



Crl.O.P.(MD)No.3296 of 2023,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.3296 of 2023

and

Crl.MP(MD)No.3016 of 2023

1.Samiyappan
2.Karunanidhi : Petitioners/A1 and A2

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch Police Station (DCB),
Thanjavur District.
(in Crime No.9 of 2022) : R1/Complainant

2.Mr.Dinesh Ponraj Oliver,
President-cum-District Collector,
District Collector Office,
Thanjavur,
Thanjavur District. : R2/De-facto
Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned First Information Report in Crime No.9 of 2022 on the file of the 1st respondent Police Station and quash the same as illegal and pass such further or others.

For Petitioners : Mr.Henri Tiphagne

For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



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This criminal original petition has been filed seeking quashment of the FIR in Crime No.9 of 2022 on the file of the 1st respondent Police.

2.The case of the prosecution in brief:-

The de-facto complainant, who is the President-cum-District Collector, lodged a complaint stating that the 1st petitioner namely Samiyappan (A1) is the Honorary Secretary of the Society for the Prevention of Cruelty to Animals (hereinafter called as 'SPCA') and the 2nd petitioner namely Karunanidhi (A2) is the Honorary Treasurer of the SPCA. They are maintaining Bank Account bearing No.1221101027215 for SPCA, Thanjavur. SPCA, Thanjavur was registered under the Societies Registration Act in Document No.32/1973. As the registration was not periodically renewed, the de-facto complainant has registered a fresh Society under the name 'SPCA, Thanjavur District' on 28/02/2022. Subsequent to the new registration of the Society, the petitioners/A1 and A2 have withdrawn a sum of Rs.1,86,000/- through one Jeyakumar(A3) for the period between 01/03/2022 and 04/04/2022. As for the above said amount, no proper accounts were submitted. So a complaint was given by the



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de-facto complainant. Upon which, a case in Crime No.9 of 2022 was registered for the offences under sections 409 and 420 IPC.

3. Seeking quashment of the same, this petition has been filed by the petitioners, who are arrayed as A1 and A2.

4. Heard both sides.

5. The issue involved can be appreciated in the light of the WP(MD)No.11019 of 2023 filed by the first petitioner herein against the de-facto complainant and the State Government.

6. WP(MD)No.8804 of 2022 was filed by the second petitioner for issuance of Writ of Certiorarified Mandamus seeking quashment of the letters issued by the District Collector, Thanjavur District in Na.Ka.No. 8628/A3/2020, dated 19/03/2022 and Na.Ka.No.8628/A3/2020, dated 29/03/2022. Para 5 to 14 are extracted hereunder:-

"5. I sincerely submit that the Society for Prevention of Cruelty to Animals, Thanjavur was initially registered in 1929 under the Societies Registration Act, 1860. In 1935 itself,



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the said society purchased Acre 6.47 Cents and further Nanjai Acre 6.66 Cents in favour of its name through different sale deeds with the help of individual members.

6.I sincerely submit that while the above society was functioning under the control of a committee consisting of private good Samaritans, the Prevention of Cruelty to Animals Act, 1960, was enacted, and the Central Government established 'Animal Welfare Board of India' in 1962 under Section 4 of the above Act under the jurisdiction of the Ministry of Food and Agriculture. In 1990, the subject of prevention of cruelty to animals was transferred to the Ministry of Environment, Forests and Climate Change. At present, the Animal Welfare Board of India has been shifted to the Department of Animal Husbandry and Dairying, Ministry of Fisheries, Animal Husbandry and Dairying.

7.I sincerely submit that the Animal Welfare Board of India is a statutory and advisory body. As per the direction of the Animal Welfare Board of India, the above society changed its bye-laws in 1968, and according to the bye-laws, the District Collector of Thanjavur shall be the President of the



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society. Government officials holding high positions are made Honorary members. The Secretary shall be ex-officio member of the Executive Committee. The society may sell, exchange, lease, mortgage, or dispose gratuitously or otherwise all or any part of the property of the society. Since the registration made in 1929 was not kept alive, the above society was again registered in 1973 under the Societies Registration Act, 1860, vide S.No.32/1973 on the file of the District Registrar, Thanjavur.

