IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.NO.17876 OF 2020
AND
CRL.M.P.NO.6956 & 6957 OF 2020

1.K.Selvaraj
President, II 580
Primary Agricultural Co-operative Credit Society Limited
Thengiyanatham Village
Chinnasalem Taluk
Villupuram District

2.R.Perumal
Secretary, II 580
Primary Agricultural Co-operative Credit Society Limited
Thengiyanatham Village
Chinnasalem Taluk
Villupuram District

.. Petitioners/Accused 1 & 2

Vs.

1.State rep. by
The Inspector of Police
Vigilance and Anti-Corruption
Villupuram
(Cr.No.09/AC/2017/VPM)

2.R.Ganesan .. Respondents/Complainant/
Defacto Complainant

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Prayer:-

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Spl.C.C.No.1 of 2020 on the file of the Special Court for Prevention of Corruption Act Cases, Villupuram and thereby quash the proceedings as against the petitioners herein.

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For Petitioner : Mr.R.John Sathyan
for Mr.Swami Subramanian

For 1st Respondent : Mr.Vijaya Narayan
Advocate General assisted by
Mrs.P.Kritika Kamal
Govt. Advocate (Crl. Side)

For 2nd Respondent : No appearance

O R D E R

The 1st petitioner (A1) was the President and the 2nd petitioner (A2) was the Secretary of II 580, primary Agricultural Co-operative Credit Society Ltd. (for brevity "the Society"). One R.Ganesan (de facto complainant) who was working as Salesman in the said Society was not allowed by the petitioners to retire from service on 31.05.2014 on his attaining the age of superannuation, as the petitioners were demanding Rs.25,000/- as bribe for granting him his terminal benefits.

2. On a complaint lodged by the said Ganesan, the police registered a case in Crime No.9 of 2017 and laid a trap on 06.10.2017, in which, the 1st petitioner was caught red-handed. After completing the investigation, the police have filed a charge sheet in Spl.C.C.No.1 of 2020 in the Special Court for Prevention of Corruption Act Cases, Villupuram against the petitioners herein for the offences under Sections 7, 12, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for brevity "the PC Act") for quashing which, the present petition under Section 482 Cr.P.C. has been filed.

3. Heard Mr.John Sathyan, learned counsel representing Mr.Swami Subramanian, learned counsel on record for the petitioners and Mr.Vijay Narayan, learned Advocate General assisted by Mrs.P.Kritika Kamal, Govt. Advocate (Crl. Side) appearing for the respondent State.

4. Admittedly, in this case, the trial Court has framed charges against the petitioners on 21.02.2020 and they have also pleaded 'not guilty'. Hence, the matter is under trial. While so, this petition has been filed placing strong reliance on the judgment passed by a Division Bench of this Court in J.A.Murugan Vs. Registrar of Co-operative Societies and Another (2020 SCC OnLine Mad 782), for quashing the prosecution.

5. Mr.John Sathyan contended that the Division Bench in J.A.Murugan (supra) has categorically held that, an office

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bearer of a Co-operative Society is not a public servant within the meaning of Section 2(c) of the PC Act and that the Division Bench has also quashed the circular dated 11.08.2015, issued by the Registrar of Co-operative Societies and hence, the petitioners herein, being office bearers of a Co-operative Society, are not public servants and cannot be prosecuted under the PC Act.

6. Mr.John Sathyan submitted that a learned Single Judge of the Madurai Bench of this Court has doubted the correctness of the aforesaid judgment passed by the Division Bench in J.A.Murugan (supra) and has referred the matter to the Hon'ble Chief Justice. He prayed that this case also may be tagged along with the case referred to the Hon'ble Chief Justice.

7. Mr.Vijay Narayan distinguished the judgment of the Division Bench, both on facts as well as law and submitted that, the petitioners are public servants falling under Section 2(c)(viii) and 2(c)(ix) of the PC Act. In support of this contention, he placed strong reliance on the judgments of the Supreme Court in State of Maharashtra and Others Vs. Brijlal Sadasukh Modani [(2016) 4 SCC 417] and CBI Vs. Ramesh Gelli and Others [(2016) 3 SCC 788].

