

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.15098, 15223 and 17042 of 2011
and
Crl.M.P.No.1 of 2011

Rt. Rev. Dr.M.DoraiPetitioner in Crl.O.P.No.15098 of 2011

1. M.Moorthy
2. T.Manesan
3. M.Dhanapaul
4. D.S.AmirthamPetitioners in Crl.O.P.No.15223 of 2011

V.ShanmugasundaramPetitioner in Crl.O.P.No.17042 of 2011

//vs//

1. The State represented by
The Inspector of Police,
Crime Branch CID,
Coimbatore 600 018.1st respondent in Crl.O.P.No.15098
15223 and 17042of 2011

2. E.Premkumar2nd respondent in Crl.O.P.No.15098
15223 and 17042of 2011

(The 2nd respondent impleaded as per the
order of this court dated 18.07.2011 in
Crl.M.P.No.3 of 2011)

Prayer in Crl.O.P.No.15098 of 2011, 15223 of 2011 & 17042 of 2011

Criminal Original Petitions filed under Section 482 of
Cr.P.C. to call for the records in C.C.No.158 of 2011 on the
file of the Chief Judicial Magistrate, Coimbatore, quash the
same.

For Petitioner(s) : Mr.J.Jaseem Mohammed
(Legal aid counsel)

For 1st Respondent : Mr.G.Harihara Arunsona Sankar
Government Advocate (Crl.Side)

For 2nd Respondent : M/s C.Uma and N.R.R.Arun Nataraj

COMMON ORDER

Heard Mr.J.Jaseem Mohammed (Legal Aid counsel) learned counsel appearing for the petitioner(s) and Mr.G.Harihara Arunsona Sankar, Government Advocate (Crl.Side), learned counsel appearing for the first respondent and Mr.N.R.R.Arun Nataraj, learned counsel appearing for the 2nd respondent.

2. The Criminal O.P.No.15223 of 2011 and Crl.O.P.No.17042 of 2011 have been filed by M.Dorai/A1 and V.Shanmugasundaram/A6 respectively and the Crl.O.P.No.15223 of 2011 has been filed by M.Moorthy(A2), T.Manesan(A3), M.Dhanapaul (A5) and D.S.Amirtham(A7) to call for the records in C.C.No.158 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

3. Based on the complaint dated 14.11.2008, given by one E.Premkumar s/o S.M.Ezra, No.4, Muthu Nagar, Uppilipalayam, Coimbatore, the Inspector of police, Crime Branch CID, Coimbatore registered a First Information Report in Crime No.1 of 2009 against 31 accused for the alleged offences punishable under Section 120B, 468, 471, 477(A) and 409 IPC. The Inspector of Police, CBCID, Coimbatore took up investigation and also filed a final report against 7 accused, including the petitioners herein, for the offences punishable under Section 120B read with Section 409, 465 and 471 of IPC. The petitioners have filed the present petitions to quash the entire proceedings on the following grounds:-

(i) The allegations levelled against the petitioners are false, motivated and intended to damage the petitioners' reputation in the C.S.I. Churches.

(ii) Since the Executive Committee members have not lodged any complaint with the police, it cannot be stated that the petitioners have committed misappropriation of diocese funds.

(iii) As per the constitution of the Church of South India, the SYNOD, appointed by the executive committee can alone conduct the enquiry and the

criminal cases lodged against the petitioners are unwarranted.

(iv) Since the allegation of misappropriation of funds pertains to the year 2005 and 2006, there is an enormous delay in lodging the complaint and therefore, the criminal proceedings against the petitioners are liable to be quashed.

4. Mr.C.Umapathy, the Inspector of Police, Crime Branch C.I.D., Coimbatore has filed a counter affidavit in which it is averred that on the directions issued by the Director General of Police, Tamil Nadu, he registered the First Information Report in Crime No.1 of 2009, and he also filed a final report before the Chief Judicial Magistrate, Coimbatore, against the present petitioners as well as the other accused for the offences punishable under Sections 120(B) read with Section 409, 465 and, 471 of IPC in C.C.No.158 of 2011. According to him, the investigation revealed that one Thiru Shanmugasundaram (A6) was dishonestly appointed by Thiru M.Dorai(A1), Bishop, CSI Coimbatore Diocese, as administrative officer of the CSI Hospital, Erode, during the year 2007, who received Rs.40000 US Dollars (Rs.18,00,000/-) as donation and credited to the account of the Bank of CSI Hospital, Erode. The first accused, without the knowledge and approval of the Coimbatore Diocese, authorized A6 to operate the bank accounts of CSI Hospital, Erode and the 6th accused conspiring with A1 and A4 withdrew a sum of Rs.11,25,944/- through 53 self drawn cheques. In order to cover up the withdrawal by A1, A4 and A6, all the accused did not maintain proper accounts for the financial years 2006-2007, 2007-2008 and 2008-2009. During the audit of the accounts of CSI Hospital, Erode, it came to light that a sum of Rs.11,25,944/- has been misappropriated. Thereafter, the Church of South India Trust Association (CSITA), which is a public charitable Trust was not audited for the financial years 2006-2007, 2007-2008 and 2008-2009. However, the exemption for payment of income tax was claimed, by falsely representing as if the institution was audited. The Inspector of Police in his counter affidavit has further contended that Manickam Durai(A1) and Swamidass(A4) have filed petitions in CrI.O.P.No.15660 of 2009 and CrI.O.P.No.16079 of 2009 respectively seeking to quash the criminal proceedings against them and the same were dismissed by this court vide orders dated 14.12.2009. According to him, the grounds raised by the present petitioners are similar to the grounds raised that were raised in CrI.O.P.No.15660 of 2009 and CrI.O.P.No.16079 of 2009. His further contention is that the church of south India is a public Charitable Trust registered under Section 25 of Companies Act for the welfare of the poor and needy people and the contention of the petitioners that the " SYNOD " alone can conduct an enquiry and

