

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.12.2017****CORAM:****THE HONOURABLE MR.JUSTICE S.S.SUNDAR****CRL.O.P. (MD) No.17444 of 2017****and****CrI.M.P. (MD) No.11450 of 2017**

1.N.Muthuraman,
S/o.Madavan,
Ex-President of Piramanampatti Village Panchayat,
Piramanampatti Village,
Thiruppathur Taluk,
Sivagangai District.

2.K.Chandrasekar,
S/o.Karuppaiah,
Ex-Vice President of Piramanampatti Village Panchayat,
Melayampatti Village,
Piramanampatti,
Thiruppathur Taluk,
Sivagangai District.

: Petitioners / A1 & A2

-Vs-

1.The State of Tamil Nadu Rep. by
The Inspector of Police,
Thirukostiyoor Police Station,
Sivagangai District.
(Crime No.40 of 2009)

: Respondent / Complainant

2.R.Natchammai,
Block Development Officer,
Thiruppathur Taluk,
Sivagangai District.

: Respondent / De-facto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to C.C.No.209 of 2012 pending on the file of the Court of Judicial Magistrate, Thiruppathur Taluk, Sivagangai District and quash the



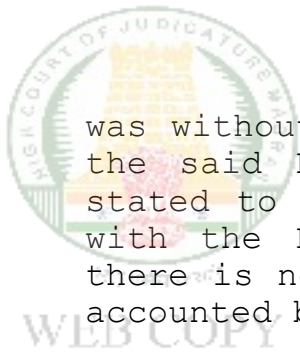
For Petitioners : Mr.R.Suresh Kumar
For Respondent No.1 : Mr.K.S.Durai Pandian
Additional Public Prosecutor

O R D E R**WEB COPY**

This petition is filed for quashing the proceedings in respect of the petitioners in C.C.No.209 of 2012 on the file of the Court of Judicial Magistrate, Thiruppathur Taluk, Sivagangai District.

2.The petitioners are accused 1 and 2 in C.C.No.209 of 2012 on the file of the Judicial Magistrate Court, Thirupathur. The petitioners were the elected President and Vice President of Piramanampatti Village Panchayat. While implementing the Central Government Scheme to provide 100 days work to rural people, some irregularities were noticed by the Block Development Officer and a complaint was lodged by the Block Development Officer against the petitioners and the Panchayat Clerk on 26.06.2009. The complaint was registered in Crime No.40 of 2009 for offences punishable under Sections 477(A), 408 and 409 of I.P.C. After completing investigation, the Inspector of Police, Thirukostiyoore Police Station, filed charge sheet and the case was taken on file in C.C.No.209 of 2012 for offences punishable under Section 477A, 408 and 409 of I.P.C. Challenging the proceedings, the above Criminal Original Petition has been filed by the petitioners 1 and 2 who were the President and Vice President of Piramanampatti Village Panchayat. The First Information Report as well as the charge sheet would disclose specific allegations that the petitioners and the Panchayat Clerk have jointly misappropriated a sum of Rs.5,14,000/-.

3.The learned counsel for the petitioners submitted that the petitioners are not public servants as defined under Section 21 of Indian Penal Code and the ingredients for the offences under Section 409, 477 of I.P.C. are not made out. Stating that there is no entrustment of any property with the petitioners to attract the provisions, the learned counsel for the petitioners submitted that the petitioners are not guilty and that the complaint as well as the charge sheet are liable to be quashed on this ground alone. It is further contended that the second respondent / de-facto complainant has not specifically indicated the entire amount distributed to the workers as per the release order and the second respondent having signed in every release order of the fund allotted to the village panchayat under the National Rural Employment Guarantee Scheme has given the complaint contrary to the entire records of the panchayat. It is further contended by the petitioners that the amount which was released for disbursement has been received only by the Panchayat Clerk in his name and that the petitioners cannot be roped in even if there is any misappropriation by the third accused. Finally, it was stated that the Panchayat Clerk admitted his guilt of misappropriating a sum of Rs.5,14,000/- and that he had given statement to the effect that the misappropriation done by him



was without the knowledge of the petitioners. It is contended that the said Panchayat Clerk had repaid the entire amount which was stated to be the amount misappropriated by the petitioners joining with the Panchayat Clerk. Hence, it was further contended that there is no loss to the panchayat as the amount misappropriated was accounted by the Panchayat Clerk.

