



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 03.03.2021

DATE ON WHICH PRONOUNCED : 01.04.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13838 of 2017

and

Crl MP(MD)Nos.9294 & 9295 of 2017

1.Pandi @ Pandian

2.Arjunan

... Petitioners/Accused Nos.1 & 2

Vs.

1.The State

Rep by its Inspector of Police,
Villur Police Station,
Madurai District.
Crime No.91 of 2012.

... 1st Respondent/Complainant

2.Saraswathi

... 2nd Respondent/Defacto
Complainant

Prayer:Criminal Original Petition is filed under Section 482 Criminal procedure code. to call for the records in C.C.No.23 of 2017 pending on the file of the learned District Munsif Cum Judicial Magistrate, Peraiyur and quash the same.

For Petitioners : Mr.N.Sathish Babu
For R1 : Mr.M.Ganesan,
Government Advocate (Crl.Side)
For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.23 of 2017 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur

2.The case of the first respondent before the Trial Court:-

The first petitioner was holding the post of President of Kenchampatti Panchayat in T.Kallupatti Union, Madurai from 2006 - 2011. The second petitioner was holding the post of Secretary during the relevant period. From 1991 onwards, the villagers of Kenchampatti Panchayat were given benefit under the housing scheme



fund namely, 'Indra Gandhi Aavash Yojana'. During 2009 -2010 financial year, 25 houses were sanctioned to the Village, for which, administrative sanction was also granted. Using this scheme as an opportunity to misappropriate the fund, these petitioners misappropriated a sum of Rs.3.85 lakhs by forging the documents and the receipts etc., by showing 7 persons as beneficiaries under the scheme for the financial year 2009 - 2010, who were already, benefitted under the scheme, during the financial year 1991 - 1999.

3. Based upon the complaint given by the Block Development Officer, attached to Panchayat Union Office of T.Kallupatti, on 11.11.2012, a case in Crime No.91 of 2012 was registered on the file of the first respondent. So, the investigation was undertaken and materials were collected. The statements of the witnesses were recorded. After completion of investigation, the first respondent has filed a final report stating that the petitioners have committed the offences punishable under Sections 420, 465, 468 and 477 (A) IPC.

4. Challenging the final report, these petitioners moved this Court by way of filing MP(MD)No.2 of 2014 in Crl.OP(MD)Nos.2354 & 2467 of 2014 seeking stay of the investigation. This Court, by its order dated 13.03.2015, granted an interim stay of filing of final report. But, the first respondent appears to have completed the investigation and filed a final report on 25.01.2017.

5. Challenging the same, the present petition has been filed by the petitioners stating that the first respondent has violated the order of this Court in the above said MP(MD)No.2 of 2014 and it is liable to be quashed. It is the further contention that even as per the materials collected by the Investigating Officer, no offences were attracted against these petitioners since the Assistant Director (Audit), attached to the Madurai District, used to conduct audit every year and for the Accounting year 2009 - 2010 and 2010 - 2011, audit was conducted. During that time, no objection was raised with regard to the above said irregularities.

6. Heard both sides.

7. According to the learned counsel for the petitioner, no complaint was given by the beneficiaries as well as the villagers; The Block Development Officer and the District Collector are the proper persons, who had sanctioned the scheme; The Resolution passed by the Village Panchayat was approved by the competent authorities; The complaint alleged to have been levelled only on the basis of the audit for the financial year 2009 - 2010; Only the second respondent is the competent authority, to reject the proposal. But, the proposal was approved by the authorities. The permission was also granted by the Block Development Officer and these



8. The main allegation levelled against these petitioners, is that they have created the documents by forging and misappropriated the Government Fund by showing 7 persons as beneficiaries under the housing scheme fund of 'Indra Gandhi Aavash Yojana', who were already benefited during the year 1991 - 1999. So, materials have been collected by the Investigating Officer and it also appears that the defacto complainant has given the complaint, based upon the direction given by the District Collector, Madurai, through his letter dated 10.10.2012 in Na.Ka.No.3466/2012/V. The statement of the witnesses were recorded.

