IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020

DELIVERED ON : 11.11.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.2374 to 2380 of 2015
and
M.P.Nos.1 to 1 of 2015

In Crl.O.P.No.2374 of 2015

G.Rajendran ... Petitioner/Accused-3

Versus

The Sub Inspector of Police,
District Crime Branch,
Villupuram 605 602.
(Crime No.1 of 2009) ... Respondent/complainant

PRAYER : Criminal Original petition filed under Section 482 Cr.P.C. praying to call for the records and quash the charge sheet No.1 of 2009 in C.C.No.88 of 2009 pending before the learned Judicial Magistrate No.1, Ulundurpet.

For Petitioners in all Crl.O.P.s. : Mr.A.N.Rajan
For Respondent in all Crl.O.Ps. : Mr.Iyyapparaj
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to quash the Charge Sheet Nos.1 to 7 of 2009 dated 02.09.2009 in C.C. Nos.88 to 94 of 2009, respectively, on the file of the learned Judicial Magistrate No.1, Ulundurpet.

2. (i) The petitioner/Accused No.3 in C.C.No.88 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, has filed quash petition in Crl.O.P.No.2374 of 2015.

(ii) The petitioner/Accused No.3 in C.C.No.89 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, has filed quash petition in Crl.O.P.No.2375 of 2015.

(iii) The petitioners/Accused Nos.3 to 8 & 11 in C.C.No.90 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, have filed quash petition in Crl.O.P.No.2376 of 2015.

(iv) The petitioners/Accused Nos.3 to 6 in C.C.No.91 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, have filed quash petition in Crl.O.P.No.2377 of 2015.

(v) The petitioners/Accused Nos.3 to 5 in C.C.No.92 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, have filed quash petition in Crl.O.P.No.2378 of 2015.

(vi) The petitioners/Accused Nos.3 to 6 in C.C.No.93 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, have filed quash petition in Crl.O.P.No.2379 of 2015.

(vii) The petitioners/Accused Nos.3 to 4 in C.C.No.94 of 2009 facing prosecution for the offence under Sections 465, 468, 471, 477(A), 420 r/w 109 I.P.C, have filed quash petition in Crl.O.P.No.2380 of 2015.

3. The case of the prosecution is that A-1/Sathiyamurthy was the President of A.Sathanoor Village Panchayat, Ulundurpet Taluk from 26.10.2001 onwards. A-2/Tmt.Selvam in Crl.O.P.Nos.2374, 2375, 2376,

2377 & 2378 of 2015 was the Vice President from 26.10.2001 to 24.10.2006. A2/Selvi.Ambika in Crl.O.P.Nos.2379 & 2380 of 2015 was the Vice President from 26.10.2006 onwards.

(i) The petitioner/A3 in Crl.O.P.No.2374 of 2015 was employed as Block Development officer in Ulundurpet Panchayat Union, Villupuram District during the period from 30.08.2001 to 05.06.2002.

(ii) The petitioner/A3 in Crl.O.P.No.2375 of 2015 was employed as Block Development officer in Ulundurpet Panchayat Union, Villupuram District during the period from 06.06.2002 to 02.07.2003.

(iii) The petitioners/A3 to A8 & A11 in Crl.O.P.No.2376 of 2015 were employed as Block Development officers in Ulundurpet Panchayat Union, Villupuram District. The first petitioner/A3 was employed as Block Development officer during the period from 06.06.2002 to 02.07.2003, the second petitioner/A4 was employed as Block Development officer during the period from 03.07.2003 to 22.10.2003, the third petitioner/A5 was employed as Block Development officer during the period from 23.10.2003 to

29.10.2003, the fourth petitioner/A6 was employed as Block Development officer during the period from 30.10.2003 to 11.01.2004 and another period from 11.02.2004 to 26.02.2004, the fifth petitioner/A7 was employed as Block Development officer during the period from 12.01.2004 to 25.01.2004 and another period from 01.02.2004 to 03.02.2004, the sixth petitioner/A8 was employed as Block Development officer during the period from 26.01.2004 to 28.01.2004 and the seventh petitioner/A11 was employed as Block Development officer during the period from 27.02.2004 to 07.04.2004.

