



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.02.2021

Pronounced on : 11.03.2021

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD) .No.13508 of 2020

and

CRL.M.P. (MD)No.6199 of 2020

and

CRL.M.P. (MD)No.868 of 2021

1.G.Thomas

2.M/s.St.John Employees Welfare Society,
Reg.SI.No.88/2017, Rep.by its President,
93 C, Harbour Express Road,
SIPCOT Industry Complex,
Thoothukudi District - 628 008. : Petitioners/Accused 1 & 2

Vs.

1.The Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
73, Aathikulam Road,
Reserve Line Post, Madurai - 625 014.

2.The Investigation Officer/ Inspector of Police,
Central Bureau of Investigation
Anti-Corruption Branch,
73, Aathikulam Road,
Reserve Line Post, Madurai - 625 014. : Respondents/Complainants

PRAYER: Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in connection with FIR in Crime No.RC2292020A0007 of 2020, dated 12.11.2020 on the file of the respondents and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.Issac Mohanlal
for M/s.Issac Chambers.
Senior Counsel
For Respondent : Mrs.Victoria Gowri,
Assistant Solicitor General.



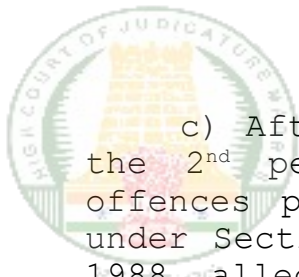
ORDER

The Criminal Original Petition has been filed under Section 482 of Cr.P.C., seeking to quash the F.I.R., registered in Crime No.RC2292020A0007 of 2020, dated 12.11.2020 on the file of the respondents.

2.The facts that are necessary for deciding the present case are as follows:

a) The Government of India through its Ministry of Housing and Urban Poverty Alleviation had introduced a scheme called "Prime Minister's Awas Yojana Scheme" to provide subsidy for construction of house for the homeless poor citizens of India. In order to extend the benefits under the Prime Minister's Awas Yojana scheme, Central Government had inserted a new provision Para 68BD in the Employees' Provident Fund Scheme, vide Gazette Notification No.G.S.R. 351(E), dated 12.04.2017, extending the scheme benefits to the homeless provident fund subscribers. The Additional Central Provident Fund Commissioner directed all the Regional Provident Fund Commissioners to give wide publication of the EPFO Housing scheme through circular, dated 21.04.2017. As per the directions of the office of the Central Provident Fund Commissioner, the Assistant Provident Fund Commissioner EPF Organisation, SRO, Tirunelveli contacted the first petitioner, who was then serving as HR in the M/s.St.John's Freight System limited, Tuticorin and requested to commence the scheme for the welfare of the employees of that company.

b) M/s.St.John's Freight System limited, Tuticorin is a company carrying out business on engaging in multiple service providers in Logistic and Shipping Industry. The first petitioner, who was then serving as Senior Assistant General Manager HR has canvassed before the employees of the said company and initially 25 employees expressed their interest in joining the scheme and later almost 160 employees have expressed their readiness to join as members of the society to be formed. After giving necessary intimation to the Assistant Provident Fund Commissioner, Tirunelveli, the first petitioner formed a society and got it registered on 17.07.2017 in the office of the District Registrar, Tuticorin in the name and style of M/s.St.John Employees Welfare Society. As per the terms of the scheme, the society, after opening a bank account in its name at Vijaya Bank, Tuticorin, had submitted the individual application forms of the members to the EPF Officer, Tirunelveli. After approval of the applications of 141 members of the society, a sum of Rs.1,50,14,600/- was sanctioned and subsequently, another sum of Rs.34,36,300/- was sanctioned, all totalling Rs.1,84,50,900/- and the same was credited into the bank account of the 2nd petitioner society.