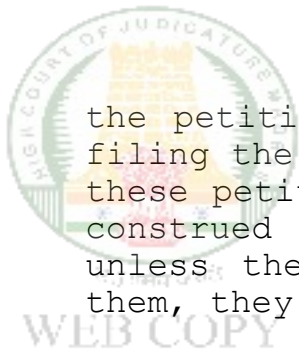
9. During the investigation, it is also shown that prima facie evidence are available against these petitioners over the allegations. The contention that subsequent audit undertaken by Audit Department did not disclose any such irregularities is not a matter for consideration in this petition. So, it has to be decided only during the trial proceedings.

10. So, the petitioners, now, cannot contend in this petition that no *prima facie* materials are available against them, in the light of the audit, undertaken by the Department, during the relevant period.

11. The second contention of the petitioners is that the beneficiaries were really selected by the officials and only genuine claims were sanctioned. But, according to the prosecution, the selection of beneficiaries is a bogus one. The alleged beneficiaries' statement shows that they were already benefitted under the Scheme during 1991 - 1999. So, they cannot be the beneficiaries under the scheme during the Accounting year 2009 - 2010. So, whether these statements are true or not and whether the photographs attached by the petitioners along with the typed set of papers are true or not are also matters for consideration, only during the trial proceedings. So, on this ground also this petition, cannot be allowed.

12. The last ground is that violating the stay order passed by this Court, final report has been filed by the first respondent. According to the counter statement filed by the first respondent, without knowing the stay order passed by this Court, in the above said Crl.MP(MD)No.2 of 2014, the new Investigating Officer, took up the investigation and filed the final report. So, it was a *bona fide* mistake, on the part of the first respondent. So, I find that no reason to reject the same in explaining the mistake committed by him as a *bona fide* one.

13. It is also seen that stay order was not communicated to the Trial Court, at the time of passing the order. So, without knowing the order of stay, the Trial Court appears to have taken the case on file and took cognizance of the offence. These are *bona fide* mistakes that have been committed by the Government Officials. But,



the petitioner cannot say that they were prejudicially affected by filing the final report. No prejudice appears to have been caused to these petitioners on filing this final report. If at all, it can be construed as an irregularity committed by the first respondent unless the petitioners are able to show the prejudice caused to them, they cannot be permitted to take advantage of the mistake.

14. In the result, none of the arguments advanced by the petitioner are acceptable and this petition is liable to be dismissed and accordingly, the same is dismissed. So, the Trial Court is directed to dispose of the case as early as possible. Consequently, connected miscellaneous petitions are closed.

15. After pronouncing the order, the learned counsel for the petitioners requested the Court to pass a direction to the learned District Munsif Cum Judicial Magistrate, Peraiyur, to dispose of the matter within a short time and the first petitioner being the President and the second petitioner being the Secretary, he prayed dispense with the personal appearance of the petitioners before the Trial Court. Considering the same, the Trial Court is directed to dispose of the case within a period of five months from the date of receipt of a copy of this order and the personal appearance of the petitioners is dispensed with and they shall file an affidavit undertaking that they will appear before the Court as and when necessary and required. They must also affix their photographs duly attested by their respective counsel in the affidavit. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar (AS)

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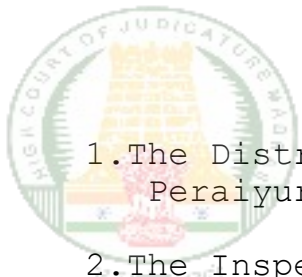
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Sub Assistant Registrar(CS)

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.

dss

To



1.The District Munsif Cum Judicial Magistrate,
Peraiyur.

2.The Inspector of Police,
Villur Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

4. The Registrar(Judicial),
Madurai Bench Of Madras High Court,
Madurai.

**Cr1.O.P. (MD) No.13838 of 2017
and
Cr1 MP (MD) Nos.9294 & 9295 of 2017**

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GS (18.05.2021) 5P 5C