IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.10.2022

Pronounced on : 21.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15280 of 2020
and
Crl.M.P.No.5827 of 2022

L.K.Manoharan ... Petitioner / A2

Vs.

1.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Namakkal. ... 1st Respondent / Complainant

2.V.Nanigoundan ... 2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in FIR.No.14/Ac/2018, on the file of the 1st respondent, quash the same insofar as the petitioner is concerned.

For Petitioner	:	Mr.M.S.Palaniswamy
For Respondent-1	:	Mr.S.Udayakumar Govt.Advocate (crl.side)
For Respondent-2	:	No Appearance

O R D E R

Seeking to quash the proceedings in FIR.No.14/Ac/2018, on the file of the 1st respondent, the petitioner, who is A1, is before this Court, with the present Criminal Original Petition.

2. The gist of the case reads as follows:-

(i) The 2nd respondent – V.Nanigoundan, is the defacto-complainant. He is working as driver in Tamilnadu State Transport Corporation (Salem Division-1) (TNSTC). Tiruchengode Branch. The 1" accused – A.Velusamy is working as conductor in the same branch, who is also the Secretary of 'Anna Thozhil Sanga Peravai' in TNSTC (Salem Division-1). A2 - LK.Manoharan is the Secretary, Tamilnadu State Transport Corporation (Salem Division-1), Employees Co-operative Thrift and Credit Society, Salem. A1 and A2 demanded and accepted Rs.5,000/-, from the defacto-complainant, for themselves, for sanctioning loan to the defacto complainant. Hence, the case was registered in Crime No. 14/AC/2018 u/s 7(a) and 12 of the Prevention of Corruption Act, 1988, as Amended by the Prevention of Corruption (Amendment) Act, 2018, and the case is under investigation. Pending investigation, the petitioner/ A2 has filed the present petition u/s 482 of Cr PC to quash the F.I.R in respect of him.

3. Mr.M.S.Palaniswamy, the learned counsel appearing for the petitioner would submit that the petitioner is working as Secretary, Tamilnadu State Transport Corporation (Salem Division-I) Employees Co-operative Thrift and Credit Society. The Society registered under the Tamilnadu Co-operative Societies Act, 1983. The Society is an independent body not financed by State or Central Government or by quasi-Government bodies. It is established by the employees working in the Tamilnadu State Transport Corporation by constituting to the share capital of the Society. The Society entirely managed by an elected body of its members and as such, the Government has nothing to do in the affairs of the Society. The finance is required will be borrowed by the Society from the District Central Co-operative Banks and will be repaid as and when the Society recovers the loans granted. The relationship between the Central Co-operative Bank and the Society is that of a lendor and a borrower. The Society is an independent body governed by its own Bye-laws, Rules and Regulations.

4.The learned counsel would further submit that the Prevention of Corruption Act is independent of Indian Penal code and it is applicable only to persons / employees coming under the definition of Section 2(c) of the Prevention of Corruption Act. The Division Bench of this Court in W.P.No.28641 of 2019 and W.A.No.2253 of 2018, dated 6.03.2020, has laid down emphatically that the employees in a Co-operative Society cannot be proceeded under the provisions of the Prevention of Corruption Act and no prosecution can be launched by the 1" respondent police under Prevention of Corruption Act. The petitioner was arrested by the 1" respondent Police on 8.12.18 and FIR was filed against him under Sections 7(a) and 12 of the Prevention of Corruption Act, 1988. he was produced before the learned Special Judge / Chief Judicial Magistrate, Namakkal District, and remanded 15 days judicial custody. The petitioner later enlarged on bail and his suspension was also revoked. The Co-operative Societies Act is a self-contained Act. Any alleged corruption committed by any employee of the Co-operative Society can be investigated only by the Commercial Crime Investigation Wing (CCIW) Police and not by the 1st respondent, as the employee of Co-operative Societies will not fall under the definition of 'Public Servant', under Section 2(c) of the Prevention of Corruption Act, 1988. The petitioner is working at Salem, the alleged trap is not laid by the 1st respondent, the petitioner was not trapped with corrupt money at his office, as per the story of the 1st respondent, the money was demanded and received by one Velusamy, the Secretary Anna Thozir Peravai. The petitioner is no way connected with the above said Velusamy and whatever Velusamy said is not evidence. Depending on the verbal statement of the said Velusamy, the 1st respondent cannot assume without proof that the petitioner has committed an offence.

