



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Original Jurisdiction

Friday, the Third day of March Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL MP(MD) . No.2926 of 2023
in
CRL OP(MD) No.3572 of 2020

1.Periasamy

2.D.Vinayagamoorthy

3.P.N.Prabhakaran

4.S.Natarajan

5.O.M.Prakash ... Petitioners/ LW 3 to 7

Vs

1 The Inspector of Police
Central Crime Branch Madurai City
Madurai 625 014
(Crime No. 93/2012) ... Respondent/1st Respondent

2 Sivakumar

3 Sharmilee

... 2nd & 3rd Respondents/Petitioners/Accused

4 Rathinasamy

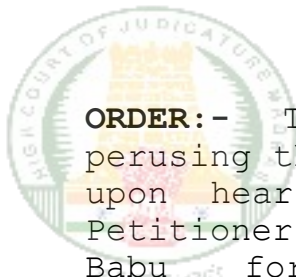
... Respondent/2nd Respondent/ Defacto Complainant

Prayer :- CRL MP(MD) . No.2926 of 2023

Criminal Miscellaneous Petition filed under section 482 of Cr.p.c. To recall the order passed in Crl O.P (MD) No. 3572 of 2020 dated 27.02.2020

Prayer in CRL OP(MD) . 3572/ 2020 :

To call for the records in connection with the case in C.C.No.32/2018, pending trial on the file of the learned Judicial Magistrate No.1, Madurai and quash the same.



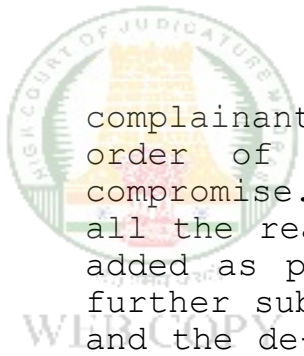
ORDER:- This Petition coming on for orders on this day on perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.T.Kumar , Advocate for the Petitioner and of Mr.M.Ajmal Khan Senior Counsel for Mr.N.Sathish Babu for the 2nd & 3rd Respondent, this Court made the following order:

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This petition has been filed seeking to recall the order passed by this Court in Crl.O.P.(MD)No.3572 of 2020, dated 27.02.2020.

2.This petition has been filed by the third parties, who are L.W.3 to L.W.7 in C.C.No.32 of 2018 on the file of the learned Judicial Magistrate No.1, Madurai.

3.The learned counsel for the petitioners would submit that the petitioners are L.W.3 to L.W.7 in C.C.No.32 of 2018, which was pending on the file of the learned Judicial Magistrate No.1, Madurai. He would further submit that one Aruppukottai Keelapettai Hindu Nadar Uravinmurai, Madurai has formed a school in the name of Aruppukottai Nadar Uravinmurai Mahalir Melnilaipalli at Keeraithurai, Madurai in the year 1967 and the school was managed and administered by a separate association. The members of the above said school association are under the control of the Uravinmurai stated above. The respondents 2 and 3/A2 and A3 were serving as Treasurer and Record Clerk respectively and they conspired with the correspondent A1 (who is now dead) and had misappropriated funds belonging to the school to the tune of Rs.43,00,000/-. He would further submit that a complaint was initiated by the de-facto complainant Rathinasamy, who was then the Secretary of the association. Based on the complaint, the police had registered a case for the offences punishable under Sections 120(b), 406, 420, 465 and 477(A) of IPC and after investigation, it was taken cognizance in C.C.No.32 of 2018 on the file of the learned Judicial Magistrate No.1, Madurai. At the time of instituting the complaint, the de-facto complainant/4th respondent was serving as Secretary and in such capacity, the criminal complaint was triggered. During the year 2015, the de-facto complainant was made to resign from the post of General Secretary, whereas, later, he had colluded with the accused and made rigorous attempts to cover up the entire fiasco, in which, the petitioners' Sangam suffered huge loss of Rs.43,00,000/- which includes school fees paid by the students. While C.C.No.32 of 2018 was pending on the file of the learned Judicial Magistrate No.1, Madurai, the respondents 2 and 3/A2 and A3 have earlier approached this Court by way of quash petition in Crl.O.P.(MD) No.5310 of 2018 and this Court taking into consideration the facts and circumstances of the case while dismissing the same on 10.09.2018 had directed the trial Court to dispose of C.C.No.32 of 2018 within a period of two months from the date of receipt of a copy of that order. While so suppressing the filing of the earlier application, the respondents 2 and 3/A2 and A3 have filed another petition for quash in Crl.O.P.(MD)No.3572 of 2020 and the de-facto



complainant colluded with the accused and they have obtained an order of quashing the proceedings based on a joint memo of compromise. He would further submit that the other members who are all the real victims were not put on notice and they have not been added as party in the quash petition filed subsequently. He would further submit that it is a case where the public money is involved and the de-facto complainant, who had resigned from the association during the year 2020 had claiming himself to be the Secretary had entered into a compromise, which is illegal and they have also misled the Court and thereby, the order passed by the suppression has to be set aside and the order has to be recalled.

