

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 26664 of 2019
Crl.M.P.Nos.14255 & 14256 of 2019

1. C.Doraisamy
2. B.Gopalakrishnan

.... Petitioners/Accused 1 & 2

Vs.

K.P.Chandrasekaran Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.977 of 2019 on the file of the Judicial Magistrate Court No.I, Erode and quash the same.

For Petitioners: Mr.M.Guruprasad

For Respondent : Mr.S.N.Arun Kumar

O R D E R

This petition has been filed to quash the proceedings in C.C.No.977 of 2019 on the file of the learned Judicial Magistrate I, Erode, thereby taken cognizance for the offences under Sections 406, 409, 420, 463, 468, 471 and 477 of IPC, as against the petitioners.

2. The petitioners are arrayed as A1 and A2. On the complaint lodged by the respondent, the trial Court had taken cognizance as against the petitioners for the above said offences, on the allegations that the respondent is one of the members of the Erode Lorry Owners Associations and the office bearers have been selected by way of election and the tenure of the office bearers is three years. Between the period 2015 and 2018, the first petitioner was the secretary and the second petitioner was the treasurer of the Society. On the verification of accounts during the period 2017-2018, there was some misappropriations of funds. Therefore, a complaint has been sent to District Registrar of the Societies, Erode and also to the police officials. Since they did not take any action against the petitioners, the respondent filed this private complaint.

3. The learned counsel appearing for the petitioners submitted that the first petitioner is the President and the second petitioner is the Treasure of the Erode Lorry Owners Association. In fact, they have been elected as second term. The respondent herein had hotly contested for the post of treasure in the year 2018, for the period 2018 to 2021 and he lost in the election. Immediately he had lodged this private complaint with false and frivolous allegations. In the earlier complaint, an enquiry was conducted and the same was closed as false one. Now the respondent come forward with this private complaint and the learned Magistrate without considering the fact and circumstances of the case, mechanically had taken cognizance for the above said offences as against the petitioners. He further submitted that for the year 2017-2018 expenses were property audited by the competent Chattered Accountant and the annual report was placed before the 59th Annual General Body meeting of the society. All the members duly accepted the report and approved the same. There is absolutely no whisper about the misappropriation of fund by the petitioners. In respect of the provident fund is concerned, a sum of Rs.5,72,823/- was paid to the Provident Fund Department and the employees contribution is Rs.2,48,308/-. The balance sum of Rs.3,24,515/- has been paid by the Society. Therefore, the present complaint is untenable with unscrupulous allegations.

4. The learned counsel appearing for the respondent submitted that there are several allegations to constitute the offences as against the petitioners. It cannot be quashed under Section 482 of Cr.P.C., and it has to be enquired by full fledged trial by the trail Court.

5. Heard Mr. M.Guruprasad, learned counsel appearing for the petitioners and Mr.S.N.Arun Kumar, learned counsel appearing for the respondent.

6. On the private complaint lodged by the respondent, the trial Court had taken cognizance in C.C.No.977 of 2019 for the offences under Sections 406, 409, 420, 463, 468, 471 and 477 of IPC, in which the petitioners are arrayed as A1 and A2. On perusal of the documents, it is seen that the respondent contested in the election of Erode Lorry Owners Association, for the post of treasurer on 21.07.2019 for the period 2018 to 2021 and he had lost in the said election. The petitioners have been elected for the second term as president and treasurer for the very same society. The main allegation in the complaint is that during their tenure, from the year 2017 to 2018, they misappropriated some amounts from the Lorry Owners Association.

7. On perusal of the papers, for the period from 01.04.2017 to 31.03.2018, proper account of the society has been duly approved by the District Registrar of the Societies, Erode. It is also seen from the minutes of the society, all the accounts have been seen by the members and the same has been approved by them. Further the offences are not at all attracted as against the petitioners, since there is no prima facie material to constitute the offences as against the petitioners and no offence is made out as against the petitioners. Therefore, the present complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners and the petitioners need not to go for ordeal of trial.

8. In view of the above discussions, this Criminal Original petition is allowed and the proceedings in C.C.No.977 of 2019 on the file of the Judicial Magistrate Court No.I, Erode, is hereby by quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

The Judicial Magistrate No.I,
Erode

+1cc to Mr.M.Guru Prasad, Advocate, Sr.No.22303

+1cc to Mr.C.Ram Kumar, Advocate, Sr.No.22341

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PVS (CO)
GS (24/07/2020)