

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.11158 of 2020
and Crl.M.P.No.4563 of 2020

B.Vasantha Kumar
S/o.Balasubramaniam,
No.9&10, Dwarkastreet,
Dr.Annie Besant Nagar,
Navarkulam,
Puducherry.

... Petitioner/Accused 1

Vs.

1.State represented by
The Inspector of Police,
Vigilance and Anti-Corruption Police Unit,
Puducherry. ... 1st Respondent/Complainant

2.Dr.A.S.Sivakumar,
Registrar of Co-operative Societies,
Department of Co-operatives,
Vadapuriswarar Nagar,
Thattanchavady,
Puducherry. ... 2nd Respondent/

de facto complainant

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in Crime No.4 of 2016 pending
investigation on the file of the 1st respondent and quash the
same.

For Petitioner : Mr.V.Parthiban
For R1 : Mr.Bharathachakravathy
Public Prosecutor (Puducherry)
For R2 : No appearance

ORDER

This criminal original petition has been filed seeking to
call for the records in Crime No.4 of 2016 pending investigation
on the file of the 1st respondent and quash the same.

2. The petitioner was working as Managing Director of Ponlait, Puducherry, which comes under the purview of the Puducherry Co-operative Societies Act, 1972. Certain allegations surfaced against the petitioner in the year 2009, pursuant to which, the CBI registered a case in Crime No.9(A)/2009 for the offences under Section 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for brevity "the PC Act"), against the petitioner and three other officials of Ponlait.

3. After completing the investigation, the CBI came to the opinion that there was no sufficient evidence to prosecute the accused before the criminal Court, but, materials are sufficient to take departmental action against them.

4. On these reasonings, the CBI filed a closure report in Crime No.9(A)/2009 before the Subordinate Court for the Cases under the PC Act, Puducherry.

5. Pursuant to the recommendations of the CBI in the closure report, a regular enquiry under Section 75 of the Puducherry Co-operative Societies Act, 1972, was conducted by the Deputy Registrar against the petitioner and others and in the enquiry report, five instances of misdemeanor were noticed and recorded.

6. Pursuant to the report, when the authorities wanted to take disciplinary action against the petitioner under the CCS (CCA) Rules, 1965, they found that the petitioner had retired by then and therefore, they dropped the departmental enquiry. However, since the report of the Deputy Registrar under Section 75 of the Puducherry Co-operative Societies Act, 1972, contain indictments amounting to penal criminal offences, a complaint has been lodged by the Registrar of the Co-operative Societies, pursuant to which, the Vigilance and Anti-Corruption Unit of Puducherry has registered an FIR in Crime No.4 of 2016 on 21.11.2016 for the offences under Sections 409, 468 and 471 r/w 34 IPC and Section 13(1)(c)(d) r/w 13(2) of the PC Act, against Vasantha Kumar and other officials of Ponlait, for quashing which, Vasantha Kumar has filed the present petition under Section 482 Cr.P.C.

7. Heard Mr.V.Parthiban, learned counsel for the petitioner and Mr.Bharathachakravathy, learned Public Prosecutor (Puducherry) appearing for the first respondent.

8. The learned counsel for the petitioner submitted that the CBI had already conducted the investigation in Crime No.9 (A)/2009 and had found that there were no evidence to criminally prosecute the petitioner and therefore, the present FIR is not maintainable.

9. This Court is unable to persuade itself to agree with the above submission for the following factual reasons:

- In the FIR that was registered by the CBI in Crime No.9(A)/2009, the allegations were that, Vasantha Kumar had illegally appointed three persons in Ponlait and had thereby caused loss to the Society and gain to the accused.
- For these allegations, the CBI conducted the investigation and closed the FIR as stated above.
- However, in the regular enquiry that was conducted by the Deputy Registrar of the Co-operative Societies under Section 75 of the Puducherry Co-operative Societies Act, 1972, five instances of defalcation came to light, viz.,
 - i. Issue of Advertisement regarding PONLAIT products without taking clearance from Registrar of Co-operative Societies.
 - ii. Entrustment of installing Milk Parlour unit to private contractors without following tender procedure.
 - iii. Appointment of 436 daily rated employees without following procedure.
 - iv Promotion of 133 employees without following procedure.
 - v Milch animals subsidies scheme operated by Pondicherry Co-operative Milk Producers Union without following procedures.
- Therefore, the registration of the present FIR for the aforesaid five instances of defalcation cannot be termed as issue estoppel. That apart, in criminal matters, the question of issue estoppel cannot be pressed into service, unless it falls within the contour of autrefois acquit under Section 300 Cr.P.C.

10. The present case is only at the stage of FIR. The police may investigate the case and even may close the FIR, if they are not able to obtain sufficient materials to file a final report. Therefore, this Court cannot interdict the investigation of the case by the police in respect of the five heads of allegations mentioned above. Since the case at hand does not pass muster the law laid down by the Supreme Court in State of Haryana Vs. Bhajan Lal & Others¹, the prayer of the petitioner for quashing of the FIR, cannot be acceded to.

In the result, this criminal original petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

nsd
To

1.The Inspector of Police,
Vigilance and Anti-Corruption Police Unit,
Puducherry.

2.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

3. The Registrar of Co-operative Societies,
Department of Co-operatives,
Vadapuriswarar Nagar,
Thattanchavady,
Puducherry.

+1cc to Mr.E.Kannadasan Advocate SR.NO.37737

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GJ CO
SDR 17/12/2020



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