4.Per contra, the learned Senior Counsel appearing for the respondents 2 and 3/petitioners in the main Criminal Original Petition would submit that the earlier quash petition in Crl.O.P. (MD)No.5310 of 2018, was not dismissed on merits on 10.09.2018 and this Court while dismissing the same on 10.09.2018 had directed the learned Judicial Magistrate No.I, Madurai to dispose of C.C.No.32 of 2018 within a period of two months from the date of receipt of a copy of that order. However, since there was no progress in the case for two years, the respondents 2 and 3/A2 and A3 have once again approached this Court in Crl.O.P.(MD)No.3572 of 2020, wherein, in Paragraph No.6 of the quash petition, they have disclosed about the earlier quash petition filed in Crl.O.P.(MD)N.5310 of 2018. Further, the de-facto complainant had also, in the joint memo of compromise, stated that at the time of filing of the complaint, he was serving as Secretary of Keelapettai Aruppukottai Hindu Nadargal Uravinmurai Sangam and that one Mr.N.S.Baskaran had acted as Auditor of both the Sangam, namely, the Madurai Aruppukottai Nadar Uravinmurai Mahalir Melnilaipalli Paribalana Sabai and the said Auditor had filed a statement of accounts for the year 2011-12 and it was found in the report that there is a deficiency of money in the school account and assuming that the above said deficiency of money is an act of swindling of money, he had hurriedly lodged the above said complaint and he had misunderstood the facts and circumstances of the same and further, he has also stated that thereafter, he came to know that the said deficiency has been set right by the office bearers of the school Sangam and thereby, he has decided to withdraw the above said case and the said complaint was preferred by him in his individual capacity and it was not preferred as per the decision of the Madurai Keelpettai Aruppukottai Hindu Nadargal Uravinmurai Sangam and or its members. Further, during the hearing of the second quash petition, the learned Additional Public Prosecutor has also stated that the case was registered based on the reference under Section 156(3) of Cr.P.C and that the Statutory Auditor's report for the year 2011-12 were found to be correct and apart from a compromise, the de-facto complainant as well as the respondent police have also observed that the accounts for the year 2011-12 were found to be correct and thereby, no offence had been committed. He would further submit that this Court, apart from the compromise between the parties had also taken into consideration the merits of the case and quashed the



proceedings and it would amount to reviewing of the earlier order, which was not passed on merits and thereby, he would submit that the petition to recall the order is not maintainable.

5. Heard. Perused the materials available on record.

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6. The respondents 2 and 3/A2 and A3 have earlier filed Crl.O.P (MD) No.5310 of 2018 and this Court, without going into the merits of the case, had dismissed the same on 10.09.2018 and directed the learned Judicial Magistrate No.I, Madurai to dispose of the case in C.C.No.32 of 2018 within a period of two months from the date of receipt of a copy of that order. Despite the order being passed, the case was not disposed of within two years, the respondents 2 and 3/A2 and A3 have filed Crl.O.P.(MD) No.3572 of 2020 before this Court. Apart from the compromise between parties, the learned Additional Public Prosecutor had also submitted that based on the Statutory Auditor's report, the accounts for the year 2011-12 were found to be correct. The respondents 2 and 3/A2 and A3 have also not suppressed the earlier order passed by this Court.

7. In view of the above, this Court finds no reason to recall the order passed by this Court in Crl.O.P.(MD) No.3572 of 2020, dated 27.02.2020. Hence, this Criminal Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CS-I)

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/03/2023

Sub Assistant Registrar(CS)

TO

1. The Judicial Magistrate No.I,
Madurai.
2. The Inspector of Police
Central Crime Branch Madurai City
Madurai 625 014
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai



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CRL MP(MD).



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+1cc to Mr.R.Bala Muruganantham Advocate CA Sr.No.12801/2023

+1CC to Mr.N.Sathish Babu, Advocate, SR.No. 3544 dated 07/03/2023

ORDER DATED : 03/03/2023

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ORDER

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CRL MP(MD) . No.2926 of 2023

in

CRL OP(MD)3572 of 2020

Giving direction and etc.

as stated within.

KB(24.03.2023) 5P 8C