



BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.17021 of 2021

and

Crl.M.P(MD)No.9216 of 2021

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G.Venkatesan

... Petitioner/Sole Accused

Vs.

1.The State of Tamil Nadu,

Represented by its Inspector of Police,

District Crime Branch,

Thanjavur District.

... 1st Respondent/Complainant

2.G.Mathanagopal

... 2nd Respondent/

Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to quash the FIR in Crime No.15 of 2021 dated 02.04.2021 under Sections 420, 408 and 477A of the Indian Penal Code on the file of the first respondent, Inspector of Police, District Crime Branch, Thanjavur District.

For Petitioner

: Mr.Isaac Mohanlal

Senior Counsel

for M/s.Isaac Chambers

For R - 1

: Mr.B.Thanga Aravindh

Government Advocate (Crl. Side)

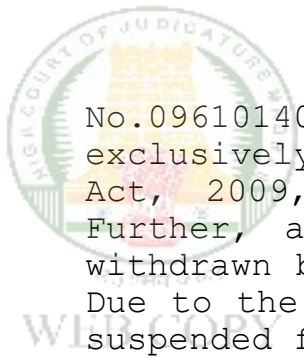
For R - 2

: Mr.C.Arul Vadivel @ Sekar

ORDER

This Criminal Original Petition has been filed to quash the FIR registered in Crime No.15 of 2021 on the file of the first respondent.

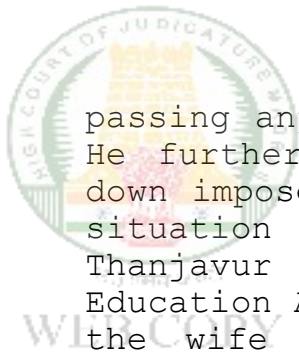
2.The case of the prosecution is that from the Academic year 2017-2018, the petitioner and the Correspondent have not submitted any School accounts despite various communications and resolutions passed by the Trust and because of the same, the Trust has not been able to file income particulars to the Government authorities. The petitioner hand and glove with the Correspondent had swindled the School money. On 22.06.2016, a sum of Rs.1,62,800/-, on 25.05.2017 a sum of Rs.2,33,866/-, on 14.05.2018 a sum of Rs.3,42,778/-, on 12.04.2019 a sum of Rs.5,10,300/- and on 05.05.2020 a sum of Rs.6,97,070/- were unlawfully withdrawn from the School account in Account



No.0961014017398 in the Indian Overseas Bank which is maintained exclusively for Right of Children to Free and Compulsory Education Act, 2009, funds released by the Government for the students. Further, alleged that on 05.05.2020, a sum of Rs.6,95,000/- was withdrawn by one Sangeetha, who is totally unrelated to the School. Due to the illegal activities of the petitioner, he was temporarily suspended from the post of Principal on 04.07.2020.

3.The learned Senior Counsel appearing for the petitioner would submit that the petitioner is the Principal of Star Lion Matriculation Higher Secondary School, Ayyampettai. He was appointed as Principal in the month of February, 2016 by the Correspondent of the School by one Thiruvengadam. The School is one among the various institutions owned and administered by Srimathi Ranganayaki Sri Sriramalu Educational and Public Charitable Trust. Already the second respondent filed a suit in O.S.No.188 of 2021 on the file of the Principal Sub Court, Thanjavur, wherein the petitioner is arraigned as the fourth defendant. For the very same set of allegations, now the present F.I.R has been registered as against the petitioner. In fact, the Correspondent requested to furnish a copy of the PAN card of the Trust and to pass necessary Board resolutions to operate the bank accounts of the School, there was no response. However, the second respondent replied by letter, dated 22.10.2018 stating that the Correspondent was delaying submission of the School accounts and as such, income tax filing for the Trust is also getting delayed. In response, the Correspondent vide reply, dated 29.10.2018 stated that only because of non-furnishing the copy of the PAN card, he was unable to access all the statements and documents from the Bank and submit the School accounts.