therefore, filing of criminal complaint against the petitioners is unwarranted, cannot be accepted, for the simple reason that only after filing the final report in the criminal case, the "SYNOD" took cognizance of the issue and this itself would clearly show the bad state of affairs of the Trust. According to him, the investigation has been done properly and that the mere fact that the allegations pertain to the year 2005-2006 and 2006-2007 alone would not be a sole ground for quashing the final report. Infact, the accounts of the CSI Hospital, Erode for the financial years 2006 to 2009 were not at all audited and only after filing the charge sheet in C.C.No.158 of 2011, the accounts were audited. Hence, he prayed for dismissal of the present petitions.

5. Mr.N.R.R.Arun Natrajan, the learned counsel appearing for the de-facto complainant/2nd respondent would contend that the de-facto complainant is an active member of the Church of South India Trust Association (CSI), which is a Religious and Charitable Trust established during September 1947 and that since he came to know about the fraudulent activities of the first accused and others, lodged a complaint with the Inspector General of Police, West Zone, Coimbatore with all the supporting documents against the first accused as well as 30 others. Based on his complaint, the first respondent had registered the First Information Report in Crime No.1 of 2009 and subsequently filed a final report in C.C.No.158 of 2011 for the offences punishable under Sections 120(B), read with Section 409, 465, 471 of IPC before the Chief Judicial Magistrate, Coimbatore. According to him, another case in Crime NO.20 of 2010 has also been registered by the Inspector of Police, Crime Branch, CID, Erode, against the first accused and his family members and the same is pending for investigation. It is the contention of Mr.N.R.R.Arun Natarajan, learned counsel for the 2nd respondent that merely based on the fact that the alleged offences took place during the year 2005, the entire criminal proceedings cannot be quashed especially, when there is no time bar for lodging a criminal complaint for the offences of commission of criminal breach of trust and forgery. Hence, he prayed for dismissal of the criminal original petitions.

6. Heard the rival submissions of the learned counsel for the petitioners as well as the learned counsel for the first and 2nd respondent.

7. The main contention of the petitioners is that since the Executive Committee appointed by the SYNOD, is having right to control over the entire issue, a criminal proceedings cannot be initiated against the accused.

8. Per contra, the learned Government Advocate (Crl. Side) submitted that even though the " SYNOD " is the supreme governing and legislative body of the Church of South India and the final authority in all the matters pertaining to the Church, as per Clause 13 of the Constitution of the Church of South India, it cannot take any decision with regard to the criminal misappropriation of funds. He also pointed out Clause 15 and 15(b) of the Constitution of the Church of South India, which read as follows:-

15. The "SYNOD" shall deal with the matters of common interest to the whole Church of South India, and with those which affect the relation of the dioceses to one another and to the rest of the universal Church and shall leave the Diocesan Councils to deal with the internal affairs of each diocese.

(b) If, at any time, the "SYNOD" Executive/the Working Committee/ the Officers of the "SYNOD" are convinced that the situation of administration and financial management in a particular diocese needs the assistance of the "SYNOD", the Working Committee shall, without delay, take appropriate action in consultation with the Executive Committee of the Diocese concerned, for restoring sound administration and financial management. The report of any such action shall be submitted to the "SYNOD" Executive Committee for review, within a period of six months, if necessary by a special meeting."

His specific contention is that a criminal proceedings are beyond the purview of the "SYNOD" and therefore, the contention of the petitioners in this regard cannot be accepted. He also pointed out the allegations levelled against all the accused in the final report and contended that there is a misappropriation of huge sum of Rs.11,25,944/-. He would further contend that the Inspector of Police, Crime Branch, CID has investigated the present case properly and also filed a final report against 7 accused, including the petitioners herein for the offences punishable under Sections 120(B) read with Section 409, 465 and 471 IPC in C.C.No.158 of 2011. According to him, the cognizance of the offence has been properly taken by the Chief Judicial Magistrate, Coimbatore.