(iv) The petitioners/A3 to A6 in Crl.O.P.No.2377 of 2015 were employed as Block Development officers in Ulundurpet Panchayat Union, Villupuram District. The first petitioner/A3 was employed as Block Development officer during the period from 27.02.2004 to 07.04.2004, the second petitioner/A4 was employed as Block Development officer during the period from 08.04.2004 to 02.07.2004, the third petitioner/A5 was employed as Block Development officer during the period from 13.07.2004 to

17.02.2005 and the fourth petitioner/A6 was employed as Block Development officer during the period from 18.02.2005 to 18.08.2005.

(v) The petitioners/A3 to A5 in Crl.O.P.No.2378 of 2015 were employed as Block Development officers in Ulundurpet Panchayat Union, Villupuram District. The first petitioner/A3 was employed as Block Development officer during the period from 18.02.2005 to 18.08.2005, the second petitioner/A4 was employed as Block Development officer during the period from 19.08.2005 to 09.02.2006 and the third petitioner/A5 was employed as Block Development officer during the period from 10.02.2006 to 30.09.2006.

(vi) The petitioners/A3 to A6 in Crl.O.P.No.2379 of 2015 were employed as Block Development officers in Ulundurpet Panchayat Union, Villupuram District. The first petitioner/A3 was employed as Block Development officer during the period from 10.02.2006 to 30.09.2006, the second petitioner/A4 was employed as Block Development officer during the period from 01.10.2006 to 28.11.2006, the third petitioner/A5 was employed as Block Development officer during the period from 29.11.2006 to 21.02.2007 and the fourth petitioner/A6 was employed as Block Development officer during the period from 22.02.2007 to 14.10.2007.

(vii) The petitioners/A3 & A4 in Crl.O.P.No.2380 of 2015 were employed as Block Development officers in Ulundurpet Panchayat Union, Villupuram District. The first petitioner/A3 was employed as Block Development officer during the period from 22.02.2007 to 14.10.2007 and the second petitioner/A4 was employed as Block Development officer during the period from 15.10.2007 to 12.06.2008.

3.1. The President and Vice President of the Panchayat, in violation of rules and regulations cheated the Government of its funds by committing forgery, falsification of Panchayat accounts. The Government entrusted the funds to the Panchayat for its need and development. Violating the Government Order in G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 and the Tamil Nadu Village Panchayats

(Receipts and Expenditure and Maintenance of the Accounts of Village Panchayats) Rules 2000, without following proper procedure, recorded Agendas and resolutions to their convenience, thereby Panchayat funds were not properly utilised and properly accounted. Further, before incurring expenditure the same has to be informed to the District Collector. The Block Development Officer has to inspect the Panchayat within its jurisdiction once in three months.

3.2. The allegation against the petitioner in Crl.O.P.No.2374 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.11,13,854/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2001 to 31.03.2002. A1/Panchayat President and A2/Vice President not utilised the sum of Rs.16,064/- for any Panchayat work, created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, further failed to maintain the records, registers and thereby both A1 and A2 made, wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioner/A3, charges are for offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.3. The allegation against the petitioner in Crl.O.P.No.2375 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.13,84,689/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2002 to 31.03.2003. A1/Panchayat President and A2/Vice President not utilised a sum of Rs.13,72,003/- for any Panchayat work, thereby created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioner/A3, charges are for offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.4. The allegation against the petitioners in Crl.O.P.No.2376 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.9,35,761/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2003 to 31.03.2004. A1/Panchayat President and A2/Vice President not utilised a sum of Rs.7,72,485/- for any Panchayat work, thereby created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioners/A3 to A8 & A11, charges are for the offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.5. The allegation against the petitioners in Crl.O.P.No.2377 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.9,64,278/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2004 to 31.03.2005. A1/Panchayat President and A2/Vice President not utilised a sum of Rs.6,62,463/- for any Panchayat work, created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, further failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioners/A3 to A6, charges are for offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.6. The allegation against the petitioners in Crl.O.P.No.2378 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.12,98,234/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2005 to 31.03.2006. A1/Panchayat President and A2/Vice President not utilised the sum of Rs.9,50,320/- for any Panchayat work, thereby created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, further failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioners/A3 to A5, charges are for offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.7. The allegation against the petitioners in Crl.O.P.No.2379 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.21,09,008/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2006 to 31.03.2007. A1/Panchayat President and A2/Vice President not utilised the sum of Rs.21,08,442/- for any Panchayat work, created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, further failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioners/A3 to A6, charges are for the offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

