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Crl.O.P.No.8761 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8761 of 2017 and
Crl.M.P.Nos.6263 and 6264 of 2017 and 10726 of 2019

Bose Ebenezer

... Petitioner

vs.

1. The State

Rep by Inspector of Police,
Crime Branch CID,
Nilgiris Unit,
Nilgiri, Uthagamandalam.

2. E.Premkumar

(R2 impleaded as per order dated 08.08.2022
in Crl.M.P.No.12287 of 2022 in Crl.O.P.No.
8761 of 2017)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records pertaining to the C.C.No.23 of 2017 pending on the file of the Chief Judicial Magistrate, Coimbatore and quash the same by allowing the Criminal Original Petition against the petitioner concerned.



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For Petitioner : Mr.D.Udhayasuriyan
For Respondent-1 : Mr.L.Baskaran
Government Advocate (Crl. Side)
For Respondent-2 : Mr.R.Sreedhar

ORDER

This petition has been filed to call for the entire records pertaining to the C.C.No.23 of 2017 pending on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

2. The petitioner/A1 who is facing trial in C.C.No.23 of 2017 for offence under Sections 406, 408 r/w 34 of Indian Penal Code along with two other accused has filed this quash application.

3. The gist of the case is that the 2nd Respondent/de-facto complainant had sent a complaint on 11.05.2015 to the 1st Respondent by way of registered post stating that he is a member of Coimbatore Church of South India Diocesan. The properties of Coimbatore CSI Diocesan are registered in the name of CSITA (Church of South India Trust Association) under the



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Companies Act as charitable trust. The institutions like colleges, schools and other institutions like CSITA are receiving foreign funds as donation with tax exemption from the Government of India. The Coimbatore CSI Diocese includes Coimbatore, Nilgiris, Tiruppur, Erode, Salem, Namakkal, Krishnagiri, Dharmapuri District and several Schools and Colleges are functioning under the Management of Coimbatore CSI Diocese and the Coimbatore CSI Diocese is under the control of CSITA, Chennai. The 2nd Respondent made three allegations against the accused and 1st allegation is that Moderator Commissary Thomas Oman and 15 others have misappropriated the public funds to the tune of Rs.5 crore in constructions of building in CSI Ketty Engineering College in collusion with the auditor Tr.John Mathew . The 2nd allegation is that a false entry was made in Coimbatore CSI Diocean Auditing report that CSI Ketty Engineering College received a sum of Rs.90,71,711.88 from CSI Polytechnic, Salem as loan, thereby misappropriated the public funds and that apart Bishop T.Timothi Ravindran of Coimbatore CSI Diocesan and others knowingly passed resolution with the members and prepared an inappropriate Audit Report on 23.10.2013 for Tax exemption and sent the same to the CSITA, Chennai one month before passing the resolution by the Committee. The 3rd



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allegation is that for the year 2012-2013, without any permission from the committee former committee members viz., Mr.Bose Ebenezer, the petitioner herein, Mr.Asir Raj and Mr.Socratis misappropriated a sum of Rs.7,10,000.00/-, Rs.2,00,000/- and Rs.1,50,000/- respectively. As no action was taken on the said complaint, the 2nd Respondent moved this Court by way of Crl.O.P.No.33366 of 2014 and pursuant to the order passed by this Court on 8.04.2015 in the said O.P., a case was registered by the 1st Respondent and on completion of investigation, charge sheet was filed before the learned Chief Judicial Magistrate, Coimbatore in C.C.No. 23 of 2017 for the offences punishable under Sections 406, 408 r/w 34 of Indian Penal Code.

4. The contention of the Petitioner is that the 3rd allegation mentioned in the complaint only pertains to the Petitioner, in which he was arrayed as A1. During the course of investigation, out of a sum of Rs.7,10,000/- a sum of Rs.10,000/- has been adjusted against the expenses during the Financial Year 2013-2014 and the balance amount of Rs.7,00,000/- is pending as advance and further the Petitioner who was the Administrative Officer during



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2012-2013 in the Management Committee of the Coimbatore CSI Diocesan had submitted a certificate for expenses of Rs.7,10,000/- on 13.11.2013 stating that he has spent the amount for vacating the stay against CSI Diocesan in XXXI Sessions Court, Coimbatore. The Petitioner had produced the vouchers and receipts for the expenses incurred, which was not accepted by the present Executive Committee and the 2nd Respondent, who is the member of Coimbatore church of South India Diocesan had lodged a complaint against the Petitioner and other accused with false allegations and after investigation charge sheet was laid and now the petitioner is facing the trial. Hence, the petitioner approached this Court by way of this Petition.

5. The learned counsel appearing for the Petitioner submits that as per order of this Court dated 28.04.2017, the Petitioner has deposited a sum of Rs.3,00,000/- and as the Petitioner who is now aged about 80 years is suffering from memory loss and other health ailments, the son of the Petitioner, in order to erase the allegation and sin against the petitioner is willing to deposit balance sum and settle the issue amicably in respect of the first accused alone and hence the learned counsel for the Petitioner requested this Court to allow this Petition.



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6. The learned counsel appearing for the 2nd Respondent/de-facto complainant submits that the 3rd allegation in the complaint pertains to petitioner and two others, the petitioner is arrayed as A1 and the allegation against him is that without any permission from the Committee had misappropriated the funds of CSI Diocesan. He further submits that the 2nd and the 3rd accused said to have misappropriated a sum of Rs.2,00,000/- and Rs.1,50,000/- respectively produced no documents to justify the expense and genuineness of the vouchers to support their contention. He further submits that P.W.3-Sangeetha Ruby, who was the Cashier of CSI Diocesan, Coimbatore given a statement that the 1st Petitioner received the amount from her and submitted voucher as expenses, without any supporting document and further P.W.6-Socrates, who was an Advocate and holding the post of Executive Committee Member (2012-2013) at CSI Diocesan, CBE gave statement that he had not received any amount from the petitioner regarding the legal expenses and other connected expenses and that apart there are many witnesses who clearly state about the misappropriation committed by the Petitioner and therefore requested this Court to dismiss this petition.



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7. A Counter Affidavit has been filed by the Respondent police wherein it is stated that the petitioner who was arrayed as A1, along with other accused said to have misappropriated the funds of CSI Diocesan to the tune of Rs.7,10,000/- and during investigation, the investigation officer examined 19 witnesses and recorded 161 (3)Cr.p.c. statements, collected 19 documents and sufficient materials against the Petitioner, filed charge sheet against the accused. The Trial Court on perusal of materials produced finding prima facie case against the accused taken the charge sheet on file, taken cognizance and issued summons to the petitioner.

8. Learned Government Advocate (Crl.side) appearing for the 1st Respondent reiterated the averments made in the counter affidavit and stated that now the case is in the stage of trial and the points raised by the petitioner can be decided only during trial and not in this quash application. He therefore prays for the dismissal of this petition.

8. Heard both sides. Perused the records.



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9. From the records, it is seen that this Court has granted an order of interim stay on 28.04.2017 by directing the Petitioner to deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs Only), on the file of Chief Judicial Magistrate, Coimbatore and the said order has been complied with by the petitioner, which was recorded by this Court on 13.06.2017. Thereafter on 19.01.2022, this petition was dismissed for non-prosecution and the same was restored vide order of this Court dated 25.03.2022. When the matter was taken up on 10.06.2022, a representation was made by the learned counsel for the petitioner that the son of the Petitioner is willing to deposit the balance amount of Rs.4,00,000/- in respect of the Petitioner alone to make good the alleged misappropriation and thereafter the matter was referred to Mediation Centre to effect settlement and as the settlement could not be effected, the matter is again listed before this Court.

10. The dispute is between the Ex-Management and the present Management with regard to the expenses incurred by the Ex-Management, which is given the criminal colour in the case of the Petitioner. A perusal of the records would go to show that the witnesses have stated that the petitioner and other accused have misappropriated the funds of the CSI



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Diocesan and the expenses said to have incurred by them not supported by way of documents, further whether the Management ratified the expenses to be found out, and therefore this Court is of the view that the points raised by the petitioner in this petition necessarily to be raised during trial and not in this quash application.

11. In view of the same, this Criminal Original Petition is dismissed.

12 . Considering the fact that the petitioner is an aged person and lost his memory, further suffering from various age related health ailments, the presence of the petitioner shall not be insisted by the Trial Court unless his presence is absolutely necessary. The trial Court shall proceed with the trial and complete the same as early as possible, without any delay. Consequently, connected Miscellaneous Petitions are closed.

12.10.2022

Index : Yes/No
Internet : Yes/No
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To

1. The Inspector of Police,
Crime Branch CID,
Nilgiris Unit,
Nilgiri, Uthagamandalam.
2. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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