8.I sincerely submit that while it was so, in 2001, the 'Prevention of Cruelty to Animals (Establishment and Regulation of societies for prevention of Cruelty to animals) Rules, 2001, was enacted. According to these rules, every State Government shall establish a society for every district in the State to be the SPCA in that district, and every society shall submit its annual report to the Board incorporating therein the activities undertaken by it for the welfare of animals and the steps or measures taken by it to implement various provisions of the Act and the rules made thereunder along with annual account duly audited by a Chartered Accountant or any other body authorized



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by law within a period of one month from the date of its accounts having been finalized by its management committee.

9.I sincerely submit as per the bye-laws of the society amended in 1968, the secretary should convene the Executive Committee Meeting. The secretary of our society convened meeting on 01.10.2020 through his Notification, dated 17.08.2020. Further, the registration of the society, vide No.32/1973, was not kept alive and however, steps are being taken by the society to re-register the society in the name of 'Animal Welfare Society'. Again the secretary convened Executive Committee on 16.02.2022 by a Notification, dated 17.01.2022. In the meeting conducted on 16.02.2022, the 1st respondent threatened me in front of other members by stating that he would remove me from my post of Treasurer. Further the secretary submitted to the 1st respondent the minute books following the meeting on 16.02.2022 for obtaining his signature but the 1st respondent is keeping the minute books with him without returning to the society.

10.I sincerely submit that while it is so, the 1st respondent in the impugned subsequent letter, dated 29.03.2022, has



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falsely stated that a meeting consisting of new members was conducted on 02.03.2022, and in the meeting, it was decided to send the accounts for audit. This averment is false because, the secretary did not convene the meeting on 02.03.2022.

11.I sincerely submit that by the averment in the subsequent impugned letter, dated 29.03.2022, that about Rs. 90 Lakhs has been received from the Thanjavur Corporation by the society by way of rent, the respondent is attempting to show that the Government is owner of the property. The Government is not owner of the property but the society is owner of the property and the society is managing its properties as per the Societies Registration Act. It is submitted that a lease deed has been executed between the society and the Thanjavur Corporation and registered, vide, Document No. 6073/2019, Registrar, Thanjavur, in respect of 2 Acres out of total extent of Acres 6.47 Cents situated at Survey No.99/1, Nanchikottai village, Thanjavur, for a period of 12 months for the rent amount of Rs.5,16,063/- per month, and the rent is still in force.



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12.I sincerely submit that the 1st respondent has sent the impugned letters beyond his vires as president of the society.

13.I sincerely submit that if the 1st respondent proceeds to take action against me, I shall undergo irreparable loss which cannot be compensated in terms of money. I have prima facie case and the balance of convenience is in my favour. Therefore, it becomes necessary to grant stay on the operation of the impugned the Letter, vide Na. 8628/A3/2020, dated 19.03.2022, and subsequent Letter, vide Na.8628/A3/2020, dated 29.03.2022, issued by the 1st Respondent.

14.I respectfully submit that the impugned letters have been passed in violation of my fundamental rights guaranteed under Article 14 of the Constitution of India."

7.In short, the contention of the petitioners is that the original Society is still exist and the new Society was formed in pursuance of the order passed by the Government of India. It is a separate entity. Transfer of assets and liabilities is not permissible.



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8.That Writ Petition was filed by one Karunanidhi, who is the second petitioner herein. Another writ petition was filed in WP(MD)No.11019 of 2023 by the first petitioner herein seeking the relief of declaration that the action of the District Collector in transferring the properties of the the petitioner's Sangam is illegal.