8. To appreciate the rival contentions, it is necessary to briefly discuss the facts in J.A.Murugan (supra). In J.A.Murugan (supra), the facts of the case have been set out in paragraph 2 of the judgment. A reading of the said judgment reveals that, the petitioner therein was the Secretary of the Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society; he was arrested by the Investigating Officer, Vigilance and Anti-Corruption and an F.I.R. was registered against him under Section 7 of the PC Act; after completing the investigation, the police gave a requisition to the Registrar of Co-operative Societies for according sanction under Section 19 of the PC Act for prosecuting the petitioner under the PC Act; the Writ Petition in W.P.No.2228 of 2018 filed by the petitioner therein challenging his prosecution on the ground that he was not a public servant within the meaning of Section 2(c) of the PC Act, was dismissed by a learned Single Judge on 02.02.2018, aggrieved by which, W.A.No.2253 of 2018 was filed; the petitioner also filed a Writ Petition in W.P.No.28641 of 2019, for quashing the circular dated 11.08.2015, issued by the Registrar of Co-operative Societies, by which the Registrar had issued instructions making the PC Act applicable to the employees of the Co-operative Societies, on the ground that they are public servants within the definition of Section 2(c) of the PC Act; the Division Bench heard W.P.No.28641 of 2019 and W.A.No.2253 of 2018 and passed a common judgment on 06.03.2020,

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quashing the prosecution and also quashing the circular dated 11.08.2015, issued by the Registrar of Co-operative Societies; the issue in the Writ Appeal was, whether the petitioner therein was a public servant (emphasis supplied) within the meaning of Section 2(c) of the PC Act; the issue in the Writ Appeal was not whether the office bearers and employees of Co-operative Societies do not fall within the meaning of the expression public servant in Section 2(c) of the PC Act. This is evident from the finding given in paragraph 15 of the judgment which reads as under :

> "15. As said earlier, the Society in which the appellant is working is only for the employees working in private companies in Krishnagiri and is not open to public at large. The fact that the Cooperative Society takes loan from the Central Cooperative Bank and repays it back does not mean that the State Government grants any aid to the Society. There is no material to even remotely suggest that the society in question receives any aid financial or otherwise from the State or Central Government. The society therefore is neither controlled or aided so as to make its employees amenable to the 1988 Act. As stated earlier, the two judgments on which reliance has been placed by the counsel for the State Government are distinguishable on facts and therefore in our opinion, the said judgments do not lend any support to the submissions. Consequently no permission could be granted to sanction prosecution of the writ petitioner under the 1988 Act."

Thus, it is beyond cavil that, on facts, the Division Bench found that the Co-operative Society in which the petitioner therein was working, was catering only to the employees working in private companies in Krishnagiri and was not catering to public at large. The Division Bench also found that there was no aid from the State Government to the said Society.

9. Now, coming to the facts of the case at hand, the petitioners are farmers and the Co-operative Society in which they were office bearers, is catering to the loan requirements of farmers. Farmers constitute 60% of our country's population and they can be indubitably characterised as public at large.

10. Bearing this in mind, Section 2(c)(viii) of the PC Act relied upon by Mr.Vijay Narayan requires a threadbare analysis. For better appreciation, the same is extracted hereunder :

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"2(c) PUBLIC SERVANT means,

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;"

One can have no two opinions that the peitioners herein, by virtue of their office as President and Secretary of the Society, were required to perform a public duty viz. to cater to the financial requirements of farmers. It is true that a farmer should become a member of the Co-operative Society to avail benefits like loan, etc. By becoming a member, he does not cease to be a farmer or a member of the public. Whereas, in J.A.Murugan (supra), a person should first become an employee of a private engineering company in Krishnagiri District and only thereafter, can he become a member of the Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society. The members of that Society cannot be characterised as members of the public, unlike the farmer-members of an agricultural co-operative society.