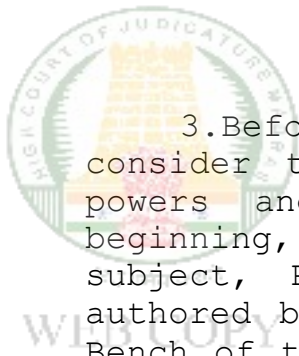


c) After sanctioning of the amount and crediting the same into the 2nd petitioner society, FIR came to be registered for the offences punishable under Sections 120 B r/w Section 406 IPC and under Sections 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, alleging that during the period 2017-2019 unknown officials of EPF, Tirunelveli, entered into criminal conspiracy with the first petitioner and in pursuance of the same, the public servants abusing their official position, caused pecuniary advantage to the 2nd petitioner society, represented by the first petitioner, in the matter of release of EPF amount and amount was misused, thereby causing loss to the Government Exchequer. It is necessary to refer the 3rd paragraph in the body of the FIR, which refers to the allegations and accusations made against the petitioners;

"Information revealed that M/s.St.John Freight System Limited, Tuticorin formed a housing society in the name of St.John's Employees Welfare Society. Proceedings U/s. 7A of EPFO Act was pending against M/s.St.John Freight System Ltd., Tirunelveli which is represented by A-1 Shri.G.Thomas, for defaulting the payment of contribution in the PF amount. Though the proceeding was pending, the claim submitted by the Society A-2 on behalf of 141 members, was processed, sanctioned and amount of Rs.1,84,50,600/- was credited into the account of A-2 by unknown officials of EPF Tirunelveli for purchase of land and construction of house. The laid down procedures in Para 68-BD of the Employees' Provident Funds Scheme, 1952 was not complied with at the time of sanction. The amount sanctioned by the EPF were mis-utilized by ShriG.Thomas, President, M/s.St.John Employees Welfare Society, Tuticorin and till date no allotment of plots to the members have been made. Information further revealed that unutilised amount was not refunded by A-1 and A-2. Thus the unknown officials of EPF have abused their official position to facilitate A-1 G.Thomas and A-2 St.Johns's Employees Welfare Society thereby caused loss to the Govt. Exchequer."

d) After coming to know about the registration of the above FIR, the petitioners have now come forward with the present petition to quash the said FIR.

e) It is informed that the formation of the second petitioner society to avail the scheme under 68 BD of EPFO Rules was the first one in the entire country and hence, the scheme was inaugurated in a grand function attended by the Central and State Ministers, Members of Parliament and Members of Legislative Assembly apart from the Higher Officials of EPFO.



3. Before entering into further discussion, it is time to consider the legal position regarding this Court's jurisdiction, powers and limitations under Section 482 of Cr.P.C. At the beginning, it is necessary to refer the known text book for the subject, Powers of the High Courts under Section 482 Cr.P.C., authored by **Hon'ble Justice.S.Rathinavel Pandian**, for the Division Bench of the Hon'ble Apex Court, in **State of Haryana Vs. Bajan Lal** reported in **1992 Suppl.(1) SCC 335** and whereunder the Supreme Court enumerates 7 categories of cases, where the power can be exercised under Section 482 of Cr.P.C and the same are reproduced hereunder;

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155

(2) of the Code;



(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

4.The Hon'ble Supreme Court in **State of Karnataka Vs. L.Muniasamy and others** reported in 1977 (2) Supreme Court Cases 699, has held that the High Court is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the Court and the relevant portion is extracted hereunder;

"7.... Section 482 of the New Code which corresponds to Section 561-A of the Code of 1898, provides that:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In the exercise of this wholesome power, the High Court is entitled to quash the proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling



necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

5. In another judgment of the Hon'ble Supreme Court relied on by the learned Senior Counsel for the petitioners in **Vineet Kumar Vs. State of Uttar Pradesh** reported in **2017(13) SCC 369**, it was reiterated that the inherent power of High Court under Section 482 of Cr.P.C is given with object of advancement of justice.

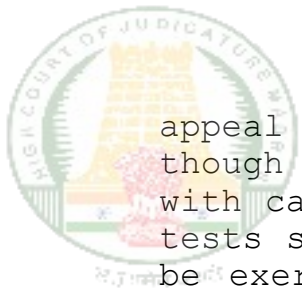
"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

23. This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy and others**, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

6. A three-Judge Bench of the Hon'ble Supreme Court, in **State of Karnataka Vs. M.Devendrappa and another** reported in **2002 (3) SCC 89**, had laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse and that the Court would be justified to quash the proceedings, if it finds that the initiation/continuation of it amounts to abuse of the process of the Court or quashing of these proceedings, would otherwise serve the ends of justice and it is necessary to refer the following passage hereunder;

"6... All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo ipsae, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers

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appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

7. In **Priya Vrat singh Vs. Shyam Ji Sahai** reported in (2008) 8 SCC 232, Hon'ble Supreme Court has relied on Category 7, as laid down in the case of **State of Haryana Vs. Bajan Lal** reported in 1992 Suppl (1) SCC 335 and after noticing the background facts and parameters for exercise of power under Section 482 Cr.P.C., it was further observed that :

