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Crl.O.P.No.7293 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.7293 of 2021 and
Crl.MP.No.4864 of 2021

G.K.Azhageashan

... Petitioner

Vs.

1. Inspector of Police,
Team – XVI,
Central Crime Branch,
Vepery,
Chennai 600 007

2.S.Sivasuriyan

... Respondents

PRAYER: Criminal original petition filed under Section 482 of Cr.P.C. to call for the records relating to the proceedings of the charge sheet in CC.No.5221 of 2020 on the file of the CCB/CBCID Metropolitan Magistrate Court, Egmore, Chennai and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Doraisamy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : No appearance



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ORDER

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This criminal original petition has been filed to quash the proceedings in CC.No.5221 of 2020 on the file of the CCB/CBCID Metropolitan Magistrate Court, Egmore, Chennai taken cognizance for the offences under Sections 420, 465, 468, 471 & 120(B) of IPC.

2. Though notice was served on the second respondent, no one appeared on behalf of the second respondent before this Court either in person or through pleader.

3. The case of the prosecution is that the defacto complainant lodged complaint stating that 'The Madras Sorting Employees Cooperative House Building Society (hereinafter called as 'the society') which was registered in the year 1965. However, it was not renewed periodically and accounts were not audited. It purchased 6.69 acres of land in Sathangadu Village to form lay out and thereafter laid out into 69 plots. The plots were sold out to various persons without paying registration charges by creating bogus rubber stamp and thereby misappropriated the society's fund and cheated the ex-chequer from paying the registration charges by impersonating the Special Officer. On



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receipt of the said complaint, the first respondent registered FIR in crime No.1375 of 2011 for the offence under Sections 423, 420, 465, 466 r/w 471 and 468 and 120(B) of IPC & 473, 474, 477(A) IPC r/w 109 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court.

4. There are totally 13 accused, in which the petitioner is arrayed as 13th accused. There is no specific overt act as against the petitioner to attract any of the offences as alleged by the prosecution. The Regional Deputy Registrar from September 2007 to November 2009 stated in his statement that till his retirement, the Society was registered on 01.03.1965 and on 30.12.1990, Chief Promoter of the Society, who is the first accused purchased land admeasuring 6.69 acres of land and laid out into 69 house plots excluding the places for public purpose i.e. park, play ground and road. However, the first accused failed to obtain permission from CMDA and DTCP approval. However, without obtaining any permission from CMDA or approval from DTCP, he sold out the land which were allotted for public purpose to an extent of 55 cents and misappropriated to the tune of Rs.2,50,000/- and created bogus stamp and without paying registration fees to the Government and thereby



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incurred loss to the Government. Thereafter, the society was dissolved and the

Sub Registrar (Housing) was appointed as Special Officer for the society.

Thereafter, the Society was wound up by the Deputy Registrar(Housing),

Chengalpet on 18.05.2007 and official liquidator was appointed. From the year

2001 onwards, the following persons acted as Special Officers of the Society:

- 1.M.Isakkimuthu (26.05.2001 to 30.04.2002)
- 2.G.Perumaal (01.05.2002 to 06.06.2002)
- 3.V.Kumar (07.06.2002 to 26.06.2002)
- 4.S.Lewis Alexander (27.06.2002 to 10.11.2002)
- 5.S.Nellaiappan (11.11.2002 to 11.02.2005)
- 6.A.Prabakaran (12.02.2005 to 24.11.2005)
- 7.E.Kannappan (25.11.2005 to 31.08.2006)
- 8.S.Jayaraj (01.09.2006 to 17.05.2007)

5. As per the statement of one S.Nellaiappan, who was the Sub Registrar of the Society from 11.11.2002 to 11.02.2005, he could not seize all the documents concerning the society, but he had collected records and handed over to the Chengalpet Deputy Registrar's Office. He did not aware what were the lands owned by the Society. Subsequently, one, Kumar was appointed as



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official liquidator for the society. As far as the petitioner is concerned, he was working as Cooperative Sub Registrar in the Office of the Deputy Registrar(Housing), Chengalpet from 27.04.2005 to 06.05.2008. Thereafter, he was transferred from the said post to Cooperative Sub Registrar, Fisheries, Office of the Assistant Director of Fisheries, Neelangarai and worked till 01.06.2009. Thereafter on 31.07.2016, he was retired from service. Now the petitioner is charged for the allegation as if the petitioner had seized all the documents of the Society, he would have prevented the subsequent registration and thus, he had failed in his duty. Therefore, no specific charge made out as against the petitioner except dereliction in his duty which is not an offence under IPC. If at all any action to be taken as against the petitioner, it is only by departmental proceedings for dereliction of duty. Though the charge has been levelled as against the petitioner, while he was acted as winding up officer, the prosecution failed to produce any iota of evidence to show that he was appointed as winding up officer and he failed to seize documents from the society.

6. It is also seen from the statement of all the witnesses, no one has spoken about the role played by the petitioner. The prosecution had examined



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39 witnesses and recorded their statement under Section 161 of Cr.P.C. They have collected so many documents and annexed along with the charge sheet.

On perusal of statement as well as the documents which were relied upon by the prosecution, they did not make out any allegation as against the petitioner in order to substantiate the charges. In fact, there is no material to question the petitioner under Section 313 of Cr.P.C. Therefore, there is absolutely no chance for convicting the petitioner since no material is available against the petitioner. Even assuming that there are materials against the petitioner, charge itself is that the petitioner failed to seize the document after the society became defunct. Therefore, the petitioner failed in his part while discharging his duties. Hence, the sanction under Section 197 of Cr.P.C. is mandate to charge the petitioner for any criminal proceedings. It is relevant to extract provision under Section 197(1) of Cr.P.C. hereunder:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—”



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7. Thus, the petitioner was being a public servant, to prosecute the petitioner, sanction is mandatory. Admittedly, before initiation of prosecution, no sanction was obtained by the respondent. Therefore, the entire proceedings is vitiated as against the petitioner since no sanction was accorded.

8. In view of the above facts and circumstances of the case, the impugned proceedings cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, the entire proceedings in CC.No.5221 of 2020 on the file of the CCB/CBCID Metropolitan Magistrate Court, Egmore, Chennai is quashed as against the petitioner alone and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

09.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The CCB/CBCID Metropolitan Magistrate Court,
Egmore, Chennai
- 2.Inspector of Police,
Team – XVI,
Central Crime Branch,
Vepery,
Chennai 600 007
- 3.The Government Advocate,
High Court of Madras

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