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CRL.O.P.Nos.14210 and 14849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADURAI

Reserved on : 28.06.2023

Pronounced on : 21.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.14210 and 14849 of 2022

and

CrI.M.P.Nos. 7759, 7760, 8265 and 8266 of 2022

1.K.Latha	... Petitioner / A3 in CrI.O.P.14210/22
2.Murugan	... Petitioner / A2 in CrI.O.P.14849/22

Vs.

1.The State, represented by
Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Tiruvannamalai Detachment,
Tiruvannamalai.

2.The Inspector of Police,
Vigilance & Anti-Corruption,
Tiruvannamalai District.
(Crime No.1/2016)

... Respondents in both CrI.OPs.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in Spl.C.No.10 of 2020, on the file of the learned Chief Judicial Magistrate and Special Judge, Tiruvannamalai, and quash the same.



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CRL.O.P.Nos.14210 and 14849 of _____

For Petitioners
(in both Crl.O.Ps.)

:

Mr.M.Palanivel

For Respondents
(in both Crl.O.Ps.)

:

Mr.S.Udayakumar
Govt.Advocate (crl.side)

COMMON ORDER

The Criminal Original Petitions have been filed to call for the records in Spl.C.No.10 of 2020, on the file of the learned Chief Judicial Magistrate and Special Judge, Tiruvannamalai, and quash the same.

2. Since the issue involved in both the Criminal Original Petitions are one and the same, they heard together and taken up for final disposal.

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

(i) There are totally three accused in this Case. The petitioners herein are A3 and A2 respectively. A1/Ganesan is the Executive Officer, Kilpennathur Town Panchayat, previously served in Vettavalam Town Panchayat Office, Tiruvannamalai District; A2/Murugan, is the Sanitary Worker - Vettavalam Town Panchayat, Tiruvannamalai District, and A3/Latha is a Private Individual / Temporary worker, at relevant period of occurrence, A1 & A2 were public servants, as defined in Section 2(c) of Prevention Corruption Act, 1988.



(ii) A1 / Executive officer, Kilpennath Panchayat, previously served in Vettavalam Town Panchayat Office from 26.08.2011 to 18.02.2014. Being an Executive Officer, he bound to execute the works passed in the Resolution of the Town Panchayat Council. He is the controller of all other officials, menials, responsible for all the work done in Vettavalam Town Panchayat and maintenance of office record. A-2 is working as sanitary worker in Vettavalam Town Panchayat from the year 1999. He worked under the direct control of A.C., during the period August 2011 to February 2014; A3 worked as Temporary worker at Vettavalam Town Panchayat from the year 2011 to 2014. She worked under the direct control of A-1.

(iii) During the relevant period, A1 misused his official position by, passing the Resolution No.46, dated 29.04.2011 (Doc. 1) in the Vettavala Town Panchayat Council, obtained bogus letters from A-2 and others, execution of repairs of mini power pump within Vettavalam Town Panchay limits. A-1 had fabricated bogus bills in the name of "Sri Pachaiyamma Electrical Works", for 142 non-executed mini power pump repair works and purchasing of spare parts materials, electrical spares, etc. Based on the said bogus bills, A-1, A-2 and A-3 have prepared 127 Bank Payment Vouchers for misappropriating the Government funds. In



this connection, xerox copies of BPVs (Doc.2 to 102) obtained from Vettavalam Town Panchayat Office.

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(iv) A1 has created false entries in the BPVs with the assistance of A2 and A3, to misappropriate the Government funds. During the relevant period, A1 issued 101 cheques with forged signatures in the name of Arasu (W1) with the assistance of A2 and 3, recorded as Account Payee cheques, but the cheques were issued actually as bearer cheques for the above stated non executed work. A1 to A3 with an intention of misappropriating the Government funds to the tune of Rs.10,52,156 and caused loss to the Government exchequer. Thus, the accused persons have committed the offence punishable under Sections 465, 468, 471 and 409 of IPC and Section 13(1)(c) r/w 13(2) of Prevention of Corruption Act, 1988.

4. Mr.M.Palanivel, the learned counsel appearing for the petitioners would submit that insofar as the petitioner/A3 is concerned, she worked as temporary worker; and the petitioner/A2 is working as Sanitary worker in Vettavalam Town Panchayat, Tiruvannamalai, Tiruvannamalai District. The allegation against the petitioners is that they intentionally misappropriated the Government funds to the tune of Rs.10,52,156, thereby, caused loss to the Government exchequer. The respondent



police filed a charge sheet / Final Report against the petitioners and another for the offence under Sections 465, 468, 474 and 409 IPC., and Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act. 1988. The petitioners are innocent and they are no way connected with the alleged offence. There is no oral or documentary evidence against the petitioners in this case and the filing for the final report / charge sheet against the petitioners is without any base of grounds. The petitioner/A3 is presently working as security in private company at Tiruvannamalai. A bare reading of the charge sheet itself reveals that respondent has not conducted proper and prospective investigation in this case. No witness or document connected with the petitioner at any point. As per the charge sheet, the basic document, which is to set the law in motion is not against the petitioner.

