

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.09.2019

Pronounced on : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19574 of 2019
and
Crl.M.P.Nos.10021 & 10022 of 2019

J.A.Murugan

... Petitioner

Vs.

1.The Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri.

2.S.Bharathi

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in Spl.C.C.No.6 of 2019 on the file of the Chief Judicial Magistrate, Krishnagiri quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Mr.T.P.Savitha,
Government Advocate [Crl. Side]

ORDER

This Criminal Original Petition has been filed by the petitioner/A1 to quash the proceedings in Spl.C.C.No.6 of 2019, pending on the file of the Chief Judicial Magistrate Court, Krishnagiri.

2.The petitioner/A1 was working as Secretary in Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, Hosur, Krishnagiri District since 1993 and the 2nd accused G.Santhi was working as Clerk therein. Both are public servants as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The 2nd respondent/defacto complainant, who is an employee of LUK India Company Private Limited, Hosur had applied for personal loan for a sum of Rs.7,00,000/- (Rupees seven lakhs only) and presented the application to the petitioner/A1 on 03.01.2017. Thereafter, when the 2nd respondent met the petitioner on 21.01.2017, he demanded Rs.5,000/- (Rupees five thousand only) as illegal gratification, for getting sanction of loan. This demand was reiterated again by the petitioner on 23.01.2017. On 24.01.2017, the 2nd respondent met the petitioner along with official witness M.Mahendran, who had accompanied with the 2nd respondent. At that time, the petitioner demanded Rs.5,000/- and directed to pay it to the Clerk of the society. The 2nd respondent met the 2nd accused/Clerk of the society at the adjacent room and she reconfirmed the demand, received the amount of Rs.5,000/-, counted with her both hands and then kept the money inside her purse. Thereafter, predetermined signal was given as informed by the Trap Lying Officer, who entered into the society, recovered the money and conducted phenolphthalein test. On completion of investigation in Cr.No.2/AC/2017/KG, charge sheet came to be filed against the petitioner/A1 and the 2nd accused/Clerk of the society for

the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.The primordial contention of the learned counsel for the petitioner is that the petitioner is the Secretary of Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, Hosur, Krishnagiri District, which is an independent body not financed by the State or Central Government or by the Quasi-Governmental bodies and it is established by the employees working in private companies in Hosur, Krishnagiri. The said society was registered under the Tamil Nadu Cooperative Societies Act, 1983 and hence the petitioner/A1 is not a public servant. The phenolphthalein test reveals that the petitioner did not receive any illegal gratification. The complaint against him is motivated one with an ulterior motive. Earlier, the petitioner had filed W.P.No.2228 of 2018 before this Court, challenging the letter of the Director of the Vigilance and Anti-Corruption dated 27.10.2017, seeking sanction from appointing authority to prosecute the petitioner under the Prevention of Corruption Act, 1988. The said Writ Petition was dismissed on 02.02.2018 and thereafter, the petitioner preferred Writ Appeal in W.A.No.2253 of 2018 and this Court ordered notice to the respondent therein and the same is pending for disposal.

4.The learned counsel for the petitioner would further submit that the Cooperative Societies Act is a self-contained Act. Any corruption committed by any employee of the Cooperative society, which is not aided by Central, State Government or Quasi-Governmental body cannot be brought within the jurisdiction of Prevention of Corruption Act, 1988. The employees of such society cannot fall under the definition of Public Servant under Section 2(c) of the Prevention of Corruption Act, 1988. The Cooperative Society does not recognize or empower the police under the Prevention of Corruption Act, 1988 to arrest the employees of society or lay a trap. While the petitioner's Writ Appeal in W.A.No.2253 of 2018 is pending questioning the sanction for prosecution, the 1st respondent hurriedly filed charge sheet before the learned Chief Judicial Magistrate, Krishnagiri and the same is taken on file as Spl.C.C.No.6 of 2019. The learned Chief Judicial Magistrate, Krishnagiri issued summons to the petitioner to appear before the trial Court on 25.07.2019.

