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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.24341 of 2017

&

Crl.M.P.Nos.14078 & 14079 of 2017

1.G.Sailakshmi
W/o.Gurunathan

2. R.Subramanian
S/o.Rajapatha Asari

...Petitioners/ Accused 3 & 5
Vs.

1. State through
The Inspector of Police,
CBCID Nammakkal,
Namakkal District.
(Crime No.1/1998)

...Respondent/ Complainant

2. M. Balu ... 2nd Respondent/ de-facto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.22 of 2006 pending on the file of Judicial Magistrate, Namakkal and quash the same.

For Petitioners : Mr.R.Ganesh Kumar

For Respondents : Mr.S.Vinoth Kumar

Government Advocate (Crl.side) for R1

: Notice sent. Service awaited for R2

ORDER

This petition has been filed to quash the final report filed in C.C.No.22 of 2006 on the file of learned Judicial Magistrate, Namakkal for the offences under Sections 120(b) read with 406, 467, 471 read with Section 34 of I.P.C.

2. The crux of the charge against the petitioners is that the petitioners, who stood as mediators for purchasing the property for Kalaimagal Sabha, have received excess money as against the true value of the property sold to the Kalaimagal Sabha. Though originally A1 to A5 were arrayed as accused, the present petitioner A3 is the wife of A4 and A4 was already discharged from the charges by this Court vide its order dated



22.12.2011 made in CrI.R.C.No.1464 of 2011 and in similar set of cases, this Court vide its order dated 21.02.2012 in CrI.O.P.Nos.7827, 20841 and 24948 of 2007 has quashed the final report filed against the other accused, mainly on the ground that excess amount received by the petitioners therein as against the value mentioned in the document, as a mediator, would not give rise to any criminal offence. On a perusal of entire final report it is seen that there is no materials collected by the prosecution to show that there was conspiracy as between the accused. In an earlier order dated 21.02.2012 passed by this Court in CrI.O.P.Nos.7827, 20841 and 24948 of 2007, it was held in paragraphs 9 and 10 as follows:-

"9. A perusal of the charge sheet in all the three cases would make it abundantly clear that there are definite and specific allegations made only against the main accused, viz., one John, who has been arrayed as A1 in all the three cases and he is the General Manager of the Kalaimagal Sabha and he is in-charge and responsible for the business affairs of the Kalaimagal Sabha and there is no allegation made against the petitioners, who have been arrayed as A2 in respect of collection of deposits from the public or in respect of handling the said money transactions and they have been implicated only on the basis of the allegation of conspiracy. It is relevant to state that the materials available on record, namely, the statements recorded under Section 161 Cr.P.C. do not make out a breach of contract entered into between the main accused and A1 and the petitioners who have been arrayed as A2.

10. It is pertinent to note, as pointed out by the learned Government Advocate (CrI. side), that this Court appointed a Joint Receiver as per the order dated 30.04.1999 in W.P.No.514 of 1999 for the purpose of selling the properties of the Kalaimagal Sabha on the basis of the time-bound programme either by public auction or calling for tenders and the Joint Receiver has been directed to distribute the sale proceeds of the properties so far purchased to the members of the Kalaimagal Sabha Society who had contributed for the same. During the said process even assuming that anyone of the petitioners, who have agreed to refund certain amount in respect of the alleged transaction of properties in the name of the



Kalaimagal Sabha, their conduct would not give rise to any criminal action."

3. Keeping in view of the judgement of this Court and considering the fact that the only charge against the present petitioners is that they have received the commission in excess, such act never be construed as an offence at all. Merely because a person dealing with the property has received a commission in excess cannot be forced to undergo the ordeal of trial.

4. In such view of the matter, similar benefit given to the petitioners in the aforesaid Crl.O.Ps will also enure to these petitioners also as the proceedings as against other accused have already been quashed by this Court and this Criminal Original Petition is liable to be allowed.

5. Accordingly, this Criminal Original Petition is allowed and proceedings in C.C.No.22 of 2006 pending on the file of Judicial Magistrate, Namakkal is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1.The Judicial Magistrate
Namakkal

2.The Inspector of Police,
CBCID Nammakkal,
Namakkal District.
(Crime No. 1/1998)

3.The Public Prosecutor
Madras High Court
Chennai - 104

+1 CC to Mr.R. Ganesh Kumar, Advocate sr 973.

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UM(CO)
SP(27/01/2022)