9.What happened to the earlier writ petition is not known. No document was also produced by the petitioners. But in the second writ petition filed by the Sangam, who is the first petitioner herein, after hearing the parties, the following order is passed by the Coordinate Bench of this Court in WP(MD)No.11019 of 2023, dated 01/06/2023:-

"2.The learned counsel for the petitioner states that the petitioner herein is the Secretary of the 'Society for Prevention of Cruelty to Animals (SPCA)', which has been functioning for quite a few decades. The Association was also vested with properties. The grievance is that, the third respondent/the District Collector, Thanjavur District, had formed a new Society called 'Society for Prevention to Cruelty of animals (SPCA), Thanjavur District' and had co-opted members to the society.



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3.It is also stated that the properties of the erstwhile SPCA Society has been transferred to 'SPCA, Thanjavur District'. However, the learned Additional Advocate General justifies this at by stating that formation of the new society was in accordance with the guidelines issued by the Central Government.

4.Let all those records be placed on record. Let there not be any encumbrance created over any of the properties. The fourth respondent/the District Collector of Thanjavur District has been impleaded in his personal name. That may not be a proper approach. Therefore, the fourth respondent stands deleted, however he shall be answerable in his official capacity to the various allegations raised in the affidavit filed in support of this writ petition."

10.In view of the above said development, whether the Society that was formed in 1929 is entirely different one from the Society formed by the District Collector, Thanjavur, in pursuance of the order passed by the Central Government, is a matter for consideration by the Co-ordinate Bench of this court. I am not going to touch this aspect, which may not be desirable. So, I refrain from making any observation in this regard.



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11.Now let us go to the record of proceedings.

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12.On 21/02/2023, the learned Government Advocate (Criminal side) was required to verify as to whether any action was initiated by the Registrar of Societies over the issue. Thereafter, the matter was adjourned. On 10/08/2023, it was submitted by the learned Government Advocate (Criminal side) that most part of the investigation is also completed; 13 witnesses were examined and for getting some more informations, the matter is kept pending. After some-time, on 13/09/2023, the following order was passed:-

"2.During the course of submissions, learned Additional Public Prosecutor reported that the investigation is almost completed.

3.Learned counsel for the petitioners on the other hand submits that the respondent Police did not summon any of the records from their side and if summons are given, they will produce the documents before the respondent Police to show that no misappropriation committed by them as alleged in the complaint.



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4. In view of the same, the respondent Police was directed to issue summons to the petitioners, of which, the petitioners are directed to produce all the relevant documents to prove that they have not committed any offence.

5. Considering the submission made above, the respondent Police are to complete the enquiry as quickly as possible.

6. Learned counsel for the petitioners submits that the petitioners will appear before the respondent Police on 22.09.2023, on which, they will produce all the documents.

7. Learned Additional Public Prosecutor reported that the respondent Police will issue summons to the petitioners, on which, basing on the documents produced by the petitioners, the respondent Police will proceed with the further investigation.

13. So as per the record of proceeding, the petitioners were directed to produce the documents before the respondents herein and the respondents are directed to proceed further and verify the documents produced. It was adjourned to 29/09/2023.



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14.The following order was passed, on 29/09/2023:-

"Learned counsel for the petitioner submitted that as directed by this Court, dated 13.09.2023 the petitioners have submitted all the relevant documents including the accounts to the respondents police to show that there is no misappropriation as alleged by the defacto complainant. The petitioners have also stated to have sent all the documents to the respondents police by way of post.

2.The learned Public Prosecutor appearing for the respondents acknowledges that all the documents have been received, however, request time as investigating officer is otherwise busy and has not gone through the documents filed by the petitioner.

3.The learned Public Prosecutor submitted that if the petitioners appear before the Investigating Officer at 10.30 a.m., on 04.10.2023 and explain them about the account books, they will proceed with the investigation for which learned counsel for the petitioner submitted no objection.