"11. '19. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur id sine quo res



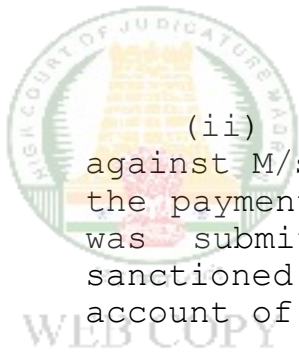
ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

8. In the background of the above legal position, let us consider the case on hand. A cursory perusal of the FIR would go to reveal the following aspects;

(i) Unknown officials of Employees Provident Fund Organisation, Tirunelveli entered into a criminal conspiracy with the first petitioner and in pursuance of the said conspiracy, the public servants abusing their official position caused pecuniary advantage to the 2nd petitioner's society, in the matter of release of EPF amount and amount was misused, thereby causing loss to the Government Exchequer.

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(ii) Though proceedings under 7A of EPFO Act was pending against M/s.St.John Freight Systems Ltd., Tirunelveli for defaulting the payment of contribution in the Provident Fund amount, the claim was submitted by the 2nd petitioner's society was processed, sanctioned and amount of Rs.1,84,50,600/- was credited into the account of the second petitioner.

(iii) a) The procedures laid down in para 68-BD of Employees Provident Fund scheme was not complied with at the time of sanction;

b) The amount sanctioned by the EPF were mis-utilized by the first petitioner and till date no allotment of plots to the members have been made;

c) Unutilized amount was not refunded by the petitioners;

9.In the counter statement filed by the respondents, the following new pleas have been raised;

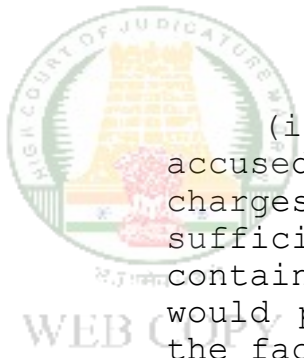
(i) Liquidation proceedings in respect of the said company was initiated in the year 2018 and the employees of the company are being paid salary by the resolution professional appointed by the High Court, Madras.

(ii) After sanctioning of the first amount for Allikulam Village project, the petitioners cancelled the said project with malafide intention and made arrangements to purchase the land at Nattathi Village, which is far away about 30 kilometres from Tuticorin City and no transport facility.

10.It is time to remind myself that while exercising power under Section 482 Cr.P.C., it is the general rule that the materials put forth by the defence cannot be looked into, as the Court is only required to consider the allegations made in the complaint or FIR. But at the same time, as per the dictum of the Hon'ble Supreme Court, the above proposition is not absolute. The Court can very well look into the defence materials, if the same are of such sterling and impeccable quality and capable of completely negating the allegations of the complainant. The Hon'ble Supreme Court in **Prasanth Bharati Vs. State of NCT of Delhi**, reported in (2013) 9 SCC 293, (Crl.A.No.175 of 2013, dated 23.01.2013), after referring to its earlier judgment in **Rajiv Thapar and others Vs. Madan Lal Kapoor** reported in (2013) 3 SCC 330, has listed out the steps to determine the veracity of a prayer for quashing raised by the defence :

"23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?



(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

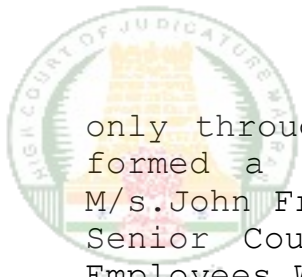
(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

11. Bearing the above legal position in mind, let us proceed further. In the case on hand, the petitioners have produced the typed set containing the copies of 55 documents and subsequently, two additional typed sets containing the copies of two documents each, and most of the documents are copies of the letter correspondence between the petitioners and the EPF officials. As rightly contented by the petitioners' side, averments in the FIR by itself are not sufficient to understand the nature of the scheme, transactions and the conduct of the parties. At the outset, it is pertinent to mention that the respondents have disputed neither the genuineness nor the contents of the documents produced by the petitioners.