11. Mr.Vijay Narayan's second limb of argument was based on Section 2(c)(ix) of the PC Act, which reads as follows :

"2(c) PUBLIC SERVANT means,
(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);"

He submitted the by-laws of the Society and drew the attention of this Court to Clause 5(3) and (4), which are as under :

"5. பங்கு மூலதனம்

(3) அரசாங்கம் செலுத்தியுள்ள பங்குத் தொகை. சங்கத்தில் செலுத்தப்பட்ட மொத்தப் பங்குத் தொகையில் 25 சதவீதத்துக்கு மேல் இருத்தல் கூடாது,

(4) அரசாங்கம் செலுத்தியுள்ள பங்குத் தொகையை. சங்கம் அரசுடன் செய்து கொண்டுள்ள ஒப்பந்தத்தின் நிபந்தனைகளுக்கு இணங்கத் திருப்பிக் கொடுக்க வேண்டும், சங்கத்தில் செலுத்தப்பட்ட அரசாங்க பங்குத் தொகையை அரசு அல்லது சங்கம் அதன் விருப்பப்படி எப்போது வேண்டுமானாலும் குறைத்துக் கொள்ளலாம் "

He followed it up, by placing reliance on paragraph 24 in Brijlal (supra) and the same is extracted hereunder :

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> "24. As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-State society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term "aid" has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of "public servant". The concept in entirety has to be understood in the backdrop of corruption." (emphasis supplied)

Thus, it is beyond doubt that, the by-laws of the Society do provide for State aid. The expression "a sprinkle of aid to the Society will also bring an employee within the definition of public servant" in Brijlal (supra), answers the contentions raised by Mr.John Sathyan.

12. In fact, in Ramesh Gelli (supra), the Supreme Court has held that even a Managing Director of a private bank would be a public servant as defined in the PC Act, since he was required to perform a public duty. At the risk of repetition, in this case, the petitioners, as office bearers of the agricultural Co-operative Society, are required to perform public duties, inasmuch as they are required to process the loan application of their farmer-members, disburse loans, take steps to realise the loans, etc.

13. Mr.John Sathyan contended that the office bearers of a Co-operative Society were declared as public servants by virtue of the circular dated 11.08.2015, issued by the Registrar of Co-operative Societies and when that circular has been quashed by the Division Bench in J.A.Murugan (supra), the petitioners are out of the net of the PC Act.

14. This Court is unable to countenance this submission for the simple reason that, interpretation of a statute does not vest with the executive, but, with the judiciary. By an executive fiat, some persons can neither be brought within the net of a penal law nor taken out. The work of the executive is to place the facts before the Court and it is the function of the Court to decide, whether the alleged act would fall within the net of a penal law.

15. Therefore, the Registrar of Co-operative Societies had no authority to issue an omnibus circular, saying that all the

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employees of a Co-operative Society are public servants within the meaning of the PC Act. The Division Bench, in J.A.Murugan (supra), rightly quashed the circular dated 11.08.2015. Only if this Court disagrees with the view in J.A.Murugan (supra), will there be a need for referring to a larger bench. The petitioners are not being prosecuted under the PC Act, based on the interpretation of the expression 'public servant' given by the Registrar of Co-operative Societies in the circular dated 11.08.2015, but, are being prosecuted based on the bare provisions of the PC Act. Hence, the quashment of the circular dated 11.08.2015 will be of no avail to the petitioners.

16. As regards the request made by Mr. John Sathyan for tagging this case along with the matter referred to the Hon'ble Chief Justice, this Court is unable to persuade itself to agree with the same on the short ground that, this Court is not differing with the reasoning given in J.A. Murugan (supra), but, is only distinguishing it on facts. In criminal matters, stare decisis has very little application, since they are mostly decided on facts. As stated above, in J.A. Murugan (supra), the Division Bench has not held as a rule that the employees of Co-operative Societies are not public servants within the meaning of the PC Act. In this context, it is profitable to allude to the following paragraph in the judgment of the Supreme Court in Charan Singh and Others Vs. State of Punjab [(1975)3 SCC 39].

> "32. In the context of what value should be attached to the statements of the witnesses examined in this case, our attention has been invited by the learned Counsel for the appellants to a number of authorities. We have refrained from referring to those authorities because, in our opinion, reference to those authorities is rather misplaced. The fate of the present case like that of every other criminal case depends upon its own facts and the intrinsic worth of the evidence adduced in the case rather than what was said about the evidence of witnesses in other decided cases in the context of facts of those cases. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Criminal cases cannot be put in a strait jacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a

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question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence e.g. the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases hardly seems apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted."

(emphasis supplied)

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

gya

To

1. The Special Judge
   Special Court for Prevention of Corruption Act Cases
   Villupuram

2. The Public Prosecutor
   High Court of Madras

+2cc to Mr.Swami Subramanian, Advocate, S.R.No.41607

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