4.The petitioner and the Correspondent followed through with the income tax filing for the Trust for the financial year 2017-2018 and it was duly done on 31.03.2019. Therefore, the non-submission of School accounts are totally false and untrue. There was no delay in either submitting the Schools accounts or in filing the IT statements. In fact, the Correspondent filed a suit in O.S.No.173 of 2019 on the file of the Principal District Court, Thanjavur for injunction restraining the defendants from interfering and disturbing the administration of the School. The second respondent issued notice to the Correspondent on 22.11.2019 to show cause as to why he should not be suspended from the Trust for not submitting the school accounts before the Trust. By reply, dated 06.12.2019, the Correspondent denied all the averments made in the notice. However, the second respondent suspended the Correspondent for the period of six months vide resolution, dated 21.12.2019. It was challenged in the suit in O.S.No.6 of 2020 on the file of the Principal District Court, Thanjavur and also sought for injunction against the defendants therein from in any way interfering or disturbing the administration of the School and the said suit is pending. He also filed another suit in O.S.No.42 of 2020 on the file of the Principal District Court, Thanjavur restraining the defendants therein from

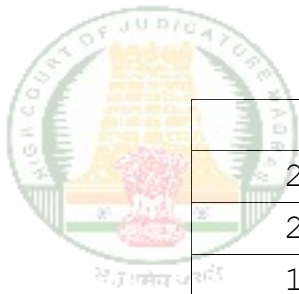


passing any resolution suspending or removing him from Trusteeship. He further submitted that on 05.05.2020, there was complete lock down imposed by the Government of Tamil Nadu due to corona pandemic situation and as such, the petitioner was unable to travel to Thanjavur to withdraw the Right of Children to Free and Compulsory Education Act, 2009, Government funds and as such, Sangeetha, who is the wife of the Correspondent, withdrew the amount for paying tuition fees for the students studying under the Right of Children to Free and Compulsory Education Act, 2009. Therefore, the allegation of misappropriation is totally false and malicious.

5.The learned counsel appearing for the second respondent would submit that all the suits mentioned by the petitioner are no way connected with the School. There is no nexus between the complaint and the said suits and in fact, the petitioner is not a party to the said suits. That apart, there is no civil suit pending in O.S.No.188 of 2021 on the file of the Principal Subordinate Court, Thanjavur as alleged by the petitioner. The said suit is pending between the Bank of India, Thanjavur Main Branch and one M.Vignesh and another. The second respondent and other Trustee one S.Kaliyamoorthy of the Trust have filed a leave petition in I.A.No.54 of 2021 to institute a suit before the Principal Sub Court, Thanjavur against the Correspondent and 9 others for removal of the Correspondent from the Trust and permanent injunction against him in any way interfering with the function and administration of the Trust and the affairs of the School. The petitioner is the fourth respondent in the said application and misappropriated the amount and also sought to return the said amount. The civil remedy is not a bar to initiate proceedings against the said person for the offence committed by him in the same transaction. Therefore, the veracity of the allegations cannot be evaluated and it would amount to factual probe of the case, which is impermissible while invoking under Section 482 of Cr.P.C.

6.Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

7.On a perusal of the complaint revealed that there is a current account stands in the name of the Principal of the School in the Indian Overseas Bank, Chakkarapalli Branch in current Account No.096101407398. It is exclusively meant for receiving fund from the Government of Tamil Nadu towards the tuition fees for the students studying under the Right of Children to Free and Compulsory Education Act, 2009. The Government of Tamil Nadu sanctioned various amounts to the School, which reads as follows:-



Date	Amount
22.06.2016	Rs.1,62,800/-
25.05.2017	Rs.2,33,866/-
14.05.2018	Rs.3,42,778/-
12.04.2019	Rs.5,10,300/-
05.05.2020	Rs.6,97,070/-

8. These amounts were received by the petitioner from the Government of Tamil Nadu in the said current account by transfer of fund. The petitioner issued a cheque for a sum of Rs.6,95,000/- in favour of Sangeetha, who is none other than the wife of Thiruvengadam and allowed her to take the money from the School account. Therefore, the Trust, suspended him from the post of Principal on 04.07.2020 and the new Principal was appointed for the School. That apart, since the petitioner failed to produce the original receipts, vouchers, books of accounts etc., the second respondent lodged a complaint on 06.07.2020 to take appropriate action and also for recovery of money. He was issued with C.S.R.No.167 of 2020. However, subsequently, it was closed. Therefore, the second respondent filed a petition seeking direction under Section 156(3) of Cr.P.C in Crl.M.P.No.255 of 2021 on the file of the learned Judicial Magistrate No.III, Thanjavur. Pursuant to the said direction issued, the F.I.R has been registered in Crime No.15 of 2021 for the offences under Sections 420, 408 and 477(A) of I.P.C.

9. It is seen from the First Information Report that there are specific allegations as against the petitioner, which have to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses *prima facie* commission of cognizable offence and as such, this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

10. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated **12.02.2019 - *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, which reads as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words,



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to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be



interdicted."

11. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence, this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file a final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Inspector of Police,
District Crime Branch,
Thanjavur District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-13711[F] dated 23/03/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-13945[F] dated 23/03/2022)

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