12. It is the specific contention of the prosecution that when the proceedings under Section 7 A of EPFO Act was pending against M/s. John Frieight System Limited, Tirunelveli for defaulting the payment of contribution in the Provident Fund amount, the claim submitted by the 2nd petitioner's society was processed, sanctioned and amount was credited. At the out-set, this Court is at loss to understand as to how the company M/s. John Frieight System Limited, Tirunelveli was linked with M/s. St. John Employees Welfare Society. As already pointed out, as per the scheme of EPFO, the PF subscribers having more than three years of membership are only eligible to apply under the Scheme and one more condition is that PF members should form themselves as society and submit the claim forms



only through that society. According to the petitioners, they have formed a society with the members, who are the workers of the M/s.John Frieght System Limited. As rightly contended by the learned Senior Counsel, except the fact that the members of M/s.St.John Employees Welfare Society are the workers of M/s.John Frieght System Limited, the company has no connection whatever with the society formed for the benefit of labourers. More over, all the workers of the company are not the members of the society and according to the petitioners, only 160 workers have expressed their willingness and they were made members of the society.

13.It is evident from the Show-cause notice, dated 29.07.2019 and the subsequent Summons to appear for enquiry under Section 7 A of EPF Act, dated 12.09.2019, the petitioners were called upon to explain for non-submission of utilization certificate for the advance amount sanctioned under Section 68 BD and for failure to refund the amount as specified in sub-para of 68 BD. It is not in dispute that 7 A proceedings was initiated, admittedly, against the M/s.St.John Employees Welfare Society and not against the company and after enquiry, the Assistant Provident Fund Commissioner has passed the order, dated 07.09.2020, dropping the proceedings by specifically observing that 7A enquiry was erroneously initiated.

14.It is pertinent to mention that 7A proceedings are initiated for determination of the Provident Fund dues and it is a matter between the employer and the Employees Provident Fund Organisation. The Assistant Provident Fund Commissioner, by referring to the instructions issued by EPFO Head office letter dated 14.02.2020, that "Inquiries under Section 7A shall not be initiated for any purpose extraneous to the statutory mandate of Section 7A ie., dispute of applicability or determination of dues" has dropped the proceedings, even according to him, which was erroneously initiated. Except the above said dropped proceedings, it is not the case of the prosecution that some other 7A proceedings are pending against the employer ie., Company. Even assuming for arguments sake that such 7A proceedings are pending against the employer, that will not bind or affect the society, which has nothing to do with the company affairs.

15.As already pointed out, the respondents have taken additional contention in the counter statement that liquidation proceedings were initiated in the year 2018 and the employees of the company are being paid salary by the Resolution Professional appointed by this Court. The learned Senior Counsel for the petitioners would contend that the Resolution Professional was appointed by the National Company Law Tribunal (NCLT), Chennai, vide order, dated 10.12.2018 and the said issue is pending for adjudication before the Honourable Supreme Court. As rightly contended by the learned Senior Counsel for the petitioners, the above said proceedings have no connection whatever with the present dispute.



16.The next contention of the prosecution is that the procedures laid down in para 68 BD of EPF Scheme were not at all complied with at the time of sanction, that the amount sanctioned by the EPF were mis-utilized by the petitioners, that allotment of plots have not been made to the members till date and that the unutilized amount was not refunded by the petitioners.

17.The learned Assistant Solicitor General would submit that in contravention of the scheme, more than Rs.76 lakhs was paid to the members of the society from the society's account, through different cheques on various dates and that Employees Provident Fund Organisation has already initiated action against the petitioners as the fund was misused by them and also issued show cause notice to the petitioners to refund the withdrawn amount with penal interest. She would further submit that the amount was claimed fraudulently, when 7A proceedings was initiated against the company with a dishonest intention to divert the amount and that it has become clear that the amount withdrawn was not utilized for the purpose, it was given and it was misused and misappropriated in pursuance of conspiracy.

18.The Learned Senior counsel for the petitioners would contend that allotment of plots to the members are to be made only after getting the approval from the Deputy Director of Town and Country Planning, Tirunelveli, that refunding of unutilized fund would arise only in the event of cancellation of the scheme and non-allotment of lands, that utilization of fund withdrawn was properly accounted and accounts were already submitted periodically to the EPF Office, that except the fund utilized for the purchase of the land, layout formation and registration etc, the remaining amount was paid to the individual members through cheques and that there is no diversion of even one rupee from the advance amount sanctioned by the EPF.

19.Before entering into further discussion, it is necessary to refer the relevant clauses in Para 68 BD, which was inserted in the Employees Provident Fund Scheme 1952, vide 4th Amendment Scheme 2017.

