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Crl.O.P.No.1821 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.09.2022

Orders Pronounced on : 30.09.2022

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1821 of 2018
and
Crl.M.P.No.700 and 701 of 2018

Malladi Krishna Rao

... Petitioner

-VS-

Kondamuri Sri Hari Kusuma Kumar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the complaint in C.C.No.16 of 2017, pending on the file of the learned Judicial Magistrate, Yanam as the same is an abuse of process of law.

For Petitioner : Mr.M.Ravi

For Respondent : Mr. S.Doraisamy

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.No.16 of 2017, pending on the file of the learned Judicial Magistrate, Yanam.



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2. The respondent filed a private complaint alleging that the petitioner obtained a lease/licence of the Government land of an extent of 1600 sq.mts from Government of Puducherry on lease/licence on 23.03.1998 for running Old Age Home in the land comprised in T.S.No.B/25/1/03 on an yearly licence fee of Rs.24,960/- commencing from 01.03.1997 onwards for a period of 19 years. Thus, he was entrusted with the Government property for a specific purpose of Old Age Home and on his pressure, while he was Chairman, Pondicherry Housing Board, he constructed Old Age Home and running the premises in a part of the building. He was instructed from the Government not to sub lease any persons as per the condition of the licence agreement, dated 20.03.1998. However, the petitioner voluntarily, purposefully and dishonestly sub-let to the Gowthami Educational Society of an extent of 411 sq.mts out of an extent of 1600 sq.mts on 26.08.2005 for running Educational Institute on a monthly rent of Rs.5,000/- with 20% increase of rent yearly for a period of three years. Thus, he received an amount of Rs.60,000/- in the year 2005-06, an amount of Rs.72,000/- in the year 2006-07 and an amount of Rs.84,000/- in the year 2007-08 while he was a Minister of Puducherry. Totally, he received an amount of Rs.2,16,000/- from the Chairman of Gowthami Educational



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Society, thereby misappropriated the said sum for his own use. The accused was entrusted with the property of the Government of an extent of 1600 sq.mts on licence basis, but the petitioner/accused made use of that property for his personal gain by letting a portion of the property to the said Gowthami Educational Society. Thus, he cheated the general public being a public servant of Puducherry.

3. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

4. The petitioner has not in his personal capacity, entered into a lease with M/s.Gowthami Educational Society. The lessor in the lease deed dated 26.08.2005 is only Yanam Old Age Home represented by its Chairman, the petitioner herein, which is a registered society. Therefore, the petitioner in his personal capacity, has no role in the said lease and he is no way connected with the financial transactions. The said Yanam Old Age Home is a registered Society which has entered into lease deed with lessee and the same society, which has received monthly rent through out the tenancy for a period of 25 months from the lessee. He also produced the relevant records pertaining to the



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Yanam Old Age Home to substantiate the same. Further, the complaint has been lodged after a period of 12 years from the date of alleged occurrence merely to wreak political vengeance. He also produced the balance sheet of Yanam Old Age Home and it reveals that the entire amount of rental income has been received only by the said Yanam Old Age Home and the same is reflected in the balance sheet of the registered Society. After the lease period, they vacated the premises in the year 2007 itself. The license has been granted in favour of the Yanam Old Age Home, represented by its Chairman and there is no material to show that the petitioner in his personal capacity, stands to gain by the license agreement dated 20.03.1998.

5. The crux of the allegation is that a portion of the licensed premises has been leased out in favour of the third party for other purpose. At the best, sub-letting a portion of the licensed premises, if found to be contradictory to the conditions of the Licence Agreement would only result in revocation of the licence or any compensation, as provided in one of the condition of the very same license agreement dated 20.03.1998. Hence, there is no scope for initiation of criminal proceedings against the licensee either by the complainant or by the Court below. Further, the license agreement is a privity



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of contract between the Government and the Yanam Old Age Home, represented by its Chairman and when there is any violation of any condition in the said agreement, there is no scope for initiation of any proceedings against the party to the contract by an outsider and in any event, there is no scope for initiation of criminal proceedings against the petitioner. After complaint, the Trial Court recorded the sworn statement and had taken cognizance of the offences under Sections 409 and 420 of IPC. As far as the offence under Section 409 of IPC is concerned, no offence has been made out either by license agreement dated 23.03.1998 or by the lease agreement dated 26.08.2005.

6. It is relevant to extract the provisions of Section 409 of IPC, which reads as follows:-

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.- *Whoever, being in any manner entrusted with property, or with any domination over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits*



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criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The subject property was not entrusted to the petitioner in his personal capacity of a public servant or as a banker, merchant, factor, broker, attorney or agent, whereas the said property was licensed in favour of the said Yanam Old Age Home represented by its Chairman, of an extent of 1600 sq.mts, which is a registered Society for a period of 19 years. Therefore, no offence is made out under Section 409 of IPC as against the petitioner.

7. Insofar as the offence under Section 420 of IPC is concerned, even according to the complainant, it is not the case that the petitioner/accused has dishonestly induced any other person to deliver any property to him and that, in pursuance of the deception, any property delivered to him by any person who is alleged to have cheated to make out the offence against the petitioner under Section 420 of IPC. It is not the case of the complainant that he has been cheated, nor it is the case of the complainant that deceived person has parted with his property to the petitioner/accused. Thus, an entire reading of the



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complaint, it will not make out any offence under Section 420 of IPC.

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8. That apart, the respondent filed a private complaint under Section 200 of Cr.P.C., without any basis, that too, after a period of 12 years from the date of alleged occurrence and there is no explanation for the belated complaint. Thus, it is clear that only with an ulterior and malafide motive, to tarnish the reputation and image earned by the petitioner, the private complaint was filed and nothing else.

9. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;



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(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned



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11. Accordingly, the proceedings in C.C.No.16 of 2017 on the file of the learned Judicial Magistrate, Yanam, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are also closed.

30.09.2022

Index : Yes/No
Speaking Order: Yes/No
kv

To

The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

kv

order in Crl.O.P.No.1821 of 2018



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