3.8. The allegation against the petitioners in Crl.O.P.No.2380 of 2015 is that the Tamil Nadu Government allotted a sum of Rs.49,26,703/- to A.Sathanoor Village Panchayat for meeting out basic requirements of the Village for the period from 01.04.2007 to 31.03.2008. A1/Panchayat President and A2/Vice President not utilised the sum of Rs.17,57,409/- for any Panchayat work, created forged documents, taken away the money and cheated the Government fund. Further projected the expenses as genuine without utilising for the Panchayat maintenance, further failed to maintain the records, registers and thereby both A1 and A2 made wrongful gain and caused wrongful loss to the Tamil Nadu Government. Hence, A1 and A2 committed offence under Sections 465, 468, 471, 477-A and 420 I.P.C. As against the petitioners/A3 & A4, charges are for offence under Sections 465, 468, 471, 477-A, 420 r/w 109 I.P.C. for not inspecting the Panchayat periodically, thereby abetted and aided the other accused A1 and A2 in commission of offence.

4. On the complaint of one Chandrasekaran, Block Development Officer, Ulundurpet, a case registered against A1 and A2 in Crime No.1 of 2009. On conclusion of investigation, charge sheets filed including the Block Development Officers before the concerned Court listing witnesses along with documents.

5. The primary contention of the petitioners is that as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997, which is said to be violated, for the reason there is no prior permission

accorded from the Block Development Officer for spending money from the general account. Since it is the Deputy Block Development Officer to monitor the accounts of Village Panchayat.

6. The learned counsel referring to G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 submitted under the caption "Accounts and Audit"- Rule 3.10, it is clearly mentioned that the Deputy Block Development Officer is given the responsibility, exercised by the Extension Officer (Panchayats), re-designated as Deputy Block Development Officer (Panchayats). Their primary duty is to bring to the notice of the Inspector (Panchayats) any irregular resolution of the Village Panchayat or cases of defalcation of panchayat funds, for taking appropriate action under the Act. The Deputy Block Development Officer (Panchayats) should inspect all the panchayat within his jurisdiction, once in a quarter and complete the annual Audit of all the Village Panchayat between the 1st May and the 31st of July of the following year.

7. It is further submitted that the investigating officer had failed to look into the Government Order in its proper perspective and falsely proceeded against the petitioners, who are all Block Development Officers. The petitioners not caused any forgery, falsification of Accounts and tampered any records. The de-facto complainant, examined as L.W.1 had stated that for each Panchayat, to fulfill the basic requirements of the village, Government implementing four projects, for each project to maintain separate bank accounts. They are (i) General Fund, (ii) TNEB/TWAD Board Fund, (iii) Project Fund and (iv) NREGA Fund. Depending upon the population and requirement, on the direction of the District Collector, the Assistant Director (Panchayat) transfer the funds to each of the Block Development Office. Recording the same in the cheque register, thereafter the funds are transferred to the account of the Panchayat either by way of cheque or demand draft. Thereafter the same to be deposited in the bank account of the Panchayat and the funds to be properly utilised and accounted.

8. As regards A.Sathanoor Panchayat, the amount would be deposited in Indian Overseas Bank, Uludurpet in the following heads: General Fund Account No.17302, Village Account No.22533, NREGA Account No.01-73323, Project Fund Account No.17304 and TNEB/TWAD Board Account No.17303. The President and Vice President of the Panchayat are joint account holders. After passing appropriate resolution, approved by its President, Vice President and members, the same to be recorded in resolution register. If the expenditure is between Rs.10,000/- to Rs.1,00,000/- the Panchayat President can utilise the amount directly. If it is more than Rs.1,00,000/-, by way of public auction, Panchayat work to be allotted and thereafter, the Panchayat Engineer would oversee, measure and record the value of the work in the M-book. As per the record, payments would be released. Further on the approval of the Vice President, the President can make payment from the Panchayat General fund. To make payment from TNEB/TWAD Board and NREGA account, the President has to get approval

from the Block Development Officer. This condition later substituted by Deputy Block Development Officer as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997.