68 BD - withdrawal of and financing from, the fund for the purchase of dwelling house or flat or the construction of a dwelling house;

"(1) Notwithstanding anything contained in Paragraph 68 B or 68 BB or 68 BC, where a member of the fund, who

a)

b) desires to purchase a dwelling house or flat including flat in a building owned jointly with others, out-right or on hire-purchase basis, or for construction of a dwelling house including the acquisition of a suitable site for the purpose, from the Central Government, a State Government or any Housing Agency under any



housing scheme or any promoter or builder for the members, such may apply form and in such manner, as may be prescribed by the Commissioner, for withdrawal from the amount standing in the credit of the member in the fund.

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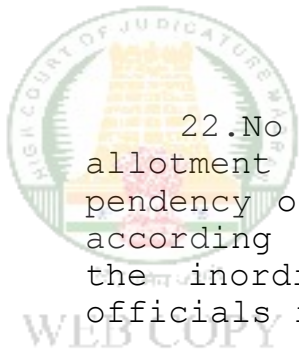
(5) The withdrawal for the purchase of a dwelling house or flat or a dwelling site or construction of a dwelling house under sub-paragraphs 1 and 2, shall not be made to the member in any event and shall be made direct to the Co-operative Society, Central Government, a State Government or any Housing agency under any Housing scheme or any promoter or builders as the case may be, in one or more instalments, as may be authorized by the member.

(6) a) If the withdrawal or finance granted under this paragraphs exceeds the amount actually spent for the purpose for which, it was sanctioned, the excess amount shall be refunded by the member, to the Fund in one lump sum within 30 days of the finalization of the purchase or the completion of construction, or necessary additions or alternations to a dwelling house or flat, as the case may be.

b) The amount so refunded under sub-paragraph (a) shall be credited to the employer's share of contribution in the member's account in the Fund to the extent of withdrawal granted out of the said share and the balance if any, shall be credited to the member's share of contribution in his account."

20.Considering the above, as rightly contended by the learned Senior Counsel, it is very much clear that the advance or any other amount that are sanctioned by the EPF for availing scheme under 68 BD shall be credited into the society's bank account and not to the members of the society at any event.

21.Sub para-6 contemplates that the excess amount if any, shall be refunded by the member, to the fund in one lump sum within 30 days of the finalization of the purchase, or completion of the construction. As rightly contended by the petitioners' side, the society after spending for the purchase of the land, forming of lay out, getting approval therefor, formation of roads and etc., the remaining amount has to be transferred to the individual accounts of the members of the society and the members, after making the construction and in case if any amount is found in excess, that should be refunded to the EPF by the individual members. Hence, the very contention of the prosecution that a sum of Rs.76,00,000/- was paid to the members of the society in contravention of scheme is devoid of substance. As per the said scheme, it is the duty of the PF subscribers, who are members of the society to refund the excess amount, if any and the society has no obligation to refund the amount and more particularly when the project is pending.

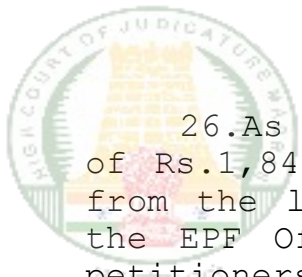


22.No doubt, when the FIR was registered, there was no allotment of plots to the members of the society and during the pendency of the above case, plots were allotted to the members and according to the petitioners, the delay was occasioned because of the inordinate delay caused by the Town and Country Planning officials in granting the approval.

23.As rightly contended by the learned Senior Counsel for the petitioners, the EPF scheme does not contemplate any particular period for completion of the project nor fixed by the EPF Officials at the time of sanctioning of the amount nor subsequently. It is pertinent to mention that the petitioners have sent letters to the EPF officials, informing the current stage of the project and the hurdles, they were facing, at regular intervals and more particularly, about the delay caused by the Town and Country Planning officials in granting the approval. It is further evident that in response to the petitioners' letters, Regional PF Commissioner has sent a letter to the District Collector to expedite the approval of layout and then to Commissioner of Town and Country Planning requesting him to issue necessary instructions to the concerned authority to expedite the process and to grant the layout approval, so as to enable them for implementing EPFO housing scheme speedily. It is not in dispute that the land was purchased by the second petitioner society on 18.02.2017, that after survey of land and patta transfer, an application to Local Planning Authority for granting layout approval was submitted on 19.04.2018 and that the same was granted only on 03.12.2020.

