



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.09.2019

CORAM:

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THE HON'BLE MR.JUSTICE **N. ANAND VENKATESH**

**Crl.O.P.No.2531 of 2017**

**and**

**Crl.M.P(MD)Nos.1954 and 1955 of 2017**

Loorthu Mary

... Petitioner/Accused No.1

Vs.

1.Joseph Pradeep

...1<sup>st</sup> Respondent / Complainant

2.The Development Officer,

Assistant Director (Rural and Development)

(Audit) Office,

Tuticorin.

...2<sup>nd</sup> Respondent/Accused No.2

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records reliant to the proceedings of C.C.No.422 of 2016 based upon the private complaint lodged by the 1<sup>st</sup> respondent /complainant on the file of learned Judicial Magistrate No.II, Kovilpatti and quash the same as against the petitioner.

For Petitioner : Mr.G.Mariappan for  
M/s.Veera Associates

For R1 : Mr.B.Ramanathan

For R2 : Mr.M.Chandrasekaran

Additional Public Prosecutor

**ORDER**

This petition has been filed seeking to quash the proceedings in C.C.No.422 of 2016, on the file of the learned Judicial Magistrate No.II, Kovilpatti.

2.The first respondent has filed a private complaint before the Court below on the ground that there is a dispute with regard to a house property between the first respondent and one Maragathamary. It is alleged that the said Maragathamary and the petitioner have colluded together to created a bogus house tax receipt and by using the said receipt, Maragathamary had obtained



petitioner has misused her official capacity as an Assistant Director (Rural and Development) (Audit), Tuticorin District, and has colluded with the above said Maragathamary. Therefore, according to the first respondent, the petitioner and the second respondent have committed the offence under Sections 166, 167, 420, 424, 465 and 468 of IPC.

3. The learned counsel for the petitioner submitted that the specific allegation made in the complaint is to the effect that the petitioner had misused a public office and has committed an offence in discharge of her public function, in collusion with Maragathamary and therefore, the Court below ought not have been taken cognizance of the complaint in the absence of a sanction under Section 197 of Cr.P.C.

4. The learned counsel for the petitioner further submitted that there is absolutely no material to sustain the charges of forgery. Admittedly, the house tax receipt was issued by the Panchayat President and he has not given any complaint that his signature has been forged in the house tax receipt. The petitioner has acted upon the said house tax receipt and therefore, there are no materials to sustain the offence of forgery and cheating.

5. The learned counsel further submitted that the petitioner is admittedly residing beyond the jurisdiction of the Court below and the Court below ought to have followed the mandatory requirement under Section 202 of Cr.P.C., and passed an order regarding the *prima facie* case made out in the complaint, before taking cognizance of the complaint and since the same has not been done in this case, the learned counsel submitted that the cognizance taken by the Court below is illegal and the same is liable to be quashed.

6. The learned counsel for the respondent submitted that the allegation made in the complaint makes out a *prima facie* case against the petitioner and the Court below applied its mind before taking cognizance of the complaint. Therefore, there are no grounds to interfere with the private complaint initiated by the respondent and this Criminal Original Petition is liable to be dismissed.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. A reading of the complaint filed by the first respondent makes it clear that the main allegation against the petitioner is that she has misused her official capacity, while discharging her public function and she has colluded with the Maragathamary by creating a forged house tax receipt and thereby, enabled



Maragathamary to get an EB connection for the property.

9.The ground that has been raised by the learned counsel for the petitioner is that the Court below ought not to have been taken cognizance without getting a sanction under Section 197 of Cr.P.C. A sanction is required wherever the offence alleged is said to have been committed in discharge of the official duty. This however is subject to the twin conditions that are prescribed U/s.197 of Cr.P.C. They are,

1.the accused can be removed from the office only by or with the sanction of the Government and,

2.the act perpetrated has been done in discharge of the official duty. Even if one of the requirement is not covered on the facts of the case, such a sanction is not required under Section 197 of Cr.P.C. to prosecute a public servant.

10. In the present case, the petitioner is working as an Assistant Director of Rural Development (Audit) and to remove the petitioner from the office, it would require the sanction of the Government. The act that is perpetrated to have been done by the petitioner is also in discharge of her official duty. Therefore, in view of the settled principles of law on this issue, the Court below ought not to have been taken cognizance of the complaint against the petitioner without a sanction being granted by the proper authority.

11.That apart, there are absolutely no materials to sustain the offence of forgery. The house tax receipt is said to have been given by the Panchayat President and the Panchayat President has not complained that his signature has been forged or his rubber stamp has been misused. He will be the most competent person to allege forgery in this case.

12.There is admittedly a property dispute that is going on between the first respondent and the above said Maragathamary. The first respondent has attempted to convert this civil dispute by giving it a criminal colour by making certain allegations against the petitioner as if the petitioner has enabled the said Maragathamarry to get E.B connection for the property.

13. In the considered view of this Court, the entire criminal proceedings is an abuse of process of the Court and same requires interference in exercise of jurisdiction under Section 482 of Cr.P.C.

14.In the result, the proceedings in C.C.No.422 of 2016 on the file of the learned Judicial Magistrate No.II, Kovilpatti, is



hereby quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

1.The Judicial Magistrate No.II,  
Kovilpatti.

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

+2 CC to M/s.VEERA ASSOCIATES, Advocate ( SR-85102,85137[F] dated 04/09/2019 )

**Crl.O.P.No.2531 of 2017  
and**

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KM/ (24.09.2019) 4P 5C