



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.11874 of 2017

and

Crl.M.P.(MD) No.8166 of 2017

Swami Thivyananda

... Petitioner/Accused No.2

.Vs.

1. The Inspector of Police,
Kulasekarapattinam Police Station,
Tuticorin District.
(Crime No.208 of 2017)

...1st Respondent/ Complainant

2. C.Perumal

... 2nd Respondent/ De facto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the F.I.R. in Crime No.208 of 2017 on the file of the 1st respondent police and quash the same.

For Petitioner: Mr.H.Arumugam

For R1 : Mr.S.Chandrasekar,
Additional Public Prosecutor.

For R2 : Mr.V.Rajiv Rufus

O R D E R

This Criminal Original Petition has been filed seeking to quash the F.I.R in Crime No.208 of 2017 which is pending investigation on the file of the first respondent police. The F.I.R. names six accused persons and the petitioner has been added as A-2.

2. The allegation that has been made by the second respondent in his complaint is that the concerned School is an aided School and one Balamurugan was dismissed from service on 06.04.1993. At that point of time, the accused persons entered into conspiracy and prepared an attendance register as if one Murugan was appointed as Office Assistant from 08.04.1993 and subsequently, the name was changed as Murugaraj and by fabricating the official documents, the accused persons had taken the aid from the



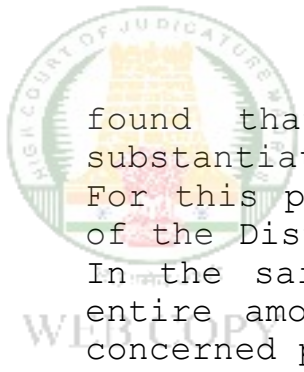
Government and have misappropriated the amount sanctioned by the Government and thereby caused wrongful loss to the government as well as to the institution.

3. In order to substantiate this complaint, the second respondent relied upon certain documents which he had collected by way of filing R.T.I. applications. The respondent police did not register an F.I.R. and therefore, the second respondent filed an application under Section 156(3) of Cr.P.C. before the concerned Court and based on the direction given by the concerned Court, the respondent police have registered an F.I.R.

4. The learned counsel for the petitioner submitted that the complaint that has been given by the second respondent is false. The learned counsel submitted that the School in question is an aided School and the petitioner was appointed as a Secretary in the year 1996 and the same was also approved by the educational Authorities. The learned counsel submitted that the second respondent/ *de facto* complainant was working as a teacher in the said School and he was terminated from service. The learned counsel further submitted that the post of Office Assistant fell vacant in the School on 08.04.1993 and one Murugan was appointed in the said post.

5. Subsequently, in the year 1996, after obtaining permission to fill up the post of Office Assistant, the Management realized that his name was Murugaraj. The salary was claimed only in the name of Murugaraj and the aid from the Government for the said post was received only with effect from 01.06.1995. The learned counsel submitted that from the year 1993 to 1995, the salary was only paid by the Management. The learned counsel further submitted that the appointment of Murugaraj was also sanctioned by the District Educational Officer, with effect from 01.06.1995 and there is nothing illegal in the appointment of Murugaraj. The learned counsel submitted that the petitioner, who is aged more than 80 years, has been unnecessarily dragged in the criminal proceedings and therefore, the F.I.R. has to be quashed insofar as the petitioner is concerned.

6. Per contra, the learned counsel appearing on behalf of the second respondent submitted that the petitioner has not come before this Court with clean hands. The learned counsel submitted that even though the petitioner claims to be the Secretary of the School from 1996, the documents produced before this Court shows that he was acting as a Secretary of the School even in the year 1991 onwards. The learned counsel further submitted that the issue with regard to impersonation of Murugan and Murugaraj became a subject matter of enquiry before the District Educational Officer, Theethukudi. During the said enquiry, the concerned Authorities



found that the Management of the School was not able to substantiate the fact that Murugan and Murugaraj are same persons. For this purpose, the learned counsel relied upon the proceedings of the District Educational Officer, Thoothukudi dated 16.03.2017. In the said proceedings, there was a direction to dispatch the entire amount to the Government and to take action against the concerned persons.

7. The learned counsel further submitted that the petitioner is effectively participating in the Management of the School and even in the proceedings that were produced before this Court shows that he had participated in the meeting even in the year 2018 in his capacity as a Secretary of the School. The learned counsel submitted that the petitioner is very much involved in the Management of the School and *prima facie* materials have been given to the police along with the complaint and the respondent police must be directed to continue the investigation.

8. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that in view of the fact that stay was granted by this Court regarding further investigation, no materials have been collected in this case and if any time limit is fixed by this Court, the respondent police will complete the investigation within the time limit fixed by this Court.

9. This Court has carefully considered the submissions made by the learned counsel appearing on either side and the materials available on record.

10. It is seen from the records that there is a long-standing dispute between the second respondent and the School Management. The second respondent was terminated from his post as a Teacher and that became the subject matter of challenge before this Court as early as in the year 2004 itself and the order passed by this Court in W.A(MD) Nos.1429 & 3624 of 2003 makes it very clear. The sum and substance of the complaint made by the second respondent is that the accused persons have joined together and have manipulated the records and have received aid from the Government by showing the name of Murugan and making one Murugaraj work in his place. Therefore, according to the second respondent, the Management of the School has indulged in cheating the Government and taking the aid by manipulating the records.

11. While considering the petition for quash, the Court is not normally supposed to consider the defense documents. The only exception that has been created by the judgment of the Hon'ble Supreme Court is in cases where the documents that are placed for consideration are of unimpeachable character and sterling in



quality.

12. In the present case, this Court has to necessarily look into such nature of documents since it is found that there is an existing dispute between the second respondent and the Management of the School and this Court wants to make it sure that a disgruntled employee is not witch hunting the Management of the School with malafide intention.

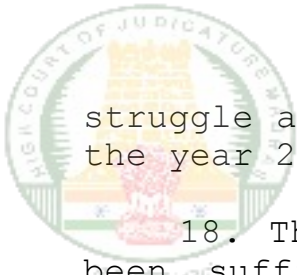
13. There are two documents that are placed before this Court by the learned counsel for the petitioner. One document is the appointment of one Murugaraj, which was an appointment order passed by the School on 08.04.1993. It is seen from the order that one Murugaraj was appointed as Office Assistant in the School with effect from 08.04.1993. It is made clear in the said appointment order that the appointment is subject to the approval of the District Educational officer, Thoothukudi. In the said document, the endorsement made by the District Educational Officer, Thoothukudi shows that the approval has been granted with effect from 01.06.1995.

14. The next document that has been relied upon is the proceedings of the Chief Educational Officer, Thoothukudi dated 08.02.1996. In the said proceedings, the Chief Educational Officer has granted sanction to the School and made it clear that even though the School was permitted to fill up the post of Office Assistant with effect from 08.04.1993, the aid will be granted only from 01.06.1995.

15. It is clear from the above documents that for the period from 08.04.1993 to 01.06.1995, the Office Assistant Murugaraj was not granted any aid by the Government and he was paid salary by the Management. It is the specific case of the petitioner that Murugan and Murugaraj are one and the same person and in fact at the time of granting approval itself, it was granted only in the name of Murugaraj and the aid was also received only in the name of Murugaraj. Therefore, there is no question of impersonation in this case.

16. It is also seen from the records that the Office Assistant Murugaraj was unauthorizedly absent from November 1999 onwards and he has been removed from service which is said to have been approved by the Chief Educational Officer, Thoothukudi.

17. The appointment of Murugaraj and the so-called manipulation of records and misuse of Government funds have been raised for the first time by the second respondent in the year 2017. The second respondent in this case claims that he was able to get all the particulars under the R.T.I. Act after a long



struggle and therefore, he was able to approach the police only in the year 2017.

18. The allegations that have been made in the complaint has been sufficiently answered by the proceedings that have been referred supra. This Court does not find that the Government aid was received in the name of Murugaraj and the same was misappropriated. The second respondent as a disgruntled employee has indulged in the process of witch hunting the Management of the School which terminated his service. If at all there was any such manipulation or misuse of government funds, the Government would be the first person to take action against the School and its Management. The same has not taken place till date. The second respondent is attempting to do something which the Government should have done, if really there was manipulation of records and misuse of government funds.

19. This Court is of the considered view that the complaint itself is attended with malafides and it has been given only with an ulterior motive for wrecking vengeance on the School and its Management and with a private and personal grudge. The continuation of the investigation will amount to abuse of process of law and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

20. In the result, the F.I.R. in Crime No.208 of 2017 pending investigation on the file of the first respondent police is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected Crl.M.P.(MD) No.8166 of 2017 is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Kulasekarapattinam Police Station,
Tuticorin District.



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

+1 CC to MR.V.RAJIV RUFUS, Advocate (SR-100727[F] dated
22/11/2019)

+1 CC to MR.H.ARUMUGAM, Advocate (SR-100767[F] dated 22/11/2019)

Order made in
Crl.O.P. (MD) No.11874 of 2017
21.11.2019

_KM/ (06.01.2020) 6P 5C