5. The petitioner is not a public servant because he does not fall any one of the descriptions given for a public servant under Section 2(c)(ix) of the Prevention of Corruption Act, 1988. The FIR registered against the petitioner is illegal and without jurisdiction. The learned counsel for the petitioner, in support of his contention, relying on the Judgment of the Apex Court in ***Thalappalam Ser.Coop.Bank Ltd., and Ors. Vs. State of Kerala and Ors*** reported in ***(2013 16 SCC 82)***, would contend that just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Co-operative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the Society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Co-operative Societies Act and not on the authorities under the Co-operative Societies Act. Hence, the learned counsel prays for quashing of the FIR.

6. Mr.S.Udayakumar, the learned Govt.Advocate (crl.side) appearing for the 1st respondent would submit that the Society is financed and controlled by the Government and the Society comes under the purview of Prevention of Corruption Act. From the pay bill of the complainant and other loan applicants/witnesses reflected that the subscription for the Thrift Society was deducted from the salary. There is a practice in TNSTC that the amount for the repayment of loan also deducted from the salary of its employees. The Share capital and subscriptions amounts of the Society were also utilized by the TNSTC, thereby, it is crystal clear that the funds in connection with Society and TNSTC are interchangeable one. The proposition in WP No.28541 of 2019 and WA No.2253 of 2018 will not apply to the facts of the present case, as in that case, the writ petitioner was working as Secretary of Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society and the Society was of the Employees Private Engineering Company for their benefits. But, the Society worked by the A1 is for the employees of quasi-Governmental bodies i.e., Transport Corporation. The case on hand is quite different from the Society mentioned in the writ petition. The control and functioning of the Society will be decided only during trial, by examining the witnesses and not at this stage

7. It is his further contention that the petitioner was arrested by the 1st respondent Police on 08.12.2018, FIR was filed against him under Section 7(a) and 12 of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act. 2018, he was produced before the learned Special Judge Chief Judicial Magistrate, Namakkal District and remanded to 15 days judicial custody. He was later enlarged on bail and subsequently, his suspension was revoked. It is pertinent to note that after the arrest and remand, the suspension order served by on the petitioner by the Deputy Registrar of Co-operative Societies not questioned by him with regards to the legality of the suspension order and the competency of the Deputy Registrar of Co-operative Societies. It is crystal clear that the Society is under the administrative control of the Registrar of Co-operative Societies of the Government of Tamilnadu. The Deputy Registrar of Co-operative Societies of the Government of Tamilnadu is the competent officer to appoint and remove the Petitioner/Accused. The petitioner is the public servant who is working under the administrative control of Registrar of Co-operative Societies of the Government of Tamilnadu. The fact of the case permits this respondents to take action against the petitioner under the Prevention of Corruption Act and accordingly, they registered the FIR, and proceeded with the investigation.

8. The petitioner is an employee of the State Transport Corporation, the Thrift and Credit Society comes under State within the meaning of Article 12 of the Constitution and can be prosecuted under the Provision of the Prevention of Corruption Act, 1988, Every employee of the Co-operative Society is employee of the State or Central Government and funds from the State Government is received by the Society and entire funds in the Society is paid by the Members of the Society as well as Government, as share capital. The offence committed by the accused would fall within the ambit of Section 7(a) r/w 12 of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act, 2018. Section 12 is emphasized that "Whoever abets any offence punishable under this act, whether or not that the offence is committed in consequence of that abetment shall be punishable with imprisonment for a term which shall not be less than 3 years, which may extend to 7 years and shall also be liable to fine." Moreover, the offence of abetment can be made out the Public servant as well as non public servants. i.e. Private individuals and the same would be attracted whether or not that offence is committed in consequence of that abetment.

