

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2019

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13184 of 2011

P.Anbumani ... Petitioner/Sole Accused

Vs.

The State
represented by
the Inspector of Police,
Neyveli Township Police Station,
Cuddalore District,
(Crime No.341 of 2008) ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.45 of 2011 pending on the file of the District Munsif-cum-Judicial Magistrate at Neyveli and to quash the same.

For Petitioner : Mr.V.Ayyadurai for
Mr.V.B.Perumalraj

For Respondent : Mr.G.Hari Hara Arun Soma Sankar
Government Advocate (Crl.Side)

सत्यमेव जयते
O R D E R

The above quash petition is filed by the accused in C.C.No.45 of 2011 which is pending trial on the file of District Munsiff cum Judicial Magistrate, Neyveli for offence under Section 471 of the Code of Criminal Procedure. The petitioner is the single accused in this case.

2.The respondent received a complaint of one Thangam Murugavel, Vice President, Vadakuthu Panchayath Union. As per the complaint, the Panchayath was not functioning properly and regular meetings were not properly held. Further the Vice President was not informed of the functioning's of the Panchayanh. Four cheques were issued in the name of Jaishankar,

Ranganathan and one Muthu for the work done by them by the Panchayath and the signatures found in the cheques does not belong to her. Since the case was forwarded by the District Munsif cum Judicial Magistrate, Neyveli U/s.156(3) Cr.P.C. a case was registered by the respondent in Crime No.341/2008 on 2-11-2008 U/s. 420 and 471 IPC.

3.The petitioner is an elected Panchayath President of Vadakkuthu Panchayath, Kurinjipadi Taluk, Cuddalore and has been discharging his function since 2006. The case of the prosecution is that witness-1 Tmt.Thangam Murugavel is the Vice President of the said Panchayath. The President had misused the cheques of Indian Bank, Vadakuthu Branch in which the Government funds of the said Panchayath are being maintained. The Cheque Nos.304639, 851642, 851643 and 304628 dated 04.09.2008, 16.09.2008, 16.09.2008 and 27.09.2008 respectively for Rs.7,214/- Rs.1,50,391/-, Rs.1,77,854/- and Rs.6,000/- respectively have been signed by the accused in the capacity of President and he also fraudulently signed the signature of the Vice President Thangam as if the Vice President has signed and misused the funds of the Panchayath against law.

4.The respondent had examined witnesses, recorded their statements and cited LW.1 to LW.17 and documents and thereafter filed the charge sheet against the petitioner. The contention of the petitioner is that LW1, Vice President of the Panchayat states that there are nine wards in the panchayat for any Government work, payments have to be made through cheque. The panchayat has a Bank Account in Indian Bank, Vadakathur Branch. She has signed the specimen signature card in the Bank, for payment to the contractors only after the President sign in the cheques, she would sign some of the cheques and the signatures found in are not that of her. LW2 Murugavel is the husband of the Vice President of the Panchayath Union had stated in his statement that for a cheque to be encashed the signature of President and Vice President is necessary. The Panchayath clerk Jaishankar used to bring the signatures to his residence and handover the same to him. The said cheque could be handed over by her husband LW.2 and after the signature of his wife the same would be handed back to the Clerk and this procedure is being followed for the past two years.

5.In the meanwhile there seems to be misunderstanding between the President and the Vice President of the Panchayath. The petitioner is the President of the Panchayath. The 4 cheques which are in dispute were not brought for the signature of his wife. On the contrary, the Office Assistant Jaishankar has categorically stated that the cheques given to the contractors, namely, Ranganathan, Krishnamoorthy, was only after obtaining the signature of the Vice President of the Panchayath and the

cheques have been presented by the Contractors to the bank and thereafter the cheques have been honoured. He would further submit that the President and the Vice President signed the cheques and thereafter only the cheques would be presented to the bank. The contractors of the Panchayath namely Ranganathan, Krishnamoorthy, Kolanji, Jayabalan, and others have categorically stated that they have received the cheques of the Panchayath after proper scrutiny of their work done and thereafter the same was presented in the bank by the respective persons and they have encashed the same. Further, LW.11 Srinivasan, and LW.14 Aravindan, Indian Bank states that the original cheques were obtained from the bank. The other witness of the bank one Thathaiya Saheb Prahalad Kakde, LW.12 and LW.13 Suma had categorically state that the cheques were presented to the banks and on verification of the specimen signature of the President and Vice President and getting satisfied about the genuiness of the signatures found in the cheques he had permitted the cheques to be processed. It is further submitted that LW.15 the witness from the Forensic department have stated nothing as against the petitioner. Further it is the categorical finding of the respondent is that there have been no cheating involved in this case.