24.The respondents have taken another plea that the petitioners have selected a land at Allikulam Village and after sanctioning of amount of nearly 1.5 crores of rupees, the second petitioner cancelled the project with malafide intention and made arrangements to purchase the land at Nattathi village, which is far away about 30 kilometres from Tuticorin City and no transport facility was there and thereafter, the second claim amount of Rs.34,36,300/- was sanctioned and credited into the society's account.

25.The learned counsel for the petitioner would contend that they had identified almost 15 lands and short listed three including the one at Allikulam Village, that since the said land was with lot of encumbrance, with the consent of all the members of the society and due intimation to the EPFO, the project was shifted to the Nattathi Village and that therefore, there is no illegality or any malafide intention in the same. As rightly contended by the learned Senior counsel for the petitioners, this scheme or the sanctioning order of the EPF does not contemplate that the project is to be implemented in a particular area or within a particular district. It is also not the case of the prosecution that members of the society have raised objection about the selection of the land at Nattathi village.



26.As already pointed out, the EPFO has sanctioned total amount of Rs.1,84,50,600/- for 148 members of the society. It is evident from the letter dated 10.07.2019, sent by the first petitioner to the EPF Officer along with audit report for 2017-2018, that the petitioners have shown that total amount of Rs.77,20,000/- was paid to the members of the society by cheques, so as to enable them to make constructions in the plots allotted to them.

27.As per the scheme, the PF members are eligible to claim 90% of the amount available in the PF account. As rightly contended by the learned senior counsel for the petitioners, on an average, the members of the second petitioner society was sanctioned with a sum of Rs.1,24,666/- each and after deducting the expenses towards purchase of land and other incidental expenses, such as layout formation, road formation and etc., a sum of Rs.52,162/- was given to each of the members for construction. As rightly contended by the petitioners' side, it is practically not possible to construct a house with the amount now paid to the members by the second petitioner society and necessarily the members have to approach the banking institutions or other sources to get loan. In that scenario, as rightly pointed out by the petitioners side, there may not be any amount, in excess, to be refunded to the EPFO. Moreover, whether any amount will be available as excess can be ascertained only after completion of the construction and cannot be decided at this stage. As rightly contended by the learned senior counsel, the question of refunding the excess amount, if any, does not arise at all at this stage.

28.The learned Assistant Solicitor General would submit that the registration of an FIR is mandatory if the information discloses commission of a cognizable offence and relied on the Constitution Bench of Hon'ble Supreme Court in **Lalitha Kumari Vs. Uttarpradesh** reported in (2008) 7 SCC 164. No doubt, the Hon'ble Supreme Court in Lalitha Kumari case has specifically held that the registration of FIR is mandatory under Section 154 of Cr.P.C, if the information discloses commission of a cognizable offence and in such a case, no preliminary enquiry is permissible and that if the information received does not disclose a cognizable offence, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

29.The Hon'ble Supreme Court has also listed out some category of cases as illustration, which requires preliminary enquiry. As rightly contended by the learned Assistant Solicitor General, the Hon'ble Supreme Court in **State of Telangana Vs. Sri Managipet @ Mangipet Sarveshwar Reddy**, passed in Crl.A.No.1662 of 2019, dated 06.02.2019 has specifically held that preliminary enquiry before registration of FIR is not required to be mandatorily conducted in all corruption cases. By relying on the above decision, the learned Assistant Solicitor General would submit that there is no necessity for conducting preliminary enquiry, if the information discloses



commission of cognizable offence. But in the case on hand, even according to the prosecution, a preliminary enquiry was conducted before the registration of FIR.

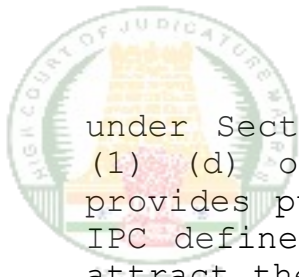
30.As rightly contended by petitioners' side, FIR does not disclose any such preliminary enquiry conducted. More over, in the impugned FIR Column 4 "Type of information", it has been stated as "Source Information". In the body of the complaint, they have alleged that some unknown officials of EPFO entered into the criminal conspiracy and committed the other offences along with the petitioners. As rightly contended by the petitioners side, since the records are very much available with the EPFO, the respondents could have easily ascertained the officers, who were incharge at the time of submission of claim applications by the society and the officers who had processed the applications and sanctioned the amount. Even after conducting preliminary enquiry, this Court is at loss to understand as to how the respondents have registered the FIR, as if some unknown officials of EPFO, had entered into the criminal conspiracy and committed the offences along with the petitioners.