5.He would further submit that when the questioning of grant of sanction for prosecution is pending in W.A.No.2253 of 2018, the 1st respondent has no authority or jurisdiction to file charge sheet before the Court below and the trial Judge cannot take cognizance of the case under the Prevention of Corruption Act, against the petitioner, who is an employee of the cooperative society. Further, the petitioner is not a public servant and he does not fall in any one of

the descriptions given for a public servant, particularly under Section 2(c)(ix) of the Prevention of Corruption Act, 1988. The learned counsel for the petitioner filed typed set of papers, wherein the communication between the Registrar of Co-operative Societies to the Joint Registrar of Co-operative Societies, Krishnagiri and the Deputy Registrar of Co-operative Societies, Hosur to President of the Society has been filed and also the order of this Court in W.P.No.2288 of 2018 and Audit Report of the year 2016-2017 and 161 Cr.P.C Statements of witnesses have also been filed.

6.Further the learned counsel for the petitioner relied upon the following decisions:-

1) ***“K.Murugappan Versus The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another reported in 2006 (4) CTC 689.”***

2) ***“Thalappalam Ser. Coop. Bank Ltd., and others Versus State of Kerala and others reported in (2013) 7 MLJ 407 (SC)”***, it is held that *“the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the*

Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.”. The citations referred by the petitioner are not applicable to facts and circumstances of the case.

7.*Per Contra*, the learned Additional Public Prosecutor appearing for the 1st respondent would submit that on the complaint of the 2nd respondent, discrete enquiry was conducted, trap proceedings were initiated, official witnesses were enlisted and thereafter the 2nd respondent accompanied by the officials witnesses, met the petitioner, who had demanded illegal gratification and directed it to be paid to the other accused, who received, counted the same and kept in her purse, which was recovered and the trap was successful. Thereafter, recovery mahazar was prepared, recording the proceedings and after obtaining sanction under Section 19(1)(c) of the Prevention of Corruption Act, 1988 from the Joint Registrar of Co-operative Societies, Krishnagiri on 18.03.2019, charge sheet came to be filed. The contention of the learned counsel for the petitioner that the petitioner is not a public servant cannot be countenanced as per Section 2 (viii) of the Prevention of Corruption of Act, 1988 and the same is extracted here under:-

“(viii) any person who holds an office by virtue of which he is empowered or required to perform any public duty.”

8.The petitioner by virtue of which he is authorized and required to perform public duty. The public duty has been defined as per Section 2(b) of the Prevention of Corruption Act, 1988 and the same is extracted here under:-

“Public Duty:

public duty means a duty in the discharge of which the state, the public or the community at large has an interest”

9.The Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, Hosur, Krishnagiri District is a registered society under the Tamil Nadu Co-operative Society Act, 1983. Further, thorough investigation has been carried out. After following all the legal formalities and procedures, charge sheet came to be filed. Hence, he prayed for dismissal of the quash petition.

10.Considering the rival submission and on perusal of the materials, it is an admitted fact that Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, Hosur, Krishnagiri District is a non-agricultural society registered under the Tamil Nadu Co-operative Society Act, 1983, in the year 1987. The funds of the society were audited by the Government Department of Cooperative Audit namely the Assistant Director of Co-operative Audit, Dharmapuri and the society is under the purview of the

Registrar of Co-operative Societies and through the Co-operative society officials. The funds of the society are audited as per Section 18 and rule 102(viii) of Tamil Nadu Co-operative Societies Act, 1983.

11.The order passed by the Audit Certificate Proceedings of the Assistant Director of Co-operative Audit, Dharmapuri in FAM.468/2016-2017/AC, dated 12.04.2018 is extracted here under:-

“3.Membership and Share Capital: There were 678 members at the end of the year as 686 against at the beginning of the year. The Share capital of the members amounted to Rs.10780500.00 against Rs.11690970.00 at the beginning of the year.

