



Crl OP No.21169 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 06.03.2023
PRONOUNCED ON : 09.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 21169 of 2019

and

Crl.M.P. Nos. 15838 & 10954 of 2019

1. S. Ravichandran
2. T.S. Venkatesan
3. P.V. Balasubramaniam
4. S. Venkateswaran
5. R. Ramadoss
6. E.A. Kamalanathan
7. V. Narayanswamy
8. P. Ramanarayanan ... Petitioners

Versus

M.V. Ramani ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the C.C. No. 2563 of 2019 pending on the file of the learned XVII Judicial Magistrate, Saidapet, Chennai.

For Petitioners : Mr. Sathish Parasaran, Senior Counsel
for Mr. K.M.D. Muhilan.



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For Respondent : Mr. T.S. Rajmohan.

ORDER

The petitioners herein are arrayed as accused 1 to 8 in a private complaint filed by the respondent / complainant herein for the alleged offences under Sections 120B, 403, 405, 408, 409, 420, 421, 422, 425, 466, 467, 571, 477 and 477A of the Indian Penal Code. The first to fifth petitioners are the office bearers of Sri Ram Samaj Society registered under the Societies Registration Act (herein after referred to as 'Society' for the sake of convenience). The sixth petitioner is the Secretary of Sri Sitaram Vidyalaya Matriculation Higher Secondary School, West Mambalam which is administered and run by the Society. The seventh and eighth petitioners are the Chartered Accountants by profession and the Statutory Auditors of the Society.

2.The respondent / complainant is a life member of the Society who was admitted in the year 1988. It is his case that the petitioners had committed fraudulent acts in the management of the Society. The Society runs a School under the name and style of Sri Sitaram Vidyalaya Matriculation Higher Secondary School (herein after referred to as 'School' for the sake of convenience). The said School had collected



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excess fees for the academic years 2010-2011, 2011-2012 and 2012-2013 totaling a sum of Rs.1,03,35,000/-. The Private Schools Fee Determination Committee constituted under the Tamil Nadu Schools (Regulation of Collection of Fees Act,) 2009 found that the School had collected excess fee and directed the School to refund the excess fee collected from the students. It is further the case of the respondent / complainant that A7 and A8 who are the Statutory Auditors for the said Society had kept the funds which were supposed to be refunded to the students under 'Contingency Fund' which is incorrect. The complaint further enumerates the defects in the balance sheets certified by A7 and A8, thereby suggesting that the petitioners had committed the offences of falsification of accounts and misappropriation.

3.(i) Mr. Sathish Parasaran, learned Senior Counsel for the petitioners would submit that the respondent / complainant is a vexatious litigant and has been harassing the office bearers of the Society and the School by filing various unnecessary litigations which are adversely affecting the smooth functioning of the Society and the School. The learned Senior Counsel for the petitioners listed out about 25 cases filed by the respondent / complainant before various forums including this



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Court by way of Writ Petitions and that in all cases, the complaints were closed by either holding that the complaint is not maintainable or false, besides recording that the respondent / complainant has vexatiously initiated the proceedings. The details of the cases filed by the respondent / complainant from the year 2004 till date have been produced by the learned Senior Counsel to show the manner in which the Society and the School and its office bearers have been targeted by the respondent / complainant.

(ii) The learned Senior Counsel relied upon the order passed by this Court in W.P. No. 23800 of 2014, wherein this Court had dismissed the Writ Petition filed by the respondent / complainant with costs stating that the Writ Petition was an abuse of process. In the Writ Petition, the petitioner prayed for restraining the President of the Society and the Principal of the School from running the School and to refund the excess fee collected since 2010-2011 up to date and directing the authorities to seal and demolish the existing superstructure of the Society. The learned Senior Counsel submitted that the prayer to demolish the school building is sufficient to show that he had no interest in the Society or the School as claimed by him.



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(iii) The learned Senior Counsel further submitted that no offence

has been made out much less the offences alleged in the complaint. The excess fee collected by the School in anticipation of the revision in the fee structure is not in question. In fact, the respondent / complainant was a part of the management, when the alleged excess fee was collected. The respondent / complainant only alleges that the excess fee collected, was not properly accounted for and refund to the students as directed by the Private Schools Fee Determination Committee has not been made.