31.The respondents have alleged that the public money entrusted with the 2nd petitioner's society was misappropriated and thereby caused pecuniary advantage to the petitioners. As already pointed out, after spending the sanctioned amount towards purchase of land and for other incidental expenses such as lay out formation, road formation etc., the remaining amount has already been paid to the members.

32.It is pertinent to mention that the respondents have themselves admitted the purchase of land at Nattathi village by the second petitioner society. They have also not specifically disputed the layout formation, obtaining of Town and Country Planning approval, road formation and execution and registration of gift deeds transferring the land meant for roads and park in favour of the Panchayat. More over, the respondents, in their counter, have specifically admitted that an amount of more than Rs.76,00,000/- was paid to the members of the society from the society's account through cheques.

33.It is not the specific case of the prosecution that the sanctioned amount was used for some other purpose, not connected with the present project nor the said amount was diverted to the company or any other person unconnected with the 2nd petitioner's society and the scheme. It is also not the case of the prosecution that they have received any complaint of wrong utilization or diversion of the fund by the 2nd petitioner society.

34.No doubt, in the FIR, they have allegedly used the words, criminal conspiracy, misuse of the amount, misutilization of funds and abusing of official position. FIR was registered for the offence



under Section 406 r/w 120(B) IPC and under Sections 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. Section 406 provides punishment for criminal breach of trust and Section 405 of IPC defines criminal breach of trust. The essential ingredients to attract the offence of criminal breach of trust are that the accused must be entrusted with property or dominion over it and that he must have dishonestly misappropriated the property or converted to his own use or disposes it, in violation of any trust. Hence, in order to constitute an offence of criminal breach of trust, the above two ingredients have to be present conjointly and in the absence of any of the ingredients, the offences will not be completed. The essential ingredients of the offences of criminal conspiracy are i) an agreement between two or more persons, ii) the agreement must relate to doing or causing to be done either (a) an illegal act ; or (b) an act which is not illegal in itself, but is done by illegal means. Conditions precedent to hold any person to be guilty of a charge of criminal conspiracy is that there must be meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

35.In the present case, though FIR was referring to the sanctioning and crediting of Rs.1,84,50,600/- into the account of the second petitioner's society, assuming for arguments sake, that the petitioners were entrusted with the said money, FIR is very much silent about the dishonest misappropriation of the said amount or conversion of the said amount to their own use or dispose of the same in violation of trust. Except referring the words that criminal conspiracy was entered into between unknown officials of EPFO, Tirunelveli and the petitioners, FIR does not contain any other particulars or ingredients so as to attract the offence under Section 120 B IPC.

36.As rightly contended by the learned Senior Counsel, the very filing of FIR was under misconception that when the 7 A proceeding was pending, amount was claimed and sanctioned and that the petitioners have not utilised the sanctioned amount for the purpose for which, the amount was sanctioned.

37.As rightly contended by the petitioners' side, in the FIR, there is no whisper that the petitioners had committed any act of misappropriation of the sanctioned fund nor transferred the land purchased for their own use or in favour of any other person unconnected with the second petitioner's society. Considering the above, this Court is of the clear view that the respondents have miserably failed to show any basis or foundation upon which, FIR was registered for the alleged offences. Hence this Court has no hesitation to hold that there are absolutely no grounds for proceeding against the petitioners and that the allegations levelled in the FIR do not make out any offences and as such FIR, is liable to be quashed and is quashed accordingly.



38.In the result, this Criminal Original Petition is allowed and the FIR in Crime No.RC2292020A0007 of 2020, dated 12.11.2020 on the file of the respondents stands quashed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

- 1.The Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
73, Aathikulam Road,
Reserve Line Post, Madurai - 625 014.
- 2.The Investigation Officer/ Inspector of Police,
Central Bureau of Investigation
Anti-Corruption Branch,
73, Aathikulam Road, Reserve Line Post,
Madurai - 625 014.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-10663[F]dated
12/03/2021)

CRL.O.P. (MD) .No.13508 of 2020
and
CRL.M.P. (MD)No.6199 of 2020
and
CRL.M.P. (MD) No.868 of 2021
11.03..2021

VB (23.03.2021) 18P 7C