4.Deposits and borrowings: The outstanding under this head has been Rs.71673357.00.

5.Reserves and Surplus: The outstanding under this head has been Rs.1927904.89.

6.Other Liabilities: The outstanding under this head has been Rs.

7.Investments: The amount outstanding under this head at the end of the year was Rs.7197018.00.

8.Loans and Advances: The amount outstanding under this head at the end of the year was Rs.78067692.00.

9.Net Result:

(i) The Society earned a net profit of Rs.270067.83 for the year of Audit. The Net profit of the society may be distributed in accordance with the act, rules and the by-laws of the

society.”

12.Further, the Joint Registrar of Co-operative Society, Krishnagiri had granted sanction for prosecution under Section 19(1)(c) of the Prevention of Corruption Act, 1988 on 18.03.2019.

13.On the above facts and on perusal of the materials, this Court finds that the Secretary of the society, who holds office are authorized and required to perform public duty by virtue of holding office. The Secretary would be a public servant as defined under sub clause (viii) of clause (c) of Section 2 of the Prevention of Corruption Act, 1988. The contention of the learned counsel for the petitioner is that if the Secretary of the society is a public servant as provided under sub clause (viii), sub clause (xii) would be redundant, it is not the case. Sub clause (xii) is attracted to an office bearer or an employee of a society as provided thereunder, only if the society is receiving or having received any financial assistance from the Central or State Government or local or public authority. The requirement or authorization to perform a public duty, as provided under sub clause (viii), is not relevant in sub clause (xii), so also the question whether the body in which the person holds office is receiving or having received financial assistance from the State or Central Government or local or public authority is not relevant factor to attract sub clause (viii). Hence, the

submission that sub clause (xii) would be redundant is not correct.

14.Thus, this Court finds that as Secretary the petitioner's mandatory obligation is to perform public duty or authorized or required to perform public duty, he can be said to perform public duty. The petitioner being the Secretary of the society, which got 686 members with huge members/public share capital and with primary duty of disbursement of loan collection of the same and holding the properties of the members of the society as custodian and trustee in public trust. The petitioner is performing a public duty and further the competent authority had granted sanction for prosecution. The Hon'ble Apex Court had defined "*Public Duty*" in the case of "*T.C.Mathew Versus K.Balajiyyengar and others in SLPs (Crl.) No.10107 of 2017*".

15.Further, on perusal of the statement of witnesses, this Court finds that there are enough material to proceed against the petitioner. The points raised by the learned counsel for the petitioner are not sustainable.