(iv) The learned Senior Counsel also pointed out an order passed by the Private Schools Fee Determination Committee dated 26.06.2019 wherein the Committee had recorded the fact that the School had taken all efforts to refund the excess fee collected from the students by publishing advertisements in the Newspapers. The Committee further found that the School after refunding the excess fee collected, still had a balance of Rs.8,44,302/- which remained undisbursed since it was not claimed. The Committee directed the School to hand over the said money to the Government for utilising it for the betterment of Government and Corporation Schools. The School vide letter dated 01.07.2019 had sent a demand draft for a sum of Rs.8,44,302/- to the Government drawn in



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favour of Joint Director (Ex-officio), Directorate of Matriculation Schools.

Therefore, the learned Senior Counsel would submit that there is no loss caused to any one and therefore, the offences alleged are not made out.

(v)The learned Senior Counsel also pointed out the order passed by the Private Schools Fee Determination Committee dated 21.12.2020 in which there is a finding to the effect that the applications filed by the respondent / complainant to take criminal action against the School and its office bearers was vindictive in nature. There is also a finding that the School had complied with the decision of the then Committee, quantifying the excess amount collected and directing the refund of the same to the students.

(vi)The learned Senior Counsel also pointed another instance of vindictiveness of the respondent / complainant where he had initiated proceedings on behalf of the teachers against the School and Society for increase in their pay.

(vii)The learned Senior Counsel submitted that the respondent / complainant had, in the past also, indulged in activities which were not in



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the best interests of the Society and the School. He was expelled in 2006.

After he had tendered an unconditional apology, his expulsion was revoked.

(viii)The respondent / complainant had also filed complaint before the Hindu Religious Charitable and Endowments Department and the Department vide proceedings dated 27.01.2016, had observed that the respondent / complainant was in the habit of giving false complaints, wasting the precious time of the Government authorities and therefore abusing the process.

(ix)The learned Senior Counsel also pointed out another order passed in W.P. No. 23788 of 2021 dated 09.11.2021 wherein this Court had observed that the respondent / complainant seems to be a interloper in matter pertaining to the School.

(x)The learned Senior Counsel therefore submitted that from the above facts, it is clear that the respondent / complainant is in the habit of causing nuisance to the Society and the School. More than once, the authorities and this Court have commented upon his conduct and yet he



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is choosing to indulge in vexatious litigations. The impugned complaint is yet another instance of abuse of process and therefore, the complaint besides not disclosing any offence, is malicious and deserves to be quashed.

4.(i) Mr. T.S. Rajmohan, learned counsel for the respondent would submit that this Petition to quash the complaint is not maintainable, since this Petition was instituted even before the learned Magistrate took cognizance of the complaint. Unless the summons is sent to the accused, they have no role in the proceedings and hence, this Petition has to be dismissed on this ground alone.

(ii) The learned counsel read the affidavit filed by the respondent / complainant in support of his Petition to vacate the stay. The grievance of the respondent / complainant is that the office bearers of the Society and the School have made contradictory statements in the balance sheets and falsified the accounts with an intention to misappropriate the funds of the Society and to deceive the Statutory authorities to evade payment of tax. The falsification of accounts and fabrication of documents have been



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done for circumventing the orders of the Private Schools Fee Determination Committee.

(iii)The learned counsel for the respondent also pointed out that the Society and the School are not being properly administered and in fact, the School building does not even have an approval from Chennai Metropolitan Development Authority which is shocking. The complainant had collected more than Rs.1 Crore for construction and completion of Gnanavapi, a place for doing last rites for the departed souls. However, the office bearers are acting against the interest of the Society and the School and he has been waging a lone battle against the office bearers who are highly influential persons. The reading of the complaint would show as to how the office bearers had fudged the accounts and committed misappropriation and therefore, this Petition deserves to be dismissed.