4. The learned counsel for the petitioners then made an attempt to point out some discrepancies in the statement of witnesses and tried to point out certain infirmities in the whole case of prosecution. Since the contentions of the petitioners relying upon the statements obtained from the witnesses in the course of investigation are factual, this Court cannot entertain the plea of petitioners denying the allegations against the petitioners. The only legal issue that arise for consideration in this case is whether the petitioners who were functioning as President and Vice President of the Village Panchayat can be prosecuted for offences under Sections 408 and 409 or under 477 I.P.C.

5. The allegation of misappropriation as against the petitioners are well-founded. Having regard to the nature of complaint and the charges framed against the petitioners, this Court has no hesitation to hold that the petitioners have been rightly charged for the offence of misappropriation. The question is whether the petitioners can be prosecuted for criminal breach of trust as a public servant to attract Section 409. Section 409 I.P.C read as follows:

"409. Criminal breach of trust by public servant, or by banker, merchant or agent - Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

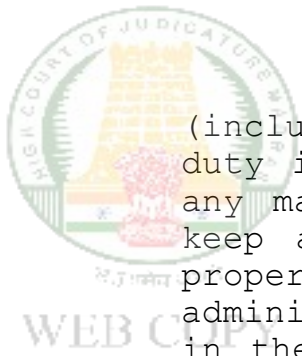
6. Of course Section 409 I.P.C. is attracted only if the accused is a Government servant or any other person mentioned therein and a property is entrusted or its control is vested in him. Under Section 21 of I.P.C. Government servant has been defined as follows:

"21. "Public Servant".-The word "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

(Second) -Every Commissioned Officer in the Military, ²⁴ [Naval or Air] Forces ²⁵ [²⁶ [***] of India];

²⁷ [(Third) -Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

(Fourth) - Every officer of a Court of Justice ²⁸ [



(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties; (Fifth) – Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

(Sixth) – Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

(Seventh) – Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(Eighth) – Every officer of ²⁹ [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(Ninth) – Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of ²⁹ [the Government], or to make any survey, assessment or contract on behalf of ²⁹ [the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of ²⁹ [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of ²⁹ [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of ²⁹ [the Government] ³⁰ [***];

(Tenth) – Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

³¹ [(Eleventh) – Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

³² [(Twelfth) – Every person–

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).] Illustration A Municipal Commissioner is a public servant. Explanation 1.–



Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not. Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.³³ [Explanation 3.—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]³⁴ [***] STATE AMENDMENT

(Rajasthan) —In section 21, after clause twelfth, the following new clause shall be added, namely:— “Thirteenth.—Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law. Explanation.—The expression ‘Public Body’ includes—

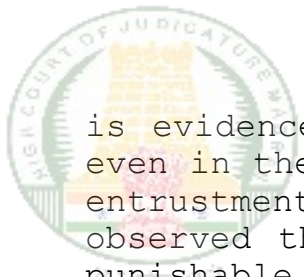
(a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and

(b) a local authority.” [Vide Rajasthan Act, 4 of 1993, sec. 2 (w.e.f. 11-2-1993)].

7.The term public servant denoted in 12th description include a person in service or pay of a local authority. Though the petitioners were not paid employees of the local body, they are in the service of a local authority. Since the person who is in service or pay of a local authority have been separately categorised, this Court is of the view that the petitioners though are the elected President and Vice President of the panchayat can also be treated as Government servant having regard to the object in establishing local bodies as a self-government under our Constitution and the functions of the petitioners 1 and 2 and their corresponding obligations. Similarly, the ninth description found in Section 21 of I.P.C. also will include even the elected President while administering the funds of Central Government.

8.Under the National Rural Employment Guarantee Scheme the funds are allotted to every panchayat and it is only the President and Vice President who are entitled to administer the funds as per the scheme. Hence, there is entrustment of property as contemplated under Section 406 to 409 of I.P.C.