16.In view of the above, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

17.10.2019

vv2

Speaking order/Non-speaking order

Index: Yes/No

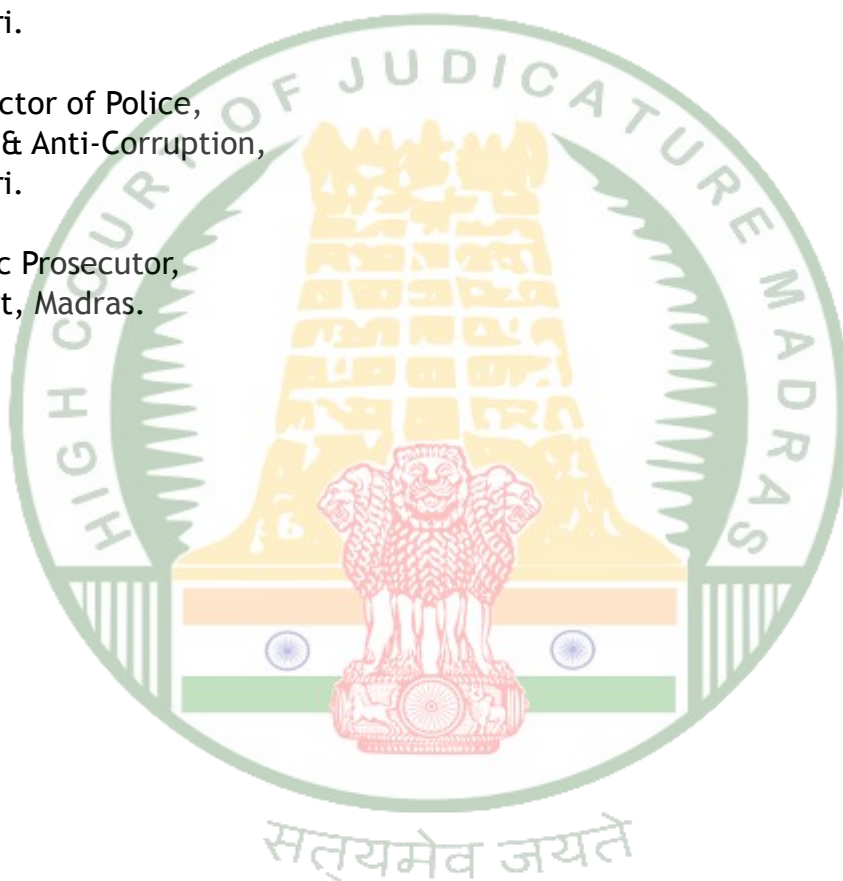
Internet: Yes/No

To

1.The Chief Judicial Magistrate,
Krishnagiri.

2.The Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri.

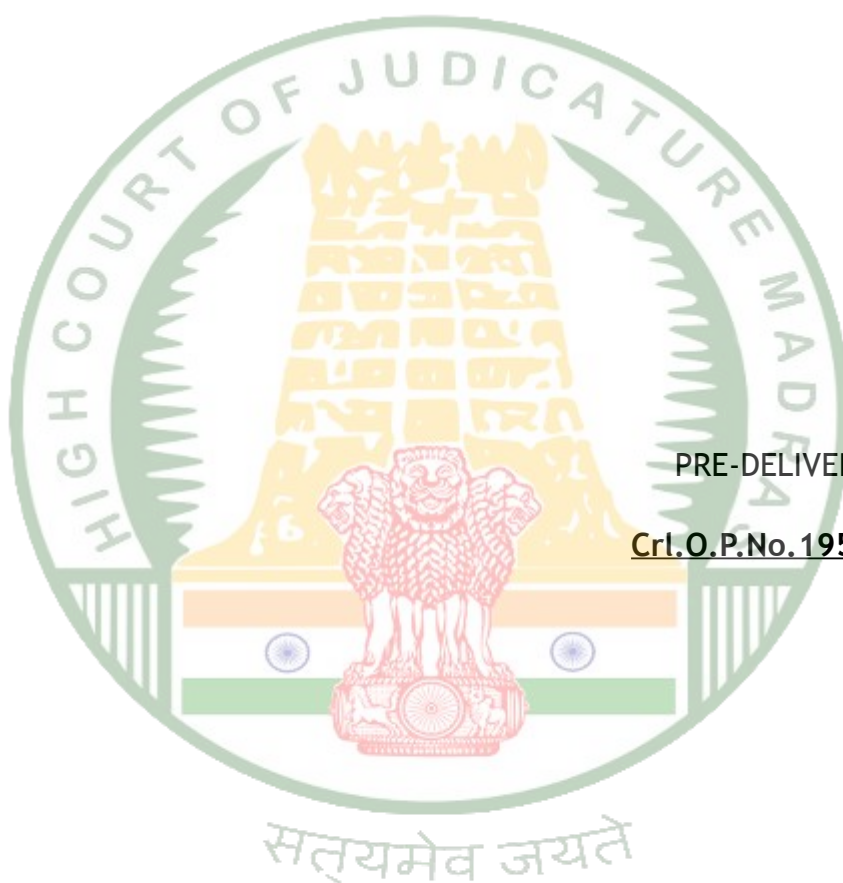
3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

vv2



PRE-DELIVERY ORDER IN

Crl.O.P.No.19574 of 2019

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17.10.2019