



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.03.2022

PRONOUNCED ON : 17.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD)No.19694 of 2021

and

CrI.M.P (MD)Nos.11046 & 11047 of 2021

WEB COPY

1.I.K.Subramaniam

2.I.A.Chidambaram

... Petitioners/Accused Nos.1 & 2

Vs.

I.C.Shanmugavelayutham

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to C.C.No.597 of 2021 on the file of the learned Judicial Magistrate No.1, Tirunelveli and to quash the same.

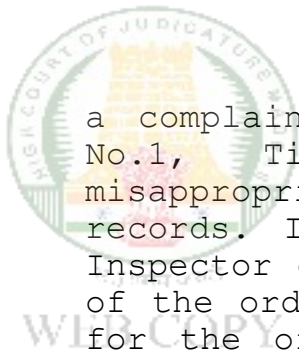
For Petitioners : Mr.V.R.Shanmuganathan

For Respondent : Mr.D.Nallathambi

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.597 of 2021 on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2.The petitioners are arraigned as Accused Nos.1 and 2. The first petitioner was the Secretary of Ramasamy Pillai Higher Secondary School, Ilanji, Tenkasi Taluk for the period from 23.05.2000 to 31.05.2009. Then from 05.08.2012 till 22.01.2016. He was also President of the said School from 01.06.2009 to 04.08.2012. The second petitioner was the Secretary of the School from 01.06.2009 to 04.08.2012 and the President of the said School from 05.08.2012 to 22.01.2016. While being so, the school accounts related to self-finance English medium sections and self finance Computer and Science sections were not subjected to audit, since no aid was given from the Government. Though the School's other accounts were subjected to audit till 2011-2012, however, in the year 2013, the School was directed to submit the accounts from 2001-2002 to 2012-2013. The Zonal Audit Officer, Madurai, had given report to the Director of School Education stating that during the Special Audit it was found that the School have not maintained proper collection register and cash register for the amounts received by the School in those self-finance sections. In this regard, one Pichaya, who was a member of Ilanji Kalvi Sangam, lodged



a complaint on 04.04.2013 before the learned Judicial Magistrate No.1, Tirunelveli, alleging that the petitioners have misappropriated the School funds without proper maintenance of records. It was forwarded under Section 156(3) of Cr.P.C to the Inspector of Police, District Crime Branch, Tirunelveli. On receipt of the order, the F.I.R has been registered in Crime No.11 of 2013 for the offence under Section 420 of I.P.C. After completion of investigation, it was found that the said complaint was false and the same was closed as 'mistake of fact' by the closure report, dated 29.04.2014.

3.On receipt of the referred charge-sheet, the said Pichaya filed a protest petition in Crl.M.P.No.6514 of 2014, in which, the learned Magistrate ordered for further investigation. As directed by the learned Magistrate, further investigation was conducted and found that the petitioners have not committed any offence as alleged by the said Pichaya and dropped the further investigation. To that effect, a report was filed and the same has been taken on file and accepted the same. It was also recorded on 23.01.2018 itself. After a period of two years, the respondent herein filed a petition under Section 190(1)(a) and 200 of Cr.P.C to take up the issue again as private complaint for the offences under Sections 420, 406 and 120 (b) of I.P.C r/w Section 34 of I.P.C in Crime No.11 of 2013. On receipt of the same, the learned Magistrate, by an order, dated 23.10.2021 found that there is a *prima facie* case to proceed further and accordingly had taken cognizance in C.C.No.597 of 2021 and issued summons to the petitioners.

4.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

5.Admittedly, the earlier complaint lodged by the said Pichaya is also one of the member of the Ilanji Kalvi Sangam and the same has been closed as 'mistake of fact' by a report, dated 29.04.2014. In fact, in his protest petition in Crl.M.P.No.6514 of 2014 further investigation was ordered and the same was closed even as early as on 23.01.2018. For the very same set of allegations, the present private complaint has been filed by the respondent in the very same crime number, which was already closed as 'mistake of fact'. It is relevant to extract the provision under Section 362 of Cr.P.C, which reads as follows:-

"362.Court not to alter Judgment._ Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its Judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."



Accordingly, no Court shall alter or review the order except to correct a clerical or arithmetical error.

6.As stated supra, the learned Magistrate already accepted the report submitted by the Inspector of Police, District Crime Branch, Tirunelveli, after conducting further investigation of the protest petition filed by the said Pichaya. Therefore, the learned Magistrate ought not to have entertained the very same complaint for the very same crime number by other member of the Society.

7.That apart, on a perusal of the records revealed that the said Ilanji Kalvi Sangam conducted extraordinary general meeting, in which 20 members participated including the respondent herein. In the said meeting, the accounts in the year 2000-2001 to 2012-2013 were submitted along with the audit report. The accounts submitted by the petitioners as well as audit reports were duly accepted by the members and passed resolution accordingly. Though the respondent did not sign the same, 14 persons were signed and passed resolution as early as on 27.04.2014 itself. If at all really aggrieved over the accounts submitted by the petitioners, the respondent could have very well lodged a complaint immediately. Whereas, the respondent kept quiet for a period of six years and when the other member lodged the complaint and the same was registered in Crime No.11 of 2013 and subsequently, closed as 'mistake of fact', he lodged the present complaint. Therefore, the present complaint lodged by the respondent is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

8.In view of the considered opinion of this Court, this Court is inclined to quash the entire proceedings as against the petitioners. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.597 of 2021 on the file of the learned Judicial Magistrate No.1, Tirunelveli, is quashed as against the petitioners herein. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

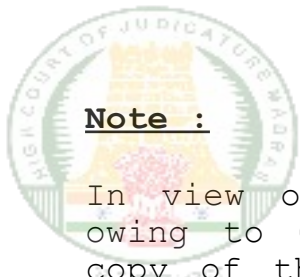
Assistant Registrar (CS I)

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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 Judicial Magistrate No.1,
Tirunelveli.

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

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-13057[F] dated 18/03/2022)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-13233[F] dated 21/03/2022)

Pre-Delivery Order made in
Crl.O.P (MD) No.19694 of 2021
17.03.2022

SS/25.03.2022 : 4P/5C