6.The petitioner further relied upon the decision upon the in the case of 2013(1) CWC 300 Anti Corruption movement by General Secretary Vs. The State of Tamilnadu wherein this court had categorically had held that for prosecuting the President or the Executive Authority of a Panchayath sanction under 230 of the Tamil Nadu Panchayath Act is mandatory. In this case no sanction is obtained. In view of the same, the petitioner prayed to quash the charge sheet in C.C.No.45 of 2011.

7.The learned Government Advocate submits that on registration of the case the investigation has been carried out recording the statements of the witnesses and collection on documents and submission of the same to the Forensic Department and after obtaining their opinion charge sheet came to be filed in the above case. Further, there are enough materials collected to show the complicity of the petitioner in the above case.

8.LW1 to LW17 were examined and collected several documents. The charge sheet came to be filed only after a detailed investigation carried out and hence opposed the quash petition.

9.Considering the rival submissions, it is seen that thought the case was filed under Section 420 and 471 of the Indian Penal Code, charge sheet came to be filed only for the offence under Section 471 of the Indian Penal Code. LW1, Vice President of the Panchayat states that the periodical meetings of the

panchayat has not been held and she was maintaining a diary, in which she found that four of the cheques have not been signed by her. These four cheques are issued in the name of the panchayat Contractors viz., LW4 - Ranganathan, LW5 - Kolachi, and LW10 - Krihnamurthy and one cheque in the name of LW3 - Jayasankar, Assistant of the panchayat and these witnesses have stated that the cheques were received for the work carried out by them. The works were recorded in the M-Book, inspected and verified by the Block Development Officer and Project Officer and thereafter only the cheques were issued and the cheques were presented in Indian Bank, Vadakathur Branch and thereafter encashed.

10.LW6 - Jayabalan, LW7 - Manivel, LW8 - Sakthivel, LW9 - Vaithyanathan are the ward members of the panchayat, who had stated about joint account maintained by the panchayat and the President and the Vice President are joint signatory, payments are made to the Contractor only on their execution of the work. LW11 to LW14 are the witnesses from the Indian Bank Vadakathur Branch. These witnesses speak about the opening up of the bank account, obtaining specimen signature from the President and the Vice President of the Panchayat and passing of the cheques on verification of their signatures and handing over of the original cheques to the respondent police.

11.It is seen that the bank operation has been done in normal course of business signatures are verified and thereafter, the cheques have been passed. LW2, Murugavel husband of LW1 categorically asserts in his statement that the cheques would be brought to his house by the contractors and from the panchayat staffs for obtaining signature and his wife, the Vice President the panchayat staff, he would receive the cheques from them for getting the signature from his wife/Vice President and thereafter, return the signed cheques to the staff of the panchayat and to the contractors. Further, the categorical finding of LW15, Thamarai Selvam, Scientific Officer attached to the Forensic Lab is that the signature found in the cheques signed as Vice President is not that of the petitioner. Hence, there is no forgery by the petitioner. Further as it could be seen from the Section 463, 464 of the Indian Penal Code that if any person makes any false document to support any claim or title with intend to commit fraud and who dishonestly, fraudulently signs the documents then only the offence of forgery is committed and making of false document would arise.

12.In this case, there is nothing to show on the uncontroverted statements and materials that the petitioner had committed any forgery or created false document which is the basis to charge a person under Section 471 of the Indian Penal Code for using the forged documents as genuine. Further there is no sanction obtained under Section 230 of the Tamil Nadu

Panchayat Act. Further, the petitioner being a President of the panchayat obtaining sanction under Section 23o of Tamil Nadu Panchayat Act is mandatory. There is compete bar on the Court to take cognizance of such offence, in the absence of previous sanction of the Government. In this case no such sanction has been obtained. In view of the above and on the guidelines of the Apex Court rendered in the case of State of Haryana Vs. Bajanlal reported in 1992 SCC (Cri) 426, it is found that taking the case as a whole on the uncontroverted allegations in the complaint and the evidence collected in support of the same does not disclose the commission of any offence and no case is made out against the petitioner.

13.In view of the same, the quash petition is allowed. The case against the petitioner in C.C.No.45 of 2011 pending on the file of the District Munsif-cum-Judicial Magistrate at Neyveli is hereby quashed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District Munsif-cum-Judicial Magistrate,
Neyveli.
- 2.The Inspector of Police,
Neyveli Township Police Station,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.V.B.Perumalraj, Advocate, vide Sr.No.16545

CrI.O.P.No.13184 of 2011

Kak(30/03/2019)