



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)No.7927 of 2014 and

M.P.(MD)Nos.1 and 2 of 2014

D.Durairaj ... Petitioner/Accused No.2

Vs.

1. The State of Tamilnadu,
Through the Deputy Superintendent of Police,
Kovilpatti Sub-Division,
Thoothukudi District.
(Thoothukudi DCP)
Crime No.12 of 2007) ... 1st Respondent/Complainant

2. Rev.Ebenesar Devaraj ... 2nd Respondent/ Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.242 of 2008 on the file of the Judicial Magistrate No.I, Tuticorin and quash the same.

For Petitioners	: Mr.C.Dhanaseelan
For R-1	: Mr.A.Robinson,
	Government Advocate(Crl. Side).
For R-2	: Mr.Kingsly Solomn

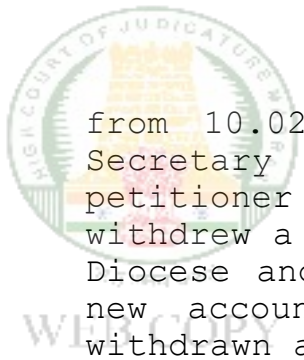
ORDER

The petitioner Thiru.Durairaj is figuring as accused No.2 in C.C.No.242 of 2008 on the file of the Judicial Magistrate No.I, Tuticorin.

2. The defacto complainant in this case is one Ebenesar Devaraj who is a member of the Clergy in Tuticorin Nazareth CSI Diocese. The information lodged by the defacto complainant was registered in Crime No.12 of 2007 on the file of the District Crime Branch, Tuticorin. Investigation was taken up and final report was filed before the jurisdictional Magistrate. Cognizance of the offences under Sections 120(b), 409, 477(A) r/w 34 of I.P.C. was taken. To quash the same, this Criminal Original petition has been filed at the instance of the second accused.

3. Heard the learned counsel on either side.

4. The occurrence had taken place during the period commencing



from 10.02.2006 to 20.02.2006. The petitioner herein was a Lay Secretary of the Diocese. The prosecution case is that the petitioner herein along with the deceased Treasurer Diraviyam withdrew a sum of Rs.40 Lakhs from the Provident Fund Account of the Diocese and transferred it to the General Account of the Diocese(a new account) at Anna Salai Branch, Chennai and it was later withdrawn also.

5. The learned counsel appearing for the petitioner would first contend that the police will not have the jurisdiction to even file a final report in this regard and the Court concerned will not have the jurisdiction to take cognizance of the offence in question. He placed reliance on Section 14(AC) of the Employees' Provident Funds and Miscellaneous Provisions Act 1952. The said provision reads as under:-

"14-AC -Cognizance and trial of offences -

(1) No Court shall take cognizance of any offence punishable under this Act, the Scheme or the Scheme or the Insurance Scheme, except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under Section 13.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or, the Pension Scheme or the Insurance Scheme."

6. He pointed out that C.S.I. Diocese has already been granted with exemption and that therefore, any violation in the matter of handling the Provident Funds will attract prosecution only at the instance of the authority under the special Act.

7. I am unable to agree with the submission. It is true that Section 14(AC) of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 contains a bar against taking cognizance of the offences except on a report in writing of the Inspector appointed under Section 13 of the Act. But then, this section will apply only in a case of prosecution of any offence punishable under the Employees' Provident Funds and Miscellaneous Provisions Act 1952. Section 14(AC) of the Act will not be attracted in the case on hand, as it involves I.P.C. offences. I reject the contentions urged by the learned counsel appearing for the petitioner.

8. The learned counsel would strongly contend that since the Tuticorin CSI Diocese has been exempted from the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952, a



temporary diversion of funds for the benefit of the institutions run by the CSI diocese cannot attract the offence under Section 405 of I.P.C.

9. I am again unable to agree with the aforesaid contention. Section 405 of I.P.C. states that who ever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust". Explanation to Section 405 of I.P.C. is significant. It clearly refers to the employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act 1952(19 of 1952) or not. In this case, a sum of Rs.40 Lakhs was standing to the credit of the Provident Fund account of C.S.I. Diocese. The said fund could not have been diverted for any other purpose. This was meant for the benefit of a particular set of people. The petitioner herein was the Lay Secretary responsible for handling the said account. He ought not to have diverted the funds standing to the account of the Provident Fund to the General account of the Diocese. It is obvious from the records that after a sum of Rs.40 Lakhs was transferred from the Provident Fund account to the General account of the Bank, it was later withdrawn. It is quite possible that the amount withdrawn was ultimately used only for the benefit of the institutions. But then, this account is created only for the benefit of the members of the Provident Fund Trust. In as much as the prosecution is anchored on the fact that there has been a disposal of the fund in violation of the direction of the law, I am of the view that the petitioner will have to necessarily face the trial.

10. The learned counsel appearing for the petitioner also drew my attention to the fact that a suit was subsequently filed in this regard. In the complaint, it had been mentioned that the amount in question was apparently misappropriated. He also pointed out that the suit was eventually dismissed for default and that it was not restored till date. This argument is again without any merit. The Constitution Bench of the Hon'ble Supreme Court in the decision reported in (2005) 4 SCC 370 (Iqbal Singh Marwah and another V. Meenakshi Marwah and another) has categorically laid down that the outcome of the civil proceedings will not have a bearing on the criminal proceedings and that each proceedings will have to be decided on the strength of the evidence placed before the respective Courts. It is a well settled proposition and therefore, there is no purpose for referring to the plaint averments in O.S.No.9 of 2009.

11. It is again well settled that a given issue can have a



civil profile and also a criminal dimension. Merely because a suit was filed for recovery of the sums alleged to have been misappropriated, that need not stop the aggrieved party from initiating the criminal prosecution also.

12. The Hon'ble Supreme Court in a very recent decision dated 31.07.2019 in Criminal Appeal No.1082 of 2019 (Chilakamarthi Venkateswarlu and others V. State of Andhra Pradesh and others) held that while exercising the power under Section 482 of Cr.P.C., the High Court ought not to assume the role of the trial Court. It cannot appreciate the material on record. That would be a function exclusively allotted to the trial Court in this case. The contentions urged by the petitioners will have to be necessarily canvassed only before the trial Court. These are not matters which can be appreciated in the exercise of the inherent powers of this Court under Section 482 of Cr.P.C.

13. No relief can be granted to the petitioner. The Criminal Original petition stands dismissed.

14. The observations made in this order are only for the purpose of disposal of this Criminal Original petition. The petitioner is at liberty to canvass all other points except the legal contentions urged with regard to Section 14(AC) of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 are left open. The Court below shall dispose of the case entirely uninfluenced by the order now passed by this Court.

15. The personal appearance of the petitioner before the Court below is dispensed with. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through his counsel. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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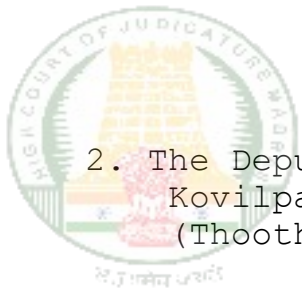
/ /2020

Sub Assistant Registrar (CS)

pmu

To

1. The Judicial Magistrate No.I, Tuticorin.



2. The Deputy Superintendent of Police,
Kovilpatti Sub-Division, Thoothukudi District.
(Thoothukudi DCP)

Copy to:

The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.KINGSLY SOLOMON, Advocate (SR-90089[F]

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-90326[F]

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SMA/10/02/2020/5P/6C