



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20 .03.2017

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Cr1.O.P.(MD) Nos.9047 and 9506 of 2016
and
Cr1.MP(MD)Nos.4773 and 4485 of 2016

Cr1.O.P(MD)No.9047 of 2016:

1.N.Arul Murugan
2.Jesurathinam
3.A.Mohan
4.Mervin @ Mervyn Raj Sekhar
5.Herbert @ J.John Herbert Singh : Petitioners/A1 to A5

-vs-

1.The State rep. by
The Inspector of Police,
Marthandam Police Station,
Kanyakumari district. : R1/Complainant

2.Ponnammal : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records on the file of the respondent in Crime No.340 of 2016 on the file of the Marthandam Police Station, Kanyakumari District and to quash the same.

Cr1.O.P(MD)No.9506 of 2016:

1.N.Arul Murugan
2.Jesurathinam
3.A.Mohan : Petitioners/A1 to A3

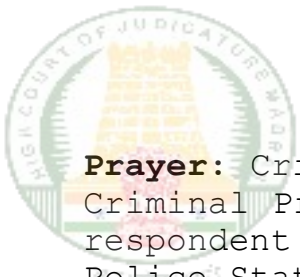
-vs-

1. The State rep. by
The Inspector of Police,
Marthandam Police Station,
Kanyakumari district. : R1/Complainant

2. Rajam

<https://hcservices.ecourts.gov.in/hcservices/>

: R2/De-facto Complainant



Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records on the file of the respondent in Crime No.339 of 2016 on the file of the Marthandam Police Station, Kanyakumari District and to quash the same.

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For Petitioners : Mr.S.C.Herold Singh
in both Crl.OPs
For 1st Respondent : Mr.A.P.Balasubramani
Government Advocate
(Criminal side) in both Crl.OPs
For 2nd Respondent : Mr.S.Titus in both Crl.OPs

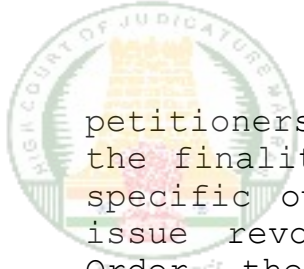
COMMON ORDER

These petitions have been filed to call for the records in Crime Nos.340 and 339 of 2016 on the file of the Marthandam Police Station, Kanyakumari District and to quash the same, respectively.

2. According to the de-facto complainants, they were appointed through Employment Exchange and they attained the age of superannuation and since, the junior's service were regularised, they approached the High Court and filed writ petitions, wherein orders were passed to regularize their services to get the benefits. It is their further case that one Prem Singh was appointed as Sweeper on 07.01.1991 and his date of birth is 25.05.1972, but all the accused together manipulated and created false document that his appointment date as 28.07.1989 and he was regularised in the service and by creating false documents withdrawn huge amount from the Government Treasury and therefore, the de-facto complainants could not get any monetary benefits. Hence, the complaints.

3. The learned counsel appearing for the petitioners would submit that there is no intention for the petitioners to commit the offence as alleged by the prosecution and that the de-facto complainants were appointed on 13.03.1990 and 14.12.1990 they have made applications for regularizing their services and filed Writ petitions challenging the proceedings, dated 02.09.2006, wherein orders were passed to regularise them in the available vacancy as full time employees and against the said orders, writ appeals were filed and the same were dismissed. Thereafter, contempt petition was filed and in the said contempt petition, the District Educational Officer was directed to take follow up steps and based on that, an order was passed regularising the services with effect from 23.04.2010, based on G.O.Ms.213, 28.07.2010 and the contempt petition was closed giving liberty to the de-facto complainant to challenge the same, if aggrieved by the said order and thereafter, SLP filed by the de-facto complainants.

4. It is further submitted that the entire proceedings relied on by the de-facto complainants to make out offence against the



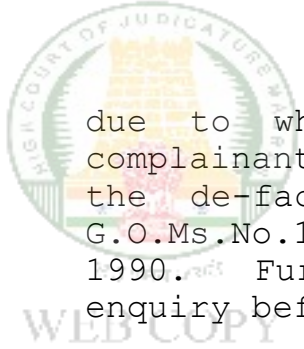
petitioners were based on the court proceedings, which has reached the finality before the Hon'ble Supreme Court and that there is no specific overt-act made as against the petitioners and the entire issue revolves around G.O.Ms.No.100 and in the said Government Order, there is no date specified for the regularisation of the service and the entire proceedings were based on the G.O.Ms.No.100 and the orders of the courts and therefore, the charges levelled against the petitioners are not attracted and that the petitioners have acted with due care and they complied only the orders of the higher officials and therefore, no offence could be made out as against the petitioners. Hence, he prayed for quashing the Crime Nos.339 and 340 of 2016.

5.The learned counsel appearing for the 2nd respondents would submit that all the accused joined together and manipulated and created false documents for one Prem Singh to the effect that his appointment date as 28.07.1989 and he was regularized in service from 28.07.1989, instead of regularising from 07.01.1991 and all the monetary benefits of Prem Singh were withdrawn from the Government Treasury from 28.07.1989 and huge amount was illegally withdrawn by the accused by creating false documents. It is further submitted that the Director of School Education, vide order, dated 08.03.2010 regularised the de-facto complainants, from the date of their joining service on 13.03.1990 and 14.12.1990, but the accused persons were wrongly regularised their services only from 23.04.2010 and hence, 20 years of service is lost and they have incurred monetary loss of more than 25 lakhs, due to the wrong order passed by the accused and the order of the accused is against the order of the Director of School Education and against G.O.Ms.No.100 passed by the Government and the petitions were filed by the petitioners only to escape from the clutches of law and the Government never authorised the petitioners to commit or pass orders against the orders of the Government or superior officers or against the High Court order, which was confirmed by the Hon'ble Supreme Court of India. Hence, he prayed for the dismissal of the petitions.

6.Heard the learned Government Advocate (Criminal side) appearing for the 1st respondent and perused the materials available on record.

7.It is seen from the records that the petitioners with common intention have prepared false documents to the effect that one Prem Singh was regularised in service from 28.07.1989 and thereby, withdrawn huge money from the Government Treasury illegally and they have also taken away the documents from the Office of the District Education Office, Kuzhithurai and they are under the illegal custody of the accused.

8.It is further seen from the records that the Director of School Education, ordered to regularise the service of the de-facto complainants from the date of their joining service on 13.03.1990 and 14.12.1990, but the accused regularised them from 23.04.2010,



due to which, 20 years of service is lost to the de-facto complainants and also monetary loss of more than 25 Lakhs caused to the de-facto complainants, which was sanctioned based on the G.O.Ms.No.100 to regularize the de-facto complainants from the year 1990. Further, the petitioner did not take care to attend the enquiry before the respondent police.

9.It is to be noted here that the cases were registered in Crime Nos.339 and 340 of 2016 against the petitioners and after completing the investigation, charge sheet are to be filed before the competent court. Whether the petitioners have committed offence as alleged by the prosecution is true or not is the issue to be decided only after full fledged trial and it cannot be decided in these quash petitions, since prima facie materials are available against the petitioners. Hence, the relief sought for by the petitioners cannot be granted at this stage.

10.In the result, these petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Marthandam Police Station,
Kanyakumari district.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 2 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 16028, 16027
+ 2 CC TO Mr.S.TITUS, ADVOCATE IN SR No. 15965, 15964

ER
TE/SKN-RSK/SAR-II : 05/04/2017 : 4P/7C

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Cr1.MP(MD)Nos.4773 and 4485 of 2016
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