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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NOS.2582 & 8017 OF 2019

AND

CRL.M.P.NOS.1665 & 4343 OF 2019

M.Asokan ...Petitioner in Crl.O.P.No.2582/2019

R.Gunasekaran ...Petitioner in Crl.O.P.No.8017/2019

Vs.

T.Aravind ...Respondent in both Crl.O.Ps.

COMMON PRAYER : Criminal Original Petitions have been filed under Section 482 Cr.P.C. praying to call for the records and quash the summons and all further proceedings in C.C.No.5 of 2015 presently on the file of the Judicial Magistrate No.1, Attur, Salem.

For Petitioner : M/s.K.P.Anantha Krishna
in both Crl.O.Ps

For Respondent : No appearance
in both Crl.O.Ps

COMMON ORDER

These Criminal Original Petitions are filed by the then Commissioner of Municipal Corporation and the then Government Pleader, who were arrayed as A1 and A1, to quash the Calender Case.No.5 of 2015 pending on the file of the learned Judicial Magistrate No.I, Attur, Salem.

2. Mr.Aravindan, a practising Advocate and also a member of the Sola Velalar Shanmugam Trust, Salem, has filed a private complaint alleging that the property of the Sola Velalar Trust has been acquired by corrupt procedure enabling a wrong person to enrich and thereby, these petitioners have committed fraud and misappropriation of Rs.77,18,281/-. A specific allegation made in the complaint against these petitioners is extracted herein below:

"11. he complainant submit that Accused
1 M.Asokan, Salem Corporation Commissioner



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public servant disobeying law with intent to cause injury to Sola Velalars in Salem city including me and Accused 1 is a public servant framing an incorrect document in corrupt motive to favour Accused 3 with intend to cause injury to Sola Velalars in Salem city including me and Accused 1 public servant cheated and thereby dishonestly induces the person to deceive to destroy the Trust property and Accused 1 public servant who had registered a false document 1929 of 2013 in District Registrar office of Salem with intent to cause damage, injury to the Sola Velalars of Salem city including me with intent to commit fraud and that fraud had committed forgery, Accused 1 public servant Forgery of public record in favour of Accused 3, Accused 1 public servant had committed Criminal Misconduct and Accused 1 public servant had dishonestly, fraudulently, misappropriated Rs.77,18,218/- and the Municipal Corporation Commissioner M.Asokan public servant are liable to be tried to the fullest extent with the other Accused in the instant complaint in terms of Section 34 of Indian Penal Code, 1860. Further, when a person knowingly, intentionally deliberately involves in the above listed fraud and forgery, he renders himself liable for punishment under Sections 166, 167, 420, 463, 466, 467, 471 of IPC and also under Section 13(1)(c), 13(2) of Prevention of Corruption Act and as such Accused No.1 M.Asokan public servant should be punished under Sections 166, 167, 420, 463, 466, 467, 471 of IPC and also under Section 13(1)(c), 13(2) of Prevention of Corruption Act.

12.The complainant submit that Accused 2 R.Gunasekaran Standing counsel member Salem Corporation public servant disobeying law with intent to cause injury to Sola Velalars in Salem city including me and Accused 2 is a public servant framing an incorrect document in corrupt motive to favour Accused 3 with intend to cause injury to Sola Velalars in Salem city including me and Accused 2 public servant cheated and thereby dishonestly induces the person to deceived to destroy the Trust property and Accused 2



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public servant who had given opinion to register a false document 1929 of 2013 in District Registrar office of Salem with intent to cause damage, injury to the Sola Velalars of Salem city including me with intent to commit fraud and that fraud had committed forgery, Accused 2 public servant Forgery of public record in favour of Accused 3, Accused 2 public servant had committed Criminal Misconduct and Accused 2 public servant had dishonestly, fraudulently, misappropriated Rs.77,18,218/- and Further, when a person knowingly, intentionally deliberately involves in the above listed fraud and forgery, he renders himself liable for punishment under Sections 166, 167, 420, 463, 466, 467, 471 of IPC and also under Section 13(1)(c), 13(2) of Prevention of Corruption Act and as such Accused No.2 R.Gunasekaran public servant should be punished under Sections 166, 167, 420, 463, 466, 467, 471 of IPC and also under Section 13(1)(c), 13(2) of Prevention of Corruption Act.

3. The background of the complaint is that, the acquisition of land for a public purpose namely widening of the road for formation of approaching roads at Oxford bridge and at Gunpoint bridge a piece of land owned by the Sola Velalar Trust, which is governed by the Scheme of civil Court decree sought to be acquired. After causing due notice to the land owners, land has been acquired and the compensation has been deposited in the Trust account. Since there is a dispute among the Trustees regarding management of the said Trust, the respondent, in the private complainant in C.C.No.5 of 2015, has alleged that the petitioner and the other accused with an intention to cause injury to the Sola Velalar Trust in Salem district, has cheated and dishonestly induced the person to destroy the Trust property. One R.Gunasekaran, who is the petitioner in Crl.O.P.No.8017 of 2019, was the then Government Pleader is alleged to have been given an opinion in favour of persons who were not the representatives of the Trust. The Commissioner of one Salem Corporation has deposited the money in favour of wrong persons, thereby the sale deed registered under document No.1929 of 2013 is by fraud. The said private complaint is assigned C.C.No.5 of 2015 and summons were issued to the accused persons for the alleged offences under Sections 166, 167, 420, 463, 466, 467, 471 of IPC and also under Sections 13(1)(c), 13(2) of Prevention of Corruption Act. The sum and substance of the case is fraud, cheating, misconduct by public servants etc., which



document No.1929 of 2013 on the file of 30th respondent."

All those applications which were considered by the scheme Court, came to be dismissed on 18.06.2015 for non prosecution. While so, with same untenable reason, the impugned private complaint is filed, hence the same is liable to be quashed.

7. The facts of the case clearly show that for the public purpose, the property of the public Trust has been acquired by following due process of law. The petitioners herein are the public servants, discharging their duty. Property came to be acquired and compensation has been deposited in the account of the title holder. The 1st petitioner herein who claims to be the member of the Trust has no larger interest than the duly nominated Trustee under the scheme. Even if he claims to have any special interest over the property and objection for the acquisition of the Trust land, as the scheme Court is the appropriate forum and he has approached before the scheme Court by filing I.A.Nos.197, 198, 301, 406 of 2013 and 313 of 2019 and allowed those petitions to be dismissed for default. Hence he cannot give a criminal colour for the act of the public servants who have discharged their duty in accordance to law.

8. The dispute regarding the right to manage the Trust cannot be sorted out by way of filing private complaint against the public authorities who have discharged their duty in accordance with law in the acquisition proceedings. There is no iota of material to infer that they have committed fraud and misappropriated funds. If the respondent/complainant is of the view that the opinion of the Government Pleader regarding the Trust is wrong, it is for him to establish his right before the scheme Court.

9. In view of the aforesaid reasons, these two Criminal Original Petitions are allowed and the proceedings in C.C.No.5 of 2015 pending on the file of the learned Judicial Magistrate No.I, Attur, Salem is hereby quashed. Consequently, the connected Criminal Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

rpl



To,

1. The Judicial Magistrate No.1,
Attur, Salem.

2. (do through) The Chief Judicial Magistrate,
Salem.

+1cc to M/s.K.P.Anantha Krishna, Advocate Sr.No.35300

CrI.O.P.Nos.2582 & 8017 of 2019
and
CrI.M.P.Nos.1665 & 4343 of 2019

JPL (CO)
RVM(29/06/2022)