9. In this case, during the relevant period A1 and A2 were the Panchayat President and Vice President, who withdrew amounts under various heads, without properly accounting the same. L.W.2/Assistant of the Panchayat President, confirms it is the Panchayat President, who was in possession of all the records and registers, who used to spent the Panchayat money on his own without giving any details or recording the same in the registers.

10. The Deputy Block Development Officer (Audit), who is examined as L.W.3 confirms that the Panchayat President and Vice President had acted independently on their own. Both failed to produce relevant records for Audit. Further for expenditure made, no proper vouchers produced. The

accounting procedure not properly followed despite several reminders. Hence, Audit prepared a report and sent to the Collector.

11. The Extension Officer (Panchayat) later the Deputy Block Development Officer (Panchayat) confirmed the Audit conducted, and reported the same. The Extension Officer is duty bound to periodically visit the Panchayat, confirm the availability of proper street lights, drinking water its quality and inspect civil work its maintenance and other facilities in the Panchayat. The Extension Officer/L.W.4 further confirms that the Panchayat President/A1 misappropriated the funds of the Panchayat, which is confirmed in the Audit report. Thereafter, report was sent to the Collector, who is the Inspectorate of the Panchayat, who had directed freezing of panchayat bank accounts.

12. The other witnesses L.W.5 to L.W.12 are the Panchayat ward members, who all confirm that in the Agenda, the subject of the resolution

would not be recorded, signature obtained from all the ward members and thereafter, according to the convenience of the Panchayat President it would be filled up later. The Assistant Director (Panchayat) confirms that during the Audit conducted by the Deputy Block Development Officers (Audit), namely, Senguttuvan, Ranganathan and Aadhirai, it was found expenditure incurred, no proper voucher maintained, further the Panchayat President failed to produce relevant records and vouchers despite several reminders. Hence, a report to the District Collector submitted, who directed the Block Development Officer/L.W.1 to lodge a complaint against the President and Vice President of the Panchayat.

13. The Branch Manager, Indian Overseas Bank confirms maintenance of four accounts by the Panchayat. He further confirms that the amount required for the Panchayat can be obtained by way of cheque signed by both the President and Vice President or by bearer cheques, to withdraw cash from the accounts. With regard to accounts, namely, NREGA,

TNEB/TWAD Board and Project Fund, only on the orders of the Block Development Officer, withdrawal can be made from these accounts. Apart from it, he has not stated anything more. Thus the entire case proceeds against the petitioners/Block Development Officers on the premises that no periodical inspection conducted and accounts not properly monitored, thereby allowed A1 and A2 to withdraw funds of the Panchayat without any control and thereby aided A1 and A2 in cheating the Government funds.

14. It is further submitted that as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997, it is clear that the periodical inspection and verification of the accounts, to be carried out by the Deputy Block Development Officer, the statement of the Deputy Block Development Officer (Audit), Extension Officer (Panchayat) and Assistant Director (Panchayats) confirm that the Panchayat President on his own independently and arbitrarily, utilised the funds without proper accounts. Further Panchayat President failed to produce vouchers and records for audit

inspection. The Assistant Director (Panchayat) confirms dictatorial functioning of Panchayat President, further none of the witnesses or documents, would lead to show that the petitioners/Block Development Officers had aided or abetted A1 and A2 in cheating the Government funds. Further the petitioners are all now retired from the service.

15. The investigating officer written to the District Collector, Villupuram informing that on the complaint of de-facto complainant/L.W.1, it was found that the Panchayat President and Vice President during the period from 26.10.2001 to 30.01.2008, not properly accounted and utilised of Government funds, hence the Block Development Officer, who served during this period, are being prosecuted.

16. Further in the case of S.Dharmasivam, serving Block Development Officer, who was also projected for lack of control over the President and Vice President in utilising and spending the Panchayat funds.

Departmental proceedings initiated by the Collector, Villupuram vide his proceedings in Na.Ka.Pa./A2/2455/2010 dated 12.11.2010, called for an explanation and on the explanation dated 25.11.2010, finding that the Block Development Officers are entrusted with various other works, such as implementation of (1) Indira Ninaivu Kudiyirupu Thittam, (2) Samboorna Gramin Rojkar Yojana-2, (3) Mazhai Neer Segarippu, (4) Muzhu Sugadhara Thittam, (5) Providing basic facilities to the people in Panchayat, (6) Accounting for Cement, Steel, Doors, Windows and monitoring projects, further they have to address public grievances, attend periodical review meetings with the Collector. Considering all these aspects in the case of S.Dharmasivam, Block Development Officer, the Collector had censured and dropped the case against him.

17. The petitioners are retired Block Development Officers. Since there is no possibility of departmental action, the prosecution has been launched. For this reason slapping criminal case and arraying the petitioners

as accused along with the Panchayat President and Vice President, is not proper.

18. He further submitted that G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 assigns duty only to the Deputy Block Development Officer and not to the Block Development Officer. The petitioners are aged persons, retired from Government service, several years back. Due to the pendency of the above cases, their terminal benefits not paid. They are suffering from age related ailments, one step in the grave, facing ignomy.

19. The learned counsel further submitted that uncontroverted statement of witnesses would go to show that there is no case made against the petitioners. Added to it, as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 and the Tamil Nadu Village Panchayats (Receipts and Expenditure and Maintenance of the Accounts of Village

Panchayats) Rules 2000, the petitioners are not responsible and authorised officers. Added to it, there is inordinate delay in registration of the case and thereafter filing of the final report, no reason given for the delay. Hence, the petitioners prayed for quashing of the case against them.

20. Learned Additional Public Prosecutor appearing for the respondent-Police submitted that the petitioners posted as Block Development Officers during the period from 30.08.2001 to 12.06.2008. A1 is the President and A2 is the Vice President of the Panchayat. Both in violation of G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 and The Tamil Nadu Village Panchayats (Receipts and Expenditure and Maintenance of the Accounts of Village Panchayats) Rules 2000, withdrawn the Panchayat amount at their own will, without passing appropriate resolution, thereafter spending some money for the Panchayat and swindled major portion of the same. Further the amount withdrawn not properly accounted with supporting vouchers. Huge sums of money

withdrawn by A1 and A2, utilised the same for their own benefit. L.W.2/Assistant of the Panchayat President confirms that records including the cheque book, M book, stock register, attendance register, meeting register and other registers all in custody of the Panchayat President. The Panchayat President is the only person, who was aware about the funds of the Panchayat, its withdrawal and utilisation. The accounts not properly maintained and recorded with supporting vouchers. The Panchayat President functioned in a dictatorial manner, no one dared to question him. A1 was the President of Panchayat from 26.10.2001 till 30.01.2008, who misappropriated huge sums of money to the tune of Rs.76,39,186/- without proper accounts. L.W.3/Deputy Block Development Officer (Audit), who conducted Audit inspection, submitted audit report. L.W.4/Extension Officer of the Panchayat and the Assistant Director (Panchayat)/L.W.13 confirm the same. The statement of ward members/L.W.5 to LW.12, confirm A1's arbitrary style of functioning. The Collector ordered freezing of the Panchayat account and directed to lodge a complaint against Panchayat President and Vice President.

On the complaint of L.W.1, the respondent police registered a case and thereafter on collection of records and statement of ward members and bank witnesses, and finding the defalcation and misappropriation committed by the President and Vice President, charge sheet filed.

21. The Additional Public Prosecutor further submitted that the case against the petitioners/Block Development Officers is that they are required to conduct periodical inspection once in three months, verify the records, conduct physical verification of the on-going projects, ensure proper utilisation of the Panchayat funds for the project. See to that, civic, sanitation and other requirements of the Panchayat properly maintained by the President. The sum and substance is that the work of President and Vice President to be monitored and seen whether they function for the benefit of the villagers. In case of any violation, improper accounting, misappropriation of funds, the same to be immediately brought to the notice of the Inspector of Panchayats/Collector to take remedial action.

22. In this case almost for nine years, A1 as President was allowed to have his own way in utilising Panchayat funds, A2 as Vice President for the period of five years. The Block Development Officer failed to monitor and control the President and Vice President of the Panchayat and failed to inform the Collector about the misdeeds of A1 and A2. Hence, the petitioners/Block Development Officers in a covert manner abetted A1 and A2 in commission of the offences. Hence, the petitioners made accused in these cases. The points raised by the petitioners with regard to interpretation of Government orders and other communication are matter of fact, which can be decided during trial. Hence, prayed for dismissal of the quash petitions.

23. Heard the learned Counsels appearing on either side and perused the materials placed before this Court.

24. Considering the submissions and on a perusal of the materials, it is not in dispute that the petitioners were the Block development Officers at

various point of time and A.Sathanoor Village, Ulundurpet Taluk was under their administrative jurisdiction. As Block development Officer, Ulundurpet Taluk, under them there were several other Panchayat and Panchayat Union falling within their jurisdiction. The Block development Officer is to coordinate with the Collector to get the funds transferred to their account and thereafter depending upon the plan approval, Finance Commission recommendation, the funds to be transferred to the concerned Panchayat. With regard to the allocation of funds from the Government to Block development Officer and Block development Officer to Panchayat, there is no quarrel. Once the funds are transferred to the Panchayat, thereafter, utilisation of funds are exclusive one. It is the President and Vice President, who are the joint signatories to the cheque to utilise the same for the benefit of the Panchayat. There are certain accounts maintained in the Indian Overseas Bank, viz., General Fund Account No.17302, Village Account No.22533, NREGA 01-73323, Project Fund Account No.17304 and TNEB/TWAD Board Account No.17303. Based on the requirement of the

Panchayat, the President and Vice President permitted to issue cheques jointly with their seal and withdraw the amount. As regards NREGA account, TNEB/TWAD Board Account and Project Fund Account, any withdrawal or transfer of funds can be done only on the orders of the Block Development Officer. These funds are permitted to be withdrawn as per the allocation and approved plan expenditure of the Panchayat, for which, the Block Development Officer has to pass appropriate orders. After transfer or withdrawal of the amount, it is for the concerned Panchayat President and Vice President to utilise the same for the purpose it was withdrawn and to account the same with appropriate vouchers and made necessary entries in the Registers and vouchers. The Deputy Block Development Officer (Audit) in the report records that there are certain works, carried out by the Panchayat, but not supported with appropriate vouchers and certain of the expenditure are without any vouchers.

25. Prior to the registration of the above cases, L.W.2, Assistant in the Panchayat office and son of former Panchayat president not informed any authorities, about the arbitrary functioning of A1 and A2, their involvement in misappropriation on the Panchayat funds. L.W.4 is the Extension Officer, who is duty bound to regularly visit the Panchayat, physically verify as to whether all the amenities such as Street light, drinking water, road and requirement of the villagers of the Panchayat are provided, and to oversee the working of the Panchayat. During this period, the Extension Officer though visited on several occasions, not made any complaint. The Assistant Director (Panchayat)/L.W.13 having equal responsibility, who receives the file, passes appropriate orders and in some cases, make recommendation, and forward the file to the Collector, who is the Inspector of Panchayat. The Assistant Director (Panchayat) is the bridge between the Collector, Block Development Officer and Panchayat President. It is not the case that earlier there was any complaint or objections in the functioning of the Block Development Officers till the above case registered. In this case, till the Deputy Block Development

Officer (Audit) report, no objection from any of the officer. Further, there was nothing pointed against the Block Development Officers, for abetting the Panchayat President and Vice President. The other witnesses, who are the ward members admit that they used to sign the resolution book. As regards the subject and agenda in the resolution book of the Panchayat, which is the primary document, none of the ward members raised any objections during the meeting or sent any complaint or representation to the Extension Officer (Panchayat), Deputy Block Development Officer, Block Development Officer, Assistant Director or to the Collector. Now after the Audit report, allegations are made by the ward members against the Panchayat President.

