should not calculate the actual work done by the workers. There was no amount allotted to the Execution of the Iyankulam Lake road and the petitioners also executed work at Karaikal Poondi Lake within the limits of Thaiyur Panchayat.

8.The petitioners also states that if at all any misappropriation done by the petitioners under the NREGA Scheme, the scheme specified that initially a show cause notice has to be issued to the petitioners if there is any shortage of amount and if there is any shortage the petitioners have to be repaid the shortage amount and if they have not paid the amount, criminal prosecution is permitted. But in this case, without following the said procedure, the de-facto complainant namely, the 2nd respondent has launching the prosecution without conducting any enquiry.

9.Apart from this, the respondent police without conducting proper investigation and without seized the workers attendance register and without need any examination of workers, who worked in the above scheme have filed the charge sheet. Therefore, the very filing of the charge sheet is totally illegal.

10.Apart from this, the petitioner also states that the 1st petitioner has paid to the workers for more than Rs.1,00,000/- which was excess amount against the amount allotted for the Panchayat during 2006-2007. Hence, the petitioners has filed the above petition for the aforesaid prayer.

11.I heard Mr.S.K.Selvarangan, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the respondents and perused the records.

12.It is the case of the prosecution is that these petitioners who were elected as President and Vice President of the Thaiyur Panchayat, during the period of 2001 to 2006. The Government of Tamilnadu has allotted a sum of Rs.8,00,000/- under the National Rural Employment Guarantee Scheme for the year 2006-2007 to the Thaiyur Village Panchayat to improve canal and lake within jurisdiction of Thaiyur Panchayat and lay

road for Iyankulam. But it was alleged by the prosecution namely the 2nd respondent Block Development Officer, these petitioners were misappropriated a sum of Rs.5,70,548/- by preparing false bill without carrying the work and without permission from the Block Development Officer.

13.If at all, the petitioners were not carried out the work without permission of the Block Development Officer namely the 2nd respondent as per the National Rural Employment Guarantee Scheme, the Block Development Officer should have issued show cause notice to these petitioners by calling upon them to give explanation and if any shortage of amount, then the Block Development Officer have directed the petitioners to repay the amount which was shortage. In this case, admittedly there was no enquiry and no show cause notice, but the 2nd respondent Block Development Officer directly given the complaint to the 1st respondent police.

14.Apart from this, on fair reading of the charge sheet, it is simply stated that these petitioners created bogus bills for their personal benefits and misappropriated the amount of Rs.5,70,548/-, but admittedly there was no evidence or documents except the statement of the final report for the offences under Sections 406, 409, 467 and 471 of IPC.

15.Apart from this, during the course of arguments, except the statement obtained witnesses, the 2nd respondent has not produced any document before this Court to substantiate his complaint and the 1st respondent police has not produced any document to show about the bogus bills and the documents, then how the respondents come to a conclusion that there was a misappropriation of fund of Rs.5,70,548/-. It is main contention in this case is as per the above scheme namely the National Rural Employment Guarantee Scheme, the petitioners must have issued show cause notice by the competent authority by calling them explanation and after the enquiry if any shortage, suitable direction should given by the 2nd respondent for repay the shortage of amount. But in this case, this was lacks on the part of the 1st respondent police and also the de-facto complainant, who is the 2nd respondent. Therefore, these petitioners, who functioned as President and Vice President of the Thaiyur Panchayat were properly carried out the work as directed by the 2nd respondent cannot be penalized. Therefore, in the above circumstances, the petitioners were make out the case before this Court and therefore, this Court warranting interference in the cognizance taken by the learned Magistrate in the case in C.C.No.342 of 2009 and the same is liable to be quashed.

16.In the result, this Criminal Original Petition is allowed and the charge sheet in C.C.No.342 of 2009, on the file of the learned Judicial Magistrate, Gingee, is quashed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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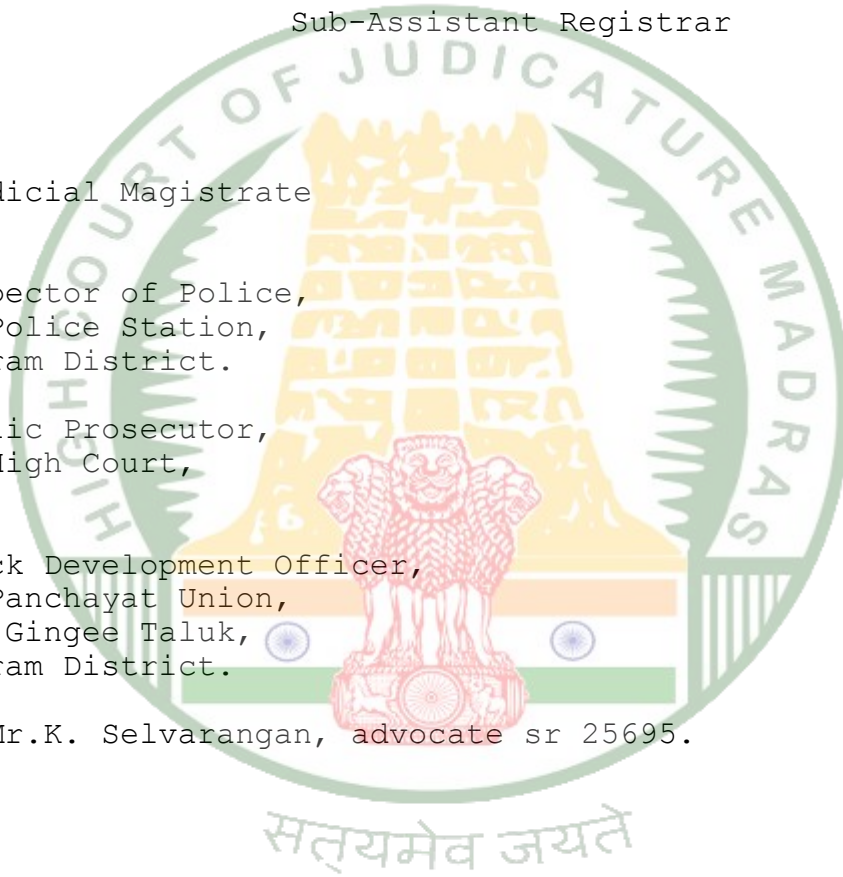
1. The Judicial Magistrate
Gingee.

2.The Inspector of Police,
Gingee Police Station,
Villupuram District.

3.The Public Prosecutor,
Madras High Court,
Madras.

4.The Block Development Officer,
Vallam Panchayat Union,
Vallam, Gingee Taluk,
Villupuram District.

+1 Cc to Mr.K. Selvarangan, advocate sr 25695.



Cr1.O.P No.5251 of 2011

and

M.P.No.1 of 2011

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MR(CO)
SP(24/11/2017)