9. The Co-operative Societies is an authority registered under Tamil Nadu Co-operative Societies Act being a state Act as mentioned u/s 2(c)(ii) of the Prevention of Corruption Act, 1988 and any person including employees of Co-operative Societies in the service and pay of an authority i.e registered Co-operative Society under the control of State Government, as per the provisions of Tamil Nadu Co-operative Societies Act, comes within the definition of 'public servant' as defined u/s 2(c) of the Prevention of Corruption Act, 1988. The registered Co-operative Society owes a public duty to workers and employees in Tamilnadu State Transport Corporation, Salem Division-I being a community at large and an interest and State is having control over the registered Societies, as per clause (b) of Section 2 of the Prevention of Corruption Act, 1988 in which public duty is well defined.

10. It is submitted that any registered Co-operative Society is an authority, since it has been registered under Tamil Nadu Co-operative Societies Act, which is a State Act as defined under Section 2(c)(iii) of the Prevention of Corruption Act, 1988 and any person in the service of the authority under the control of the state as defined under section 2(c)(ii), is a public servant. The above definition u/s 2(c) of the said Act very clearly and prima facie proves the fact beyond all reasonable doubt without any ambiguity that A2 being paid Secretary at the service of

registered Co-operative Society, being an authority established under the Tamil Nadu Co-operative Societies Act, 1983 being State Act squarely comes within the definition of public servant and A2 being the Secretary of the Co-operative Society established for serving the employees of Tamilnadu State Transport Corporation with the community of employees having and interest at large as defined u/s 2(b) of the Prevention of Corruption Act, 1988 owing public duty under the control of the Registrar of the Co-operative Societies of Tamil Nadu State and also getting financial assistance in form of loans from Central Co-operative Bank, which is getting financial aid from the state Government

11. The learned Government Advocate relying on the Judgment of the Apex Court in ***"Govt of Andhra Pradesh Vs. P.Venkureddy*** reported in ***(AIR 2002 SC 3346)*** would contend that the present Prevention of Corruption Act, 1988 with wider definition of "Public Servant" was brought into force to purify public administration when legislature has used such comprehensive definition of "Public Servant to achieve the purpose of punishing and curbing growing corruption in Government and Semi-Government departments. It would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of "Public Servant" therefore deserves a wide construction. Any "Public Servant defined

under the Prevention of Corruption Act, 1988 is to discharge his duties only in accordance with the rules and regulations framed by the Government either State/Central under the statute. In this case. Secretary, being employee of the registered Co-operative Society at the service of an authority as defined u/s 2(c) (iii) and (ix) of the said Act discharging Public Duty for the community of State Transport employees working in a Transport Corporation as defined u/s 2(b) of the Prevention of Corruption Act, 1988 are public servants within the frame work of law under section 2(a) of the Prevention of Corruption Act, 1988. In the existing definition of public servant u/s 2(c) of the Prevention of Corruption Act 1988, the emphasis laid on "Public Duty as defined u/s 2(h) of the Act. A thorough analysis of the definition of public servant u/s 2(c) of the Act and public duty defined u/s 2(b) of the Act shows that a person who holds an office by virtue of which he is authorized or required to perform any public duty is a public servant.

12. The learned Government Advocate further submitted that the definitions of public duty u/s 2(b) and any person in the service or pay of an authority controlled or aided by the Government u/s 2(c)(ii) and any person who holds an office by virtue of which he is authorized to perform any public duty u/s 2(c)(viii) or any person who is the President, Secretary or other office bearer of a registered Co- op Society or any

authority owned or controlled or aided by the government u/s 2(c)(ix) very clearly shows that A2, the Secretary, Tamilnadu State Transport Corporation (Salem Division-1) Employees Co-operative Thrift and Credit Society. Salem, has been discharging only public duty in the said registered Co-operative Society, in which, employees working in the branches / Depots under the Tamilnadu State Transport Corporation. Salem Division-1 being a community of transport employees have an interest at large as defined u/s 2(b) of the Prevention of Corruption Act 1988 and A2 comes within the ambit of definition of public servant u/s 2(c) of the Prevention of Corruption Act, 1985. Hence, the learned Government Advocate prays for dismissal of the petition.

13. I have heard the learned counsels appearing on either side and perused the materials available on record.

14. It is not in dispute that the 2^{nd} respondent is the defacto-complainant and working as driver in Tamilnadu State Transport Corporation (Salem Division-1) (TNSTC). Tiruchengode Branch. A1 is working as conductor in the same Branch, who is the Secretary of 'Anna Thozhil Sanga Peravai' in TNSTC (Salem Division-1). The petitioner herein / A2 is the Secretary, Tamilnadu State Transport Corporation (Salem Division-1), Employees Co-operative Thrift and Credit Society,

Salem.

15. On perusal of the records it is seen that the petitioner/A2, along with A1 demanded and accepted a sum of Rs.5,000/-, from the defacto-complainant, for themselves, for sanctioning loan. On the complaint of the 2nd respondent - defacto complainant, the case was registered in Crime No. 14/AC/2018, on the file of the 1st respondent Police, for the offence under Section 7(a) and 12 of the Prevention of Corruption Act, 1988, as Amended by the Prevention of Corruption (Amendment) Act, 2018 .

16. As regards the contention of the petitioner/A2 that he is not a public servant and he cannot be prosecuted under the Prevention of Corruption Act, 1988, by placing reliance on the decision of this Court in ***W.A.No.2253 of 2018***, dated 06.03.2020 in the case of "***J.A.Murugan Versus The Registrar of Cooperative Societies, Chennai-10 and another*** reported in ***2020 SCC Online Mad 782***" is no more *res integra,* in view of the reference answered by the Larger Bench of this Court in the case of "***K.Subramanian Versus State through the Inspector of Police and another*** reported in ***2021 SCC OnLine Mad 1721***". The relevant portion of the reference is as follows:

"(37)For a person to be regarded as a public servant within the meaning of Section 2(c)(ix) of the Act of 1988, three conditions have to be fulfilled: the first is the status of the person in the registered co-operative society; the second is the nature of the business that the relevant registered cooperative society is engaged in; and the third is as to whether the society receives or had received during the relevant period any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or authority or body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956. All three limbs have to be satisfied for the person to be reckoned as a public servant within the meaning of Section 2(c)(ix) of the said Act.

(38) As of the status of the relevant person, he must be the President or Secretary or other office-bearer of a registered cooperative society. As to the nature of business that the cooperative society must be engaged in, the relevant areas would be agriculture, industry, trade or banking. The third aspect is of such registered co-operative society, in which the person holds the office of President or Secretary or office bearer and which registered co-operative society is engaged in the business of agriculture, industry, trade or banking, also receiving financial aid from the Government bodies specified or had received financial aid from the specified Government bodies at the relevant point of time.

(39)..............................

(40)However, merely because a person is a public servant may not make him amenable to prosecution under the Act of 1988 unless the offence pertains to the discharge of any duty that he is required to perform in the usual course of his employment. Section 2(b) of the act of 1988 defines "public duty" to mean a duty in the discharge of which the State, the public or the community at large has an interest. Section 2(c)(viii) of the Act of 1988, on the other hand, indicates that a person would be a public servant if he holds an office by which he is authorised or required to perform any public duty. If the definition of "public duty" is imported into clause 2(c)(viii) of the Act, it would imply that a person ought to be regarded as a public servant within the meaning of the definition of the said Act if such person holds an office by virtue of which he is authorized or required to perform any duty in discharge of which the State, the public or the community at large has an interest."

17.From the above authoritative pronouncement, it is clear that the petitioner is a public servant, he being the Secretary of the Society, the Society receiving preferential treatment from the State, as full time Secretary receiving benefits from the Society, looking after day-to-day affairs of the Society, can be prosecuted under Prevention of Corruption Act, 1988. In view of the above, the contentions of the learned counsel for the petitioner are not sustainable both on facts and in law.

18. In the result, the Criminal Original Petition stands dismissed.

Needless to say that the observations and findings made herein is only for the limited purpose of disposing this Criminal Original Petition. This Court has not gone into the merits of the case of the prosecution or defence to be projected by the petitioner. Consequently, the connected miscellaneous petition is also dismissed.

19.At this juncture, it is informed that now investigation has been completed, charge sheet filed and taken on file as Spl.C.C.No.6 of 2022 by the learned Chief Judicial Magistrate, Namakkal, and the case is at the trial stage

21.07.2023

Index : Yes/No
Internet : Yes / No
mpk

To

1.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Namakkal.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

VV2 / MPK

CRL.O.P.No.15280 of 2020

21.07.2023