26. It is seen that as regards one of the serving Block Development Officers, namely, S.Dharmasivam, who was having over all supervision of A.Sathanoor Village, Ulundurpet is that of the petitioners. The Collector had accepted the explanation of the said Block Development Officer finding that the Block Development Officers are burdened Indira Ninaivu Kudiyirupu

Thittam, Samboorna Gramin Rojkar Yojana-2, Mazhai Neer Segarippu, Muzhu Sugadhara Thittam. Further fulfilling basic requirements of the villagers in Panchayat, oversee the project works, maintaining accounts of the Cement, Steel, Doors, Windows and other materials. Added to it, they are required to address the grievances of the villagers, attend Jamapandhi meetings. The Collector, considering the representations of the Block Development Officer found it appropriate and dropped departmental proceedings, censuring the act of Dharmasivam, Block Development Officer and no prosecution launched against the serving Block Development Officer. As regards the retired Block Development Officers, since there is no possibility of any departmental action, foisting of criminal cases against them is not the answer, utmost, it is only dereliction of duty, and no criminality could be attributed for the same. In view of the same, foisting a criminal case and to face the criminal trial on the charges of abetting and aiding is improper.

27. Further, G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 is clear, in which, specific directions issued that all accounts of the Panchayat to be jointly operated by President and Vice President and the payments to be supported by bill or voucher.

(i) In Rule 3.10 of the Audit and Accounts, it is stated that the Deputy Block Development Officer given responsibility and the Extension Officer (Panchayat) have been re-designated as Deputy Block Development Officer and their primary duty is to bring to the notice of the Inspector/Collector any irregular resolution of the village Panchayat or cases of defalcation of Panchayat funds for taking appropriate action under the Act.

(ii) The Deputy Block Development Officer (Panchayat) should inspect all the Panchayat in his jurisdiction at least once in a quarter and the Deputy Block Development Officer (Panchayat) should complete the annual audit of all the village Panchayat between the 1st May and the 31st of July of the following year.

(iii) In Rule 4.3., it is stated that the "Earmarked grants Account" to be operated by the President of the Village Panchayat which should be able to accord administrative sanction without any limit for both capital and maintenance works undertaken out of these funds (unless the Government has stipulated that the sanction of some other authority is required); all the relevant vouchers, registers and other records should be maintained only at the Village Panchayat office, and the Audit of this account will be done the designated officer through the Deputy Block Development Officer (Panchayat) and the Panchayat officers. Wherever, civil works are to be carried out it will be only by calling for tender/quotations as in the case of VP fund works.

(iv) In Rule 5.4. it is stated that there will be a major difference in the operation of the "Scheme Fund Account" and the other 2 accounts. Apart from the fact that the Village Panchayat cannot accord administrative sanction for the works at its level, in as much as the works under JVVT, IAY, CRSP, etc. are supposed to be executed through the Village Panchayat. As regards the scheme account while the Bank account will be maintained at the Village Panchayat level and operated jointly by the President and the Vice President, no payment will be made unless the work has been duly measured and check measured by the engineers concerned and the bill has been passed by the ABDO. The estimates and the allotment registers, M-books, Vouchers and the files concerned to be maintained at the Block office under the custody of the ABDO.

(v) In Rule 5.5. it has been clearly clarified that whether the President and Vice President cannot issue a cheque without passing of the bill by the ABDO, as the banker will not be aware as to whether or not all the formalities were followed before the issue of the cheque. All the relevant records, including the bills and M-Books, pertaining to scheme funds works are maintained only the Block office, the President and Vice President cannot issue a cheque in isolation and in the absence of the records. If they were to do, it should be construed as a case of defalcation.

(vi) In Rule 6.2. it is stated that the Deputy Block Development Officer is notified as the "prescribed officer" under Section 192 of the Tamil Nadu Panchayats Act, 1994.

(vii) In Rule 7. it is stated that a consolidated monthly statement of classified receipts and payments for all the 3 accounts to be compulsorily placed before the Village Panchayat as its monthly meeting by the President and after approval, the same should be sent to the Inspector/Collector (with a copy to the Deputy Block Development Officer (Panchayats)) within 7 days of the meeting of the Panchayat.

(viii) In Rule 9, the responsibilities of the Block Development Officers/Panchayat Union Commissioner suggested that the B.D.O/P.U.C. will stand divested of all his responsibilities with regard to Village Panchayat administration. The BDO/P.U.C. Will confined to the Panchayat Union Administration and the implementation of Noon Meal Programme, Small Savings, Social Welfare schemes Eye camps and execution of works entrusted to Panchayat union under DDP and MPLAD.

28. Thus in unequal terms, as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997, Block Development Officers have been divested of all supervision and over all control of the Panchayat and the same has been entrusted to the Deputy Block Development Officer. As per the the Tamil Nadu Village Panchayats (Receipts and Expenditure and Maintenance of the Accounts of Village Panchayats) Rules 2000, the rules have been contemplated for payments from the Village Panchayat funds, etc., in which Rule 41. stipulates as follows:

41. Defalcation or loss of moneys or stamps

(1) Any defalcation or loss of moneys or stamps belonging to a Village Panchayat shall be reported immediately after discovery by the president or any one of the inspecting officer to the Inspector and Auditor appointed under section 193 of the Act.

A further and complete report shall also be submitted to such Auditor as soon as may be after the matter has been fully enquired into, by such inspecting officer setting forth the nature and the extent of the defalcation or loss. The errors or neglect of rules by which such defalcation or loss was rendered possible, and the prospects of effecting a recovery.

(2) Loss by theft or otherwise of any property belonging to a Village Panchayat shall also be reported by the president or Inspecting officer to the Auditor, if the purchase value of the property exceeds rupees one thousand.

(3) The submission of the reports prescribed by sub-rules (1) and (2) shall not be deemed to debar the Village Panchayat or the Executive Authority from taking such further action as may be considered necessary.

29. Thus the Block Development Officers as per G.O.(Ms).No.92 Rural Development (C.III) Department, dated 26.03.1997 has been divested responsibilities with regard to Village Panchayat Administration and it is the Deputy Block Development Officer, Extension Officer and other inspecting officers to report to the Inspector of Panchayat about any defalcation and not the Block Development Officers alone entrusted with any specific responsibility, as regards Panchayat and its functioning.

30. Thus looking the case from any angle, it is clear that the Deputy Block Development Officer has been given responsibility of Extension Officer (Panchayat), who are assigned standard duty to bring to the notice of the Inspector (Panchayats)/Collector any irregular resolution of the Village Panchayat or cases of defalcation of Panchayat funds for taking appropriate action. The Block Development Officer will stand divested of all his responsibilities with regard to Village Panchayat administration and as per G.O.Ms.No.93, they are given supervision in the taluk and assigned the duties of implementation of Noon Meal Programme, Small Savings, Social Welfare schemes Eye camps and execution of works entrusted to Panchayat union under DDP and MPLAD. In view of clear demarcation of duties and responsibilities, no case is made out against the petitioners, who are Block Development Officers. In view of the same, continuation of proceedings against the petitioners would amount to abuse of process of law. Hence, the proceedings against the petitioners/Block Development Officers in

C.C.Nos.88 to 94 of 2009, pending before the learned Judicial Magistrate No.1, Ulundurpet, are hereby quashed.

31. Though the Accused Nos.9 and 10 in C.C.No.90 of 2009, who are also Block Development Officers, have not filed any quash petition, they stand on the same footing. Hence, the proceedings against the Accused Nos.9 and 10 in C.C.No.90 of 2009 pending before the learned Judicial Magistrate No.1, Ulundurpet, are also hereby quashed.

32. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

11.11.2022

Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
rsi

To

1.The Sub Inspector of Police,
District Crime Branch,
Villupuram 605 602.

2.The Judicial Magistrate No.1,
Ulundurpet.

3.The Public Prosecutor,
High Court, Madras.

M. NIRMAL KUMAR, J.

rsi

Pre-delivery Common Order in
Crl.O.P.Nos.2374 to 2380 of 2015

11.11.2022