9.The learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of S.W.Palanitkar and others v. State of Bihar and another reported in (2002) 1 SCC 241. Since there was nothing to show that any property was entrusted to any of the accused nor there is material that the accused have domain over the any property of the complaint it was held by the Hon'ble Supreme Court that every breach of trust may not result in a penal offence of criminal breach of trust unless there



is evidence of a mental act of fraudulent misappropriation. Since even in the complaint in that case there was no allegation regarding entrustment of any property and hence, the Hon'ble Supreme Court has observed that the appellant therein have not committed any offence punishable under Section 406 of I.P.C. The learned counsel for the petitioners then relied upon a judgment of the learned Single Judge of this Court in the case of Shanmugam and others v. State of Tamil Nadu rep. by Inspector of Police, CCIW (CID), Trichy reported in 2000 (3) MWN (Cri) 133 wherein the Vice President of a Cooperative Society was held to be not a public servant as defined under Section 21 of I.P.C. Relying upon the earlier judgment of this Court, it was held that the misappropriation attracting Section 477 was held to be bad and the offence was altered into one under Section 406 I.P.C. The learned counsel for the petitioners further relied upon another judgment of the Hon'ble Supreme Court in the case of State of Maharashtra v. Laljit Rajshi Shah and others reported in 2000 SCC (Cri) 523. The Hon'ble Supreme Court dealt with an issue whether the Chairman of the Cooperative Society under the Maharashtra Cooperative Societies Act can be held to be a public servant for the purpose of Section 21 of IPC. It is to be noted that the Hon'ble Supreme Court followed yet another judgment of the Hon'ble Supreme Court in the case of Ramesh Balkrishna Kulkarni v. State of Maharashtra reported in (1985) 3 SCC 606 wherein a municipal councillor was held to be not a public servant within the meaning of Section 21 of I.P.C. The role of Municipal Commissioner under the provisions of Maharashtra Municipalities Act, 1965 is quite different. Despite the existence of provisions namely Section 302 of Maharashtra Municipalities Act whereunder every councillor and officer or servant of a council was deemed to be a public servant within the meaning of Section 21 of I.P.C. it was held in that case that the legal fiction cannot be extended to another statute. Hence, it is evident while interpreting the scope of Section 21 of I.P.C., the Hon'ble Supreme Court has held that even though the legislature refers to the provisions of Section 21 of I.P.C. in the statute, and define a public servant, that officer cannot be prosecuted for an offence under a different statute by adopting the well-known principles on construction or interpreting statutory provision creating a legal fiction.

10. Therefore, it can be deduced from the judgment of the Hon'ble Supreme Court that the question whether a person is a public servant can be taken from the provisions of a statute only for the purpose of the enactment and cannot be extended to another statute. In this case, the petitioners are entrusted with the funds allotted by the Central Government under a scheme. The administrators of the fund, the petitioners are liable to account for the Government. Since the allegation is that the petitioners have misappropriated the funds, they are liable to be prosecuted for the offence of misappropriation. Having regard to the facts and circumstances of this case, this Court is of the view that the petitioners are liable to be prosecuted for the offence punishable under Section 409 I.P.C. As the entrustment of the funds with the petitioners under the



Central Government scheme makes them accountable. This interpretation would serve the purpose keeping in mind the laudable object behind the introduction of the Central Government Scheme namely National Rural Employment Guarantee Scheme. The learned counsel for the petitioners further contended that the entire money found to be misappropriated has been deposited by the Panchayat Clerk admitting guilty and that therefore, the petitioners cannot be prosecuted further. No material is produced before this Court to show that the Panchayat Clerk has admitted his guilt. Merely because the amount is paid by the Panchayat Clerk, it cannot be taken that the petitioners are discharged. This may be a factor that can be pointed out on behalf of the petitioners in defence to escape from the penal liability after full-fledged trial. Hence, preserving liberty to the petitioners to raise all these factual contentions before the trial Court at the time of trial, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P & A)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Thiruppathur Taluk,
Sivagangai District .
- 2.The Inspector of Police,
Thirukostiyoor Police Station,
Sivagangai District.
- 3.R.Natchammai,
Block Development Officer,
Thiruppathur Taluk,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P. (MD) No.17444 of 2017
19.12.2017

SRM

SDS/SV:MMS/SAR 1/25.01.2018/7P/5C