5. The learned counsel further submitted that in this case, A2 was a sanitary worker, since he happened to be found with A1 often, he has been falsely implicated. A2 in connection his work used to visit the pumping station and other places to ensure uninterrupted water supply. At time there were breakdowns of water pumps repair work and restoration to be done without any delay. L.W.3, is the Electrician, who used to repair and replace the parts of the pump. After his work submit the bill, which was submitted to the Office. A1 was the Head of the



office. On his instructions, the Bills and Vouchers would be prepared and approved. After approval, cheques will be prepared and made in the name of L.W.3 and later, on the instructions of A1, the cheques were encashed from the Bank and handed over to A1. What is the arrangement between A1 and L.W.3 is not known to the petitioner. A2 has been falsely implicated in this case. Since some of the Ward Members and Staff had some issues with A1 / Executive Officer, they made a complaint and A2 has been made a scapegoat in this case.

6. As regard A3, the learned counsel submitted that it is an admitted case that A3 is only a temporary staff and she used to do menial work in the office, as instructed by her superiors, including A1 and A2. Other than complying with the orders of her superiors, including A1 and A2, the petitioner/A3 had no other role. One or two occasions, she was handed over the cheque by A1 to get it encashed. A3 had visited the Bank, encashed the cheques and handed over the same to A1 and nothing more. He further submitted that in this case, the FIR came to be registered after a detailed enquiry. During the preliminary enquiry, all the documents, records and working of the Panchayats were studied and thereafter, FIR came to be registered. In the FIR, the petitioner/ A3's name does not find a place and in the charge sheet, without any reasons, she has been arrayed as accused. In this case, witnesses are the Ward



Members, residents of the Panchyats, employees and others. There is no incriminating finding by the Forensic expert with regard to the alleged forged documents. Majority of the witnesses have not stated anything about the petitioner / A3 and the witnesses, who referred to A3 name have also given positive statement that the petitioner / A3 was forced, compelled, threatened to obey the orders of A1 and A2 and on the fear of losing even the temporary employment and on compulsion, she had gone to the Bank, encashed 2 or 3 cheques and handed over the cash to A1, other than that, she had no role in encashment of the cheque. Thus, looking the case from any angle with regard to A3, there is no materials both oral and documentary against the petitioner / A3.

7. As per the contents and averments stated in the charge sheet, there is no statements and documents relied with the charges against the petitioners. Hence, the learned counsel praying for quashing of the charge sheet. Before parting with his submission, the learned counsel, in support of his contentions, relied on the Judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava*** reported in ***(2017) 15 SCC 560***, wherein in paragraph 18, it has been held as follows:-

“18. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents



placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the Accused of the offence with which he is charged or requiring the Accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the Accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. “

8. Mr.S.Udayakumar, the learned Government Advocate (crl.side) would submit that there are totally three accused in this case, the petitioners are A3 and A2. The petitioner/A2 is the Sanitary Worker - Vettavalan Town Panchayat, Tiruvannamalai District. The petitioner/A3 is a Private Individual, who was working as temporary worker in Vettavalan Town Panchayat, Tiruvannamalai District. A1 misused his official position, obtained bogus letters from A-2 and others, for execution of repairs of mini power pump, fabricated bogus bills in the name of Sri



Pachaiyamma Electrical Works, for 142 non-executed mini power pump repair works, purchasing of spare parts. Based on the said bogus bills, A1 prepared 127 Bank Payment Vouchers for misappropriating the Government funds, with the assistance of A2 and A3, thereby caused loss to the tune of Rs.10,52,156 to the Government exchequer. Hence, the case has been registered against the accused, for the offence under Sections 465, 468, 471 and 409 of IPC and Section 13(1)(c) r/w 13(2) of Prevention of Corruption Act, 1988. The documents collected from Vettavalam Town Panchayat Office viz., Bank Payment vouchers, including the alleged bogus bills, cheque issuing register, it is found that 127 BPVs were prepared for 142 mini power pump repair works, out of which, forgery signatures were put in 101 cheques, with forgery signatures, in the name of Arusu/W3, as Account Payee cheques, but the cheques were issued actually bearer cheques, for the non-executed work. It is further submitted that A1 created false entries in BPVs with the assistance of A2 and A3 to misappropriate the Government funds.

9. The learned Government Advocate would further submit that the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The veracity of documents and statement of witnesses cannot be gone into at this stage.



The Court is bound to look into the materials produced by the prosecution during investigation and filed before the Court and the Court is not bound to consider the probable defence of the accused to quash the charge, at this stage. Hence, the learned Government Advocate prays for dismissal of the petitions.

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

11. On perusal of the records it is seen that the petitioners herein are A3 and A2. The Petitioner/A2 is the Sanitary Worker and /A3 is a Private Individual, who was working as temporary worker in Vettavalan Town Panchayat, Tiruvannamalai District, at the relevant period of time. A1 misusing his official position, obtained bogus letters from A-2 and others, for execution of repairs of mini power pump, without executing the works, fabricated bogus bills in the name of 'Sri Pachaiyamma Electrical Works' purchasing of spare parts, based on the said bogus bills, A1 prepared 127 Bank Payment Vouchers, for misappropriating the Government funds, with the assistance of A2 and A3, thereby, caused loss to the tune of Rs.10,52,156/- to the Government exchequer.



12. It is seen from the Memo of evidence of Tiruvannamalai V& AC Cr.No.01 of 2016, L.W.1 / Director Town Panchayats, Chennai, who speaks about the receipt of report from the Director of Vigilance and Anti Corruption, Chennai in Ref.No.RC39/2016/TVM, perusal of the records relating to this case produced by witness-32, Inspector of Police Vigilance and Anti-Corruption, Thiruvannamalai, applying his mind and accorded the sanction against A1 in Roc.No.3701/2017/F3, dated 01.09.2020. The Witness-2 / Executive Officer (I/c.) Pudhupalayam, Thiruvannamalai District, speaks about sanction accorded against A2 in Roc.No.279/2016, dated 18.08.2020. W-3 speaks about the bills in the name of 'Sri Pachaiyamman Electrical Works attached in BPVs, except for 3 Bills rest not issued by him and the signatures found in the bills were not signed by him.

13. In this case, L.W.4, L.W.5, L.W.6, and L.Ws.7 are the Ward Members and their spouse. These witness have not stated anything about A3. Likewise, L.W.8, L.W.14, L.W.15, L.W.16 and L.W.17 are the local residents; L.W.9, and L.W.10 are brother and employee of L.W.3. L.W.11 and L.W.12 are the temporary staff of the Panchayat. L.W.18, L.W.19, L.W.20, L.W.21, L.W.22 and L.W.23 are the Sanitary Workers / Staff of the Panchayat and they have not stated anything about A3.



L.W.24 is the Junior Assistant of Panchayat, who was assigned the job of preparing Bills, Vouchers, payment slip and cheque for payments.

L.W.24 refused to prepare Bills in the name of L.W.3 finding some discrepancies and thereafter, the work was entrusted to one Venkatesan, a temporary staff, who, on compulsion, having no other option to save his temporary job, had prepared the bills for payment. L.W.18, L.W.19, L.W.20, L.W.21, L.W.22, L.W.24 have given positive statement, proving the innocence of A3. A3 being compelled, forced and threatened to encash some cheques. The prepared and signed cheques were handed over by A1 and A2, which on compulsion, she had bank, encashed the same, and handed over to them. Of the 101 cheques, which are in dispute, the petitioner / A3, had encashed few cheques. It is not the case of the prosecution that the cheques were prepared by A3 or A3 had the knowledge that these cheques contained false particulars and not signed by L.W.3. These cheques were bearer cheques, hence, she gone to the bank and encashed the same and nothing more. L.W.25 is the Bank Manager. L.W.27 and L.W.28 are the Village Administrative Officer and Village Assistants; L.W.29 is the Scientific Officer of the Forensic Department and L.W.26 / Executive Officer, who had handed over the official files. These witnesses have also not whispered about anything against the petitioner/A3



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14. Thus, from the uncontroverted statements of witnesses and the materials produced it is seen that there is nothing to connect the petitioner / A3 in the commission of offence. At risk of repetition, it can be seen that W.24 is the Junior Assistant, working in the said Panchayat and in her statement confirms that during the relevant period, the Municipal officer Ganesan/A1 and one Murugan/A2, who is maintaining the mini power pumps, prepared fake bills, asked him to prepare the expenditure list and cheques. He refused to prepare the same. So, they took it upon themselves to prepare the expenditure list through the computer operator Venkatesan and fill the cheques. As the computer operator, was a temporary employee, he did the same, as instructed. The said computer operator Venkatesan died last year due to illness. He had no choice but to make a summary of some expenses due to the intimidation of Municipal Officer Ganesan/A1 and his accomplice Murugan/A2. Fearing fraud, she requested transfer, and was transferred to other Department. Sometimes, the Municipal Officer would tell Latha/A3, who was working temporarily, to exchange the cheque, and she was forced and threatened, hence, acted as per their directions. Further, the Petitioner/A3 stands on the same or better footing as that of L.W.24.



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15. In view of the forgoing reasons, the Petition filed by the Petitioner/A2 in Crl.O.P.No.14849 of 2022 stands dismissed. The Petition filed by the Petitioner/A3 in Crl.O.P.No.14210 of 2022 stands allowed and the proceedings in Special C.C.No.10 of 2020, pending on the file of the learned Chief Judicial Magistrate and Special Judge, Tiruvannamalai, is quashed in respect of A3 alone. Consequently, the connected miscellaneous petitions are closed.

21.07.2023

Index : Yes/No
Internet : Yes / No
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To

- 1.The Chief Judicial Magistrate and Special Judge,
Tiruvannamalai,
- 2.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Tiruvannamalai Detachment,
Tiruvannamalai.
- 3.The Inspector of Police,
Vigilance & Anti-Corruption,
Tiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

VV2 / MPK

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