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(a) The society SPCA Thanjavur floated vide Reg.No.32/1973 was not renewed every year and that the Petitioner/accused knowing well that the Society was not renewed did not pursue suitable action to get it renewed. But they were misusing the funds of the Society by making transaction through the bank by utilizing the service of A3 Jayakumar by filling up required amount in the cheque leaves belonging to him.

b) Their shady modus operandi came to light only on perusal of the accounts audited by a private auditor for the year 2021-22 in the Executive Committed meeting held on 19.01.2022 where questions were raised and ordered to withhold.

c) Since the old SPCA Thanjavur was not functional since the same was not renewed, as per the order of the Director of Animal Husbandry, new society with new office bears were floated as SPCA, Thanjavur District on 16.02.2022 and the said Society is functional to look after the welfare of the animals in Thanjavur District.

d) Investigation also disclosed that the 2nd Petitioner/A2 by using the service of A3 and with the approval of



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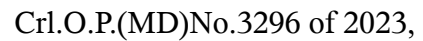
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the 1st Petitioner/A1 were misusing the funds of the Society amounting to Rs. 1,86,000/-"

18. So this status report does not indicate the documents produced by the petitioners, verification, genuineness. No attempt was made by the Investigating Officer. Even the party, who issued the vehicle receipt and the Auditor, who made the auditing were not also examined. This shows that in a casual manner, investigation has been undertaken without even referring to the documents produced by the petitioners as stated above. This shows the non-compliance of the order passed by this court.

19. In the light of the above said faulty investigation, now let us go to the documents produced by the petitioners to show that proper accounting was maintained.

20. As per the case of the prosecution, as mentioned above, sum of Rs.1,86,000/- alleged to have been misappropriated, misused or not accounted or documents have been created. To verify this only, this court directed the Investigating Officer to verify the documents. But the Investigating Officer failed to





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consist of grant made to it by the State Government which shall commensurate with the functions that it is required to perform, Any other grants, contributions, bequests, donations, gifts etc, and the like made to the Society, shall also constitute its funds. The Society shall have discretion to utilize its funds for the performance of its functions as decided by the Management Committee."

23.List is also annexured showing various capacities such as name, members list, Chairperson, etc. This shows that the petitioners are neither members nor office-bearers. List also shows that all the particulars of the office-bearers and Chairman person are functioning in the Government Department under the various Categories and various Branches.

24.So naturally the question, which may arises in the mind of the Court is whether the second respondent can have any control over the old Society. This is the crux of the matter.

25.But as mentioned above, I am not going into this aspect, since the matter is pending consideration before the Coordinate Bench of this court. For attracting *prima*



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facie ground that initiation of proceedings, this aspect must be taken into account. But absolutely, no such thought was made by the Investigating Officer on this line. He has been carried away by the complaint given by the District Collector, probably on the ground that the de-facto complainant is a Honorary chairman of the old Society.

26.In the Bye-Laws also, no reference is made available with regard to the old Society and the properties.

27.With regard to the properties, Bye-Law 21 reads as under:-

"21.The Properties of SPCA Thanjavur shall be managed by the society and any Sale (or) Long Term lease (More than 7 Years) shall be done on the specific recommendation of the SPCA Thanjavur District Chairperson (District Collector) with the concurrence of the State Government (Government of Tamil Nadu) after the subject is deliberated in the management committee of the society and after obtaining the approval of the management committee. Further any Short term lease (Less than 7 years) shall be done by the specific recommendation of



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the SPCA "Thanjavur District Chair Person (District Collector) after obtaining the approval of the management committee of the society."

28.This also does not indicate that the property of the old Society is automatically transferred to the new Society. On what ground, the entire property was taken over by the second respondent and made a complaint stating that the Society fund has been misused is completely not clear on record.

29.More-over, as mentioned above, the details of the statement of the account and the vouchers are available with the petitioners. As mentioned above, those were not verified by the Investigating Officer. Simply because, the second respondent happened to be the de-facto complainant, it has been carried on as if all is well with the averments made in the complaint. So, it is not the complaint of the second respondent that misappropriation was made by the petitioners in the old Society. He being the Honorary Chairman of the Society is making complaint. No such averment is made in the complaint itself. The problem started only after starting the new Society. So the factual aspects does indicate that the initiation of the criