



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2018
Pronounced on : 24 .05.2018

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CORAM :

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP. (MD) Nos.17576/2014, 18740/2015 & 18741/2015
and

MP (MD) .No.1/2014 in CRL.OP (MD) No.17576/2014
MP (MD) .Nos.1 & 2/ 2015 in CRL.OP (MD) No.18740/2015
MP (MD) .Nos.1 & 2/ 2015 in CRL.OP (MD) No.18741/2015

Gobalakrishnan .. Petitioner in CRL.OP. (MD) No.17576/2014
R.Renganayagi .. Petitioner in CRL.OP. (MD) No.18740/2015

1.S.Nainar
2.V.S.Subbarayan .. Petitioners in CRL.OP. (MD) No.18741/2015

Versus

1. State rep. By
Inspector of Police,
Vasudevanallur Police Station,
Cr.No.73/2010,
Tirunelveli District.

2. S.Velsamy ... Respondents in all the CRL.OPs.

Prayer:

CRL.OP. (MD) No.17576/2014: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for records in C.C.No.55/2013 on the file of the Judicial Magistrate, Sivagiri, Tirunelveli District, and quash the same.

CRL.OP. (MD) No.18740/2015: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for records relating to the charge sheet in C.C.No.55 of 2013 on the file of the learned Judicial Magistrate, Sivagiri and quash the same as illegal.

CRL.OP. (MD) No.18741/2015: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for records relating to the charge sheet in C.C.No.55 of 2013 on the file of the learned Judicial Magistrate, Sivagiri and quash the same as illegal.

For Petitioners : Mr.V.Kathirvelu,
Senior Counsel for Mr.M.P.Senthil
in Crl.OP. (MD) Nos.18740 & 18741/2015
Mr.K.Prabhu in Crl.OP. (MD) No.17576/2014



For Respondents
in all the O.Ps

: Mr.A.P.G.Ohm Chairma Prabhu for R1
Government Advocate (Crl.Side)
Mr. R.J.Karthick for R2

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COMMON ORDER

Crl.OP.MD.17576/2014 has been filed by the accused No.8 u/s.482 of Cr.P.C., to quash the proceedings against him in C.C.No.55/2013 on the file of the Judicial Magistrate, Sivagiri Tirunelveli District.

Crl.OP.MD.18740/2015 has been filed by the accused No.5 to quash the proceedings against her in C.C.No.55/2013 on the file of Judicial Magistrate, Sivagiri Tirunelveli District.

Crl.OP.MD.18741/2015 has been filed by the accused Nos.6 & 7 to quash the proceedings against them in C.C.No.55/2013 on the file of Judicial Magistrate, Sivagiri Tirunelveli District.

2. Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.M.P.Senthil and Mr.K.Prabhu for the petitioners and Mr.A.P.G.Ohm Chairma Prabhu, Government Advocate (Crl.Side) for first respondent and Mr. R.J.Karthick for the second respondent.

3. The brief facts are as follows:-

The second respondent herein has filed a Criminal Original Petition before this court to direct the first respondent police to register a case based on his complaint dated 19.02.2010. This Court has allowed the said petition and directed the second respondent to register a case and investigate the matter. Accordingly, the second respondent has registered a case on 30.04.2010 in Cr.No.73/2010 u/s.420 of IPC against one Arunachala Pandian and his son Jesuraj.

4. After investigation, the first respondent has filed a charge sheet against eight accused persons stating that the accused No.1 Arunachala pandian was the Panchayat President for Narayanapuram Panchayat, during the period from 2007 to 2009. A2/Senthil Velpandian was the Vice President, A3 - Jesuraj was a Panchayat Clerk, A5 R.Renganayaki (petitioner in Crl.OP.MD. No.18740/2015) was the BDO of Vasudevanallur, Panchayat Union, A6-S.Nainar (Petitioner No.1 in CRL.OP.MD.No.18741/2015) was the Assistant Engineer in Vasudevanallur Panchayat Union, A7 - V.S.Subbarayan (petitioner No.2 in Crl.OP.No.18741/2015) was Overseer in Vasudevanallur Panchayat Union. It is further stated that A1 to A3 have misappropriated the government money of Rs.44,735/- by creating false records as if the 4th accused Govindan has constructed a house. It is further stated that even though the accused No.4 Govindan has not constructed any house, Accused No.7 gave a report that the accused No.4 has constructed a house and accused No.6 has recorded in the measurement book that the accused No.4 has constructed a house and the accused No.5 has passed an order to disburse the amount to the



accused No.4 and thereby the accused Nos. 5 to 7 aided the accused Nos.1 to 4 for misappropriating the Government money. It is also stated that the accused Nos.1 to 3 have created false records as if one K.Samudram, Contractor has done some work and misappropriated a sum of Rs.60,656/-. It is also stated that the accused Nos.1 to 3 prepared false records as if one Murugayya has done some work and misappropriated Government money of Rs.29,390/- and hence the accused Nos.1 and 2 are liable to be punished u/s.406, 409, 423, 465, 466, 467, 468, 471 and 420 IPC; A3 is punishable u/s.406,409,423,465,466, 467,468,471 and 420 IPC r/w.109 IPC; A4 to A7 are punishable u/s.465, 466, 467, 468, 471 and 420 of IPC and A8 is punishable u/s. 409, 423, 465, 466, 467, 468, 471 r/w.109,201,204,420 IPC.

5. Mr.V.Kathirvelu, learned Senior Counsel who is appearing for the petitioners has submitted that the petitioners in Crl.OP.(MD) Nos.18740/2015 and 18741/2015 (A5 to A7) were working only in the supervisory capacity and they have no direct role in the offences said to have been committed by the accused Nos.1 to 4. He further submitted that the accused Nos.1 and 2 who are being President and Vice President of the Naranapuram Panchayat respectively alone will have the right to choose the beneficiary under the Indira Awaaz Yojana (herein after referred to as IAY). He further submitted that accused No.4 chosen as beneficiary on 18.02.2008 and at that time, the accused No.5 was working as Block Development Officer in Valliyur Panchayat Union Office and as such, she has no role in selection of beneficiary under IAY Housing Scheme. He further submitted that the allegation against A5 to A7 is that A1 to A3 have manipulated the documents, as Supervisory Officers, A5 to A7 have not properly verified the documents and hence, they have aided the A1 to A3 to commit the offence. He further submitted that the charge sheet was filed completely over looking the crucial issue that there is a difference between the criminal intention to commit the offence and negligence of duty. The negligence of duty may constitute dereliction of duty which may lead at the best to disciplinary action. But they cannot attribute for criminal intention to commit the offence by abatement. He further submitted that there is no charge against A5 to A7 u/s.109 or 120-B of IPC and in such circumstances, the charge sheet is liable to be quashed.

6. Mr.V.Kathirvelu, the learned Senior Counsel for the petitioners has further submitted that one of the witnesses viz., Arputharaj has stated in the statement which has been recorded in Section 161 of Cr.P.C., that the original records are not available in the Naranapuram Panchayat. He further submitted that though in the charge sheet, it is stated that a separate list of documents attached with the charge sheet, actually no such documents filed in the Court. He further submitted that as per the G.O.Ms.No.238 issued by the Rural Development Department dated 25.07.1997, it is the duty of the Monitoring Officer-cum-extension Officer to Supervise, the allotment under IAY Housing Scheme and



therefore, A5 is not liable to be charge sheeted.

7. The learned Senior Counsel for the petitioners has further submitted that the accused No.8, after receipt of a letter from the first respondent has produced the records which were available with him, but not satisfied with the same, the first respondent has also purposely added Accused No.8. He further submitted that since the transactions are pertaining to Naranapuram Panchayat, the relevant records must be only in the said Panchayat, but, the first respondent has implicated Accused No.8 in the above case as if he has refused to produce the original records with a view to safeguard the other persons and therefore, he prayed to quash the proceedings against the A5 to A8 in C.C.No.55/2013 on the file of the Judicial Magistrate, Sivagiri. In support of his contention, he relied upon the following decisions:

1.K.Sundari Vs. State represented by the Deputy Superintendent of Police, Economic Offences Wing, Tirunelveli, (Crl.OP (MD) Nos.1187 & 1188 of 2007) dated 25.04.2007.

2. G. Selvakumar Vs. State through Inspector of Police, C.C.I.W. CID, Tirunelveli (Crl.RC. (MD) .No.787/2010 & MP (MD) Nos.1 and 2/2010) dated 26.11.2010.

3. M.Muthu Selvam and Others Vs. Deputy Superintendent of Police, Economic Offences Wing, Tirunelveli (Crl.OP.MD.Nos.8479 to 8483/2008) dated 11.09.2009.

8. Mr.A.P.G.Ohm Chairma Prabhu, the learned Government Advocate (Crl.Side), who is appearing for the first respondent, has submitted that though three charges have been mentioned in the chargesheet, A5 to A7 are concerned only with regard to the charge that A1 to A3 have prepared false records as if A4 has constructed the house and misappropriated the Government money of Rs.44,500/- and for committing such offence by the accused Nos.1 to 4, the accused Nos.5 to 7 have intentionally aided them. He further submitted that it is the duty of the accused No.7 to inspect and submit a report as to whether actually beneficiary has constructed a house under IAY Housing Scheme. But in this case, the accused No. 4 (beneficiary) has not actually constructed a house, but the accused No.7 gave a false report stating that the accused No.4 has constructed a house. He further submitted that accused No.6 who is being an Assistant Engineer is also having responsibility to inspect the spot and only thereafter, he has to make an entry in the measurement book, but in this case, he has made a false entry in the measurement book that the accused No.4 has constructed a house as per the stipulated measurement. He further submitted that the accused No.5 who was the Block Development Officer, only after verification, as to whether actually the house has been constructed by the beneficiary, she has to pass an order to disburse the amount, but in this case, knowing fully well that A4 has not constructed the house, the accused No.5 has passed an order to disburse the amount to him and therefore, A5 to A7 are liable to be prosecuted under the relevant provisions of law. He further



submitted that Accused No.8 who is being the present Block Development Officer of the Vasudevanallur Panchayat Union, inspite of summons sent by the first respondent, has purposely withheld the relevant records and hence he is liable to be prosecuted u/s.201 and 204 of IPC.

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9. Learned counsel who is appearing for the second respondent has submitted that A5 to A7 conspired with accused Nos.1 to 4 and committed misappropriation of public money, but the first respondent has failed to add Section 120-B of IPC against them. He further submitted that for considering the petition u/s 482 of Cr.P.C., the Court has to see as to whether the allegations in complaint prima facie make out a case or not. He further submitted that the Court cannot scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial. He further submitted that the accused Nos.5 to 7 have committed serious offences along with accused Nos.1 to 4 and caused loss to the exchequer which is a serious economic offence against the society and therefore, the chargesheet against them cannot be quashed. In support of the aforesaid contention, he has relied upon the following decisions:

1. Homi Rajvansh Vs. State of Maharashtra and Others (2014) 12 SCC 556

2. Sushil Suri Vs. Central Bureau of Investigation and Another (2011) 5 SCC 708

10. As per the service particulars enclosed in the typed set of papers, A5 was working as the Block Development Officer of Vasudevanallur Panchayat Union during the period from 11.08.2008 to 29.01.2009. The allegation against her is that she has passed an order on 24.12.2008 to disburse the amount of Rs.44,735/-. According to the second respondent, the accused No.5, knowing fully well that the accused No.4 has not constructed the house under IAY Housing Scheme, she has passed an order to disburse the amount to him and thereby she also committed an offence of misappropriation of the public money. One Deivendran, Assistant Project Officer attached to the Collectorate, Tirunelveli gave a statement u/s.161 (3) of Cr.P.C., stating that the Accused No.5 has issued a proceedings on 24.12.2008 to enable the accused No.4 to get money of Rs.44,735/-. Whether the said statement is true or not cannot be decided at this stage. It is to be pointed out that accused No.5 has not disputed the allegation that she has passed an order to disburse the amount of Rs.44,735/- to the accused No.4. It is also not disputed that accused No.4 has not constructed the house under IAY Housing Scheme.

11. The accused No.6 is the Assistant Engineer and the accused No.7 is Overseer and they only prepared report of accompany the estimate (as per the typed set submitted by the petitioners). As per the statement of Deivendran, the accused Nos.6 and 7 have made entry in the measurement book stating that the accused No.4 has constructed a house. So it appears that it is the duty of the



accused Nos.6 and 7 to make an inspection as to whether the beneficiaries have actually constructed the house in accordance with the plan and estimate prepared by them and they have to make necessary entry in the measurement book and also submit a report.

12. Accused Nos.6 & 7 have not disputed the allegation that they have made entries in the measurement book that the accused No.4 has constructed the house under the IAY Housing Scheme. So, the burden is upon them under what circumstances they have made entries in the measurement book as accused No.4 has constructed the house. The factual aspects cannot be decided in these petitions.

13. In so far as the contention of the petitioners that Sections 109 or 120-B IPC have not been mentioned in the charge sheet is concerned, it is for the trial court to frame necessary charges under the relevant provisions of law. Merely because the police has committed some mistake in the charge sheet, that will not entitle the accused to quash the proceedings against them.

14. In the decisions cited by the petitioners, the facts are totally different. In the said cases, the petitioners were working in the supervising capacity. But they were charged for not effectively supervising the work of the subordinates, whereas in this case, according to the respondents, accused Nos.6 & 7 have made false entry in the measurement book after knowing fully well that accused No.4 has not constructed the house and Accused No.5 has passed order to disburse the amount knowing fully well that accused No.4 has not constructed the house. Therefore, the decisions relied on by the petitioners will not be applicable to the facts of this case.

15. In **Homi Rajvansh Vs. State of Maharashtra and Others** (supra), the Hon'ble Supreme Court has held in paragraph No.16 as follows:

"16. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint prima facie make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial."

16. So, it is clear that for considering the petition u/s.482 of Cr.P.C., the Court has to see as to whether the allegations in the complaint prima facie make out a case or not. In this case, the allegations made in the charge sheet and also the statement recorded u/s.161 of (3) Cr.P.C., of the witness Deivendran (Assistant Project Officer) would make out a prima facie case to proceed against the petitioners herein.

17. In **Sushil Suri Vs. Central Bureau of Investigation and Another** (supra), the Hon'ble Supreme Court has observed in



paragraph Nos.17 and 33 as follows:

"17. In one of the earlier cases in *R.P. Kapur Vs. State of Punjab* this Court had culled out some of the categories of cases where the inherent powers under Section 482 of the Cr.P.C. could be exercised by the High Court to quash criminal proceedings against the accused. These are:

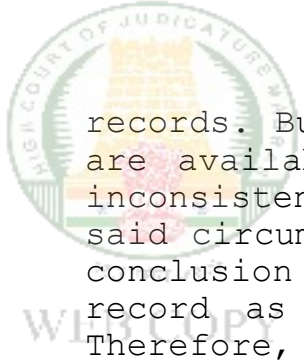
- "(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;
- (ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no

legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

33. In the present case, having regard to the *modus operandi* adopted by the accused, as projected in the charge-sheet and briefly referred to in para 23 we have no hesitation in holding that it is not a fit case for exercise of jurisdiction by the High Court under Section 482 Cr.P.C. as also by this Court under Article 142 of the Constitution of India. As noted above, the accused had not only duped PSB, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society."

18. In this case also, the allegation against the petitioners is that they have caused loss to the exchequer and the same is a serious economic offence against the society and therefore, the proceedings against the petitioners 5 to 7 cannot be quashed.

19. In so far as the accused No. 8 is concerned, admittedly the first respondent has issued a letter requesting the accused No.8 to produce certain documents. Though accused No.8 has stated in his petition that the respondent has sent a letter and collected the original records and subsequently also a letter has been sent by him and for that, he replied that already records were sent, he has not produced the copy of the said subsequent letter and also the reply sent by them. Unless those documents were produced, this court cannot come to the conclusion that what are the documents requested by the first respondent and what was the reply submitted by the accused No.8. It is also to be pointed out that accused No.8 has stated in his petition that he has already submitted the



records. But subsequently he has taken a stand that all the records are available only with the Panchayat Office and this plea is inconsistent with the earlier plea of the accused No.8. Under the said circumstances, this court is not in a position to come to the conclusion that whether actually the accused No.8 has submitted any record as stated by him in paragraph No.4 of his petition. Therefore, the proceedings against him also cannot be quashed.

20. In view of the foregoing discussions, I do not find any merit in these petitions and they are dismissed. Consequently, connected miscellaneous petitions are closed. The trial court shall proceed with the case as expeditiously as possible without being influenced by any observations made by this court.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Sivagiri,
Tirunelveli District.
2. The Inspector of Police,
Vasudevanallur Police Station,
Cr.No.73/2010,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 2 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR Nos. 66214 & 66215

GV/VS

TE/JC/SAR-3 : 28/06/2018 : 8P/6C

ORDERS made in
CRL.OP.(MD)Nos.17576/2014,
18740/2015 & 18741/2015 and
MP(MD).Nos.1 & 2/ 2015 in
CRL.OP(MD)No.18740/2015
MP(MD).Nos.1 & 2/ 2015 in
CRL.OP(MD)No.18741/2015
24.05.2018