9. A plain reading of the above Clause 15 and 15(b) of the Constitution of the Church of South India simply shows the powers of " SYNOD" and the Executive Committee of the Diocese. However, since this is a case of misappropriation of funds, which is a criminal offence, the police has every right

to investigate and find out the truth in the complaint and proceed accordingly and the findings, if any, of the "SYNOD " will be independent and should not have any influence over the probe by the police as both are mutually exclusive.

10. The contention of the learned counsel for the petitioners is that the present complaint has been given only in the year 2011 for the alleged offences that took place during the year 2005-2007 and that therefore, the entire proceedings should be quashed. It is to be pointed out that there is no bar in initiation of criminal proceedings and merely because a complaint has been lodged belatedly, a criminal proceedings cannot be quashed under Section 482 of Code of Criminal Procedure. As far as the present case is concerned, the de-facto complainant had lodged the complaint with the police as soon as he came to know about the misappropriation of funds by the accused and there is nothing to infer that the allegations levelled against the present petitioners are baseless in the light of the fact that the investigating officer has recorded the statement of all the witnesses and had also seized the material documents, which would prima facie show that the accused had committed the offences punishable under Section 120 (B), 409, 465 and 471 of Indian Penal Code and the Chief Judicial Magistrate, Coimbatore is right in taking cognizance of the offence for the aforesaid offences.

11. Another contention of the petitioners is that there is no question of misappropriation of funds as there was some omissions, which dealing with the accounts and the same had already been placed before the Executive Committee for approval. This is a disputed question of fact and the High Court while exercising power under Section 482 of Code of Criminal Procedure, cannot conduct an enquiry into the disputed facts. Only after full fledged trial, it can be found out whether there is an actual misappropriation of funds or not. At this stage, there are sufficient materials to proceed against the accused and hence I do not find any reason to quash the proceedings under Section 482 of Cr.P.C.

12. Accordingly, all the criminal original petitions are dismissed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mst

To

1.The Chief Judicial Magistrate, Coimbatore.

2.The Inspector of Police, Crime Branch, Coimbatore.

3.The Public Prosecutor, High Court Madras.

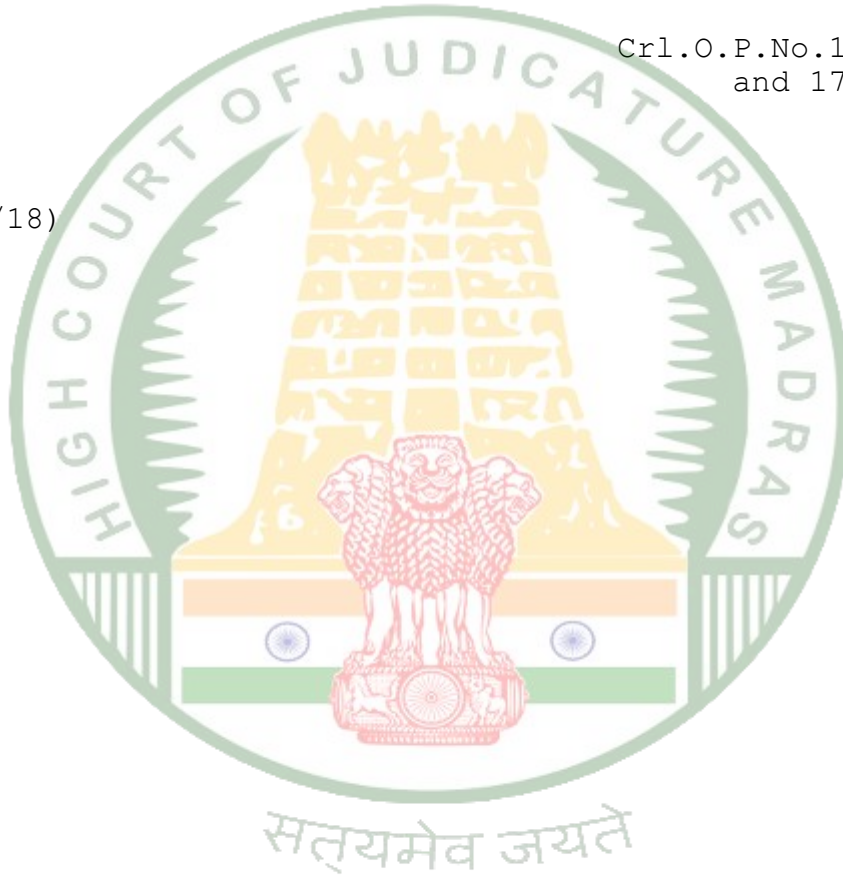
4.The Secion Officer, Criminal Section, High Court Madras.

+3cc to Mr.B.Nedunchezhiyan, Advocate, sr.no.29728 to 29730

Crl.O.P.No.15098, 15223
and 17042 of 2011

GMR(CO)

RRK(31/05/18)



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