(iv)The learned counsel also relied upon the counter affidavit in W.P. No. 22324 of 2022 pending in this Court filed by one N.Elansezhian who is the Chairman of the peace committee of Sri Ram Samaj. In the said counter, there are averments suggesting that the



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officer bearers were acting against the interest of the Society.

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5.Heard the learned Senior Counsel for the petitioners and the learned counsel for the respondent and perused the records.

6.As regards the maintainability of this petition to quash the complaint, it is submitted by the learned counsel for the respondent that this petition was filed even before the summons were issued to the petitioners. The records reveal that sworn statement was recorded on 05.07.2019 and the learned Magistrate had issued summons on the very same day. The learned Magistrate had therefore taken cognizance of the complaint on 05.07.2019 and this petition has been filed on 05.08.2019. Therefore, the argument of the learned counsel for the respondent has no merit and hence, rejected.

7.This Court on perusal of the impugned complaint finds that the first to six petitioners are the office bearers of the Society and the School and the seventh and eighth petitioners are the statutory auditors for the Society. Primarily, the allegations are that the office bearers had collected excess fee from the students for the academic years 2010-2011, 2011-



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2012 and 2012-2013. The total excess amount collected is to the tune of Rs.1,03,35,000/-. The allegation is that this excess fee collected was shown by A7 and A8 as 'Contingency'. This amounted to falsification of accounts according to the complaint. Further, it is alleged that the auditors had given contrary certificates as regards the excess fee determined by the Private Schools Fee Determination Committee on the very same day i.e., on 03.07.2018. The certificates issued by them did not match with the year ending statement of accounts i.e., on 31.03.2018. Therefore, according to the respondent / complainant, A7 and A8 had committed falsification of accounts.

8.Further, in the annual report dated 31.03.2019, under the head 'excess fee refundable', a sum of Rs.5,43,542/- was shown which is higher than what was shown in the previous year. The sum and substance of this complaint is stated in the penultimate paragraph. That is extracted hereunder;

“Therefore, it could be reasonably presumed that there was willful and deliberate act on the part of A-1 to A-8 in unison and collusion who have conspired to fudge accounts to misled the members of the samaj besides, the public at large, deceive the



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Statutory Authorities with an intent to evade payment of tax by suppressing true and proper accounts, thereby committing offences under Sec. 120B, 403, 405, 408, 409, 420, 421, 422, 425, 466, 467, 471, 477 and 477A of IPC.”

The reading of the allegations in the complaint would show that the respondent / complainant is aggrieved by the manner in which the excess amount collected was apportioned and kept as 'Contingency'. Pointing out various discrepancies in the accounts, the respondent / complainant would say that it could be reasonably presumed that the petitioners committed misappropriation and falsification of accounts.

9. The complaint in the first place, does not disclose as to what is the exact role played by each of the accused except for stating that A7 and A8 aided the other petitioners for fabricating the accounts. The complaint had disclosed the order passed by the Private Schools Fee Determination Committee in the year 2017, directing the School to refund the excess fee. The complaint was filed on 24.06.2019. On 26.06.2019 an order was passed by the Private Schools Fee Determination Committee. In the said order, the Committee had recorded the fact that



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the School had taken all efforts to refund the excess fee to all the students by publishing an advertisement in Indian Express and Dinamani. The Committee had accepted the statement of the School management that a sum of Rs.8,44,302/- was available in excess in view of the fact that certain parents and students did not make any claim and had directed the School to issue demand draft in favour of the Government for utilizing the said amount for the purpose of betterment of Government and Corporation Schools. Accordingly, the School had issued a demand draft dated 01.07.2019 in favour of the Joint Director (Ex-Officio), Directorate of Matriculation Schools which is also acknowledged by the Joint Director. All these facts have been suppressed by the respondent / complainant in his sworn statement recorded on 05.07.2019. The respondent / complainant cannot claim ignorance of the order of the Private Schools Fee Determination Committee dated 26.06.2019 as this order was passed based on his representations.

10.That apart, after this order, another attempt was made by the respondent / complainant to prosecute the petitioners by requesting the Private Schools Fee Determination Committee to initiate criminal prosecution. The Private Schools Fee Determination Committee passed



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an order dated 21.12.2020, after the impugned complaint was filed by the respondent / complainant. In this order dated 21.12.2020, the said Committee rejected the respondent / complainant's request for initiating criminal prosecution against the School and the Society. The said Committee had also recorded the fact that the excess amount collected by the School was refunded to all concerned and the direction of the Committee to issue a demand draft in favour of the Government was also complied with. The said Committee, further observed in the order dated 21.12.2020 as follows;

“...Further, it is noticed that none of the parents of any student affected by such excess collection are not before the committee requesting any action to be taken against the school. The Writ Petitioner has not stated as to how he is interested in bringing to the notice of the committee the need for proceeding against the school. Taking an overall view of the facts available in this case, the Committee conclude that the present application by the writ petitioner appears to be vindictive in nature.”

11.The question is as to what is the wrongful loss caused to the



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Society or wrongful gain caused to the petitioners to bring the alleged acts within the definition of 'dishonestly', which is an essential ingredient of any offence against property. It is not the case of the respondent / complainant that any other injury was caused to term the act as fraudulent.

12.The fact that no wrongful loss or wrongful gain has been caused, is confirmed by the orders passed by the Private Schools Fee Determination Committee. All the orders dated 28.12.2017, 26.06.2019 and 21.12.2020, not only confirms that there is no wrongful loss to the Society and the School, but also reiterates that the respondent / complainant has been acting vindictively as against the Society and its School management.

13.Further, the orders passed in the Writ Petitions filed by the respondent / complainant holding that either it is an abuse of process of proceedings or the respondent / complainant is a interloper confirms that he has been vexatiously prosecuting cases against the Society and the School. That apart, the Hindu Religious and Charitable Endowments Act had also in its order dated 27.01.2016, had commented upon the conduct



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of the respondent / complainant in giving false complaints against various authorities. Though this Court in a quash petition would not consider any extraneous materials which are not part of the complaint, since in all the proceedings, respondent / complainant is a party, the respondent / complainant cannot justifiably refute these documents.

14.The petitioners have been able to produce documents of sterling quality which cannot be disputed. The Hon'ble Apex Court in ***Rajiv Thapar and others vs. Madan Lal Kapoor*** reported in (2013) 3 SCC 330 held that in order to quash the proceedings at the stage of 482, the material produced by the accused can be looked into provided the material is of sterling and impeccable quality and that it is either not refuted or justifiably cannot be refuted by the prosecution. The relevant portion of the said judgment is extracted hereunder for better understanding:-

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-



(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in



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exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

15.Though the learned counsel for the respondent would submit that he has nothing personal against the petitioners and he has been pursuing various proceedings only because of his interest for the Society and the School, this Court finds that various forums approached by this respondent / complainant have held more than once that he has been abusing the process by filing vexatious petitions. In fact, in W.P. No. 23800 of 2014, this Court had imposed a cost of Rs.5,000/- for abuse of process.

16.To sum up, the impugned complaint which spells out the alleged irregularities in the maintenance of accounts by the office bearers and the auditors does not disclose as to what is the monetary loss caused



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to the Society or the School by the alleged acts of the petitioners. As stated earlier, the respondent / complainant was part of the board during the academic year 2012-2013, when the excess fee was allegedly collected. His grievance is that the auditors A7 and A8 had shown it as 'Contingency'. This Court is unable to comprehend as to how this would constitute an offence. To prosecute a person for a property offence, it has to be shown that the acts were either done 'dishonestly' or 'fraudulently' within the meaning of Sections 24 and 25 of the Indian Penal Code. None of it has been alleged. That apart, from the various proceedings, it can be seen that the impugned complaint is malicious and vexatious. Therefore, the impugned complaint deserves to be quashed not only because it does not disclose any offence but also because it is vexatious and malicious. The impugned complaint is clearly an abuse of process of law.

17. For all these reasons, the impugned complaint in C.C. No. 2563 of 2019 pending on the file of the learned XVII Judicial Magistrate, Saidapet, Chennai deserves to be quashed and is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The XVII Judicial Magistrate,
Saidapet.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J



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Dated: 09.03.2023