



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 20.01.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.330 and 331 of 2020

and

Crl.M.P. (MD) .Nos.2801, 2802, 2806 & 2807 of 2020

WEB COPY

Crl.R.C.(MD)No.330 of 2020

S.Nainar

.. Petitioner

Vs.

1.State rep. by

The Inspector of Police,
Vasudevanallur Police Station,
Vasudevanallur,
Tenkasi District.
(Crime No.73 of 2010)

2.Arunachalapandian @ Chelladurai

.. Respondents

Prayer : This criminal revision case is filed under Section 397 r/w. Section 401 of Cr.P.C., to revise the order of the Additional District Munsif cum Judicial Magistrate, Sivagiri, Tenkasi District, dated 31.12.2019, made in Crl.M.P.No.144 of 2019 in C.C.No.55 of 2013 in connection with Crime No.73 of 2010 on the file of the Inspector of Police, Vasudevanallur Police Station, Vasudevanallur, Tenkasi District forthwith.

For Petitioner

: Mr.S.Palani Velayutham

For Respondents

: Mrs.S.Bharathi
Government Advocate for R1

: Mr.G.Thiruvartur Selvan for R2

Crl.R.C.(MD)No.331 of 2020

Renganayagi

.. Petitioner

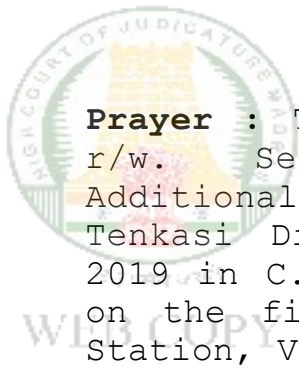
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(Crime No.73 of 2010)

2.Arunachalapandian @ Chelladurai

.. Respondents



Prayer : This criminal revision case is filed under Section 397 r/w. Section 401 of Cr.P.C., to revise the order of the Additional District Munsif cum Judicial Magistrate, Sivagiri, Tenkasi District, dated 17.02.2020, made in Crl.M.P.No.2887 of 2019 in C.C.No.55 of 2013 in connection with Crime No.73 of 2010 on the file of the Inspector of Police, Vasudevanallur Police Station, Vasudevanallur, Tenkasi District forthwith.

For Petitioner : Mr.S.Palani Velayutham

For Respondents : Mrs.S.Bharathi
Government Advocate for R1

: Mr.G.Thiruvarut Selvan for R2

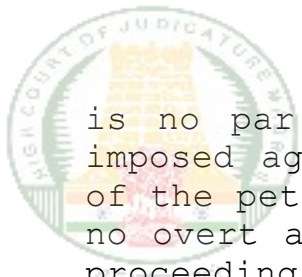
COMMON ORDER

These revisions have been filed to revise the order of the Additional District Munsif cum Judicial Magistrate, Sivagiri, Tenkasi District, dated 31.12.2019 and 17.02.2020, made in Crl.M.P.No.144 of 2019 and Crl.M.P.No.2887 of 2019 in C.C.No.55 of 2013 in connection with Crime No.73 of 2010 on the file of the Inspector of Police, Vasudevanallur Police Station, Vasudevanallur, Tenkasi District forthwith.

2.The petitioners filed petitions to discharge them from the charges under Sections 465, 466, 467, 467, 471 and 420 I.P.C in C.c.No.55 of 2013 the Additional District Munsif cum Judicial Magistrate, Sivagiri, Tenkasi District, in Crl.M.P.No.144 of 2019 and Crl.M.P.No.2887 of 2019 in C.C.No.55 of 2013. That petitions were dismissed by the trial Court on 31.12.2019 and 17.02.2020 respectively. Against the impugned order, the petitioners preferred these revisions.

3.The allegation against the petitioners / A5 & A6 is that the petitioners along with other accused persons misappropriated the funds allotted for the construction of houses under the IYA Scheme. It is stated that A4, without constructing a house received all the benefits from the Government with the support of the petitioners/A5 & A6 and others. The petitioner in Crl.R.C. (MD)No.330 of 2020 is the Assistant Engineer and the petitioner in Crl.R.C.(MD)No.331 of 2020 is the Block Development Officer. The petitioners herein released the funds in the name of A4 and supported in the commission of the offence.

4.On the side of the petitioners, it is stated that sanction is required from competent authority under Section 197 Cr.P.C., for taking cognizance of an offence, whereas, the prosecution has failed to obtain sanction under Section 197 Cr.P.C and the petitioners are entitled for discharge. Under section 239, there



is no bar for prosecution. The maximum allegation that can be imposed against the petitioners is negligence of duty. The name of the petitioners did not find place in the F.I.R., and there is no overt act against the petitioners and the Department is taking proceedings separately. Departmental proceedings and the criminal proceedings amount to double jeopardy and prayed the petitions to be allowed.

5. On the side of the respondents, it is stated that without the help of the petitioners/ A5 & A6, there is no possibility for A4 to have committed the offence. Without construction a house, A4 received all the benefits from the Government with the help of the petitioners / A5 and A6. Only with the motive to defraud the Government funds, all the accused have committed the offence. The amount involved huge some of public money. Misappropriation cannot be named as official duty, only after giving opportunities to both the parties and after careful consideration all the documents, the Court has dismissed the discharge petitions. Already the petitioners filed a quash petition in Crl.O.P.(MD) Nos.18740 & 18741 of 2015 and the co-accused/A8 also filed a quash petition in Crl.O.P.(MD)No.17576 of 2014 and all the petitions are dismissed by this Court and prayed the petitions to be dismissed.

6. Section 197(1) Cr.P.C has clearly stated that no Court shall take cognizance of an offence done by the public servant in discharging an official duty, but, the charge against the petitioners is misappropriation, which does not fall under the category of discharge of official duty. It is seen that the quash petition filed by the accused persons were already dismissed by this Court. It is seen that this Court has passed an order, directing the trial Court to dispose of the case within a stipulated time. Whether the act of the petitioner is in the official capacity or the act of the petitioner amount to an offence can be decided only after the completion of the trial.

7. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District Munsif cum Judicial Magistrate,
Sivagiri, Tenkasi District,
- 2.The Inspector of Police,
All Women Police Station,
Sankarankovil, Tenkasi District.
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C.(MD)Nos.330 and 331 of 2020
20.01.2021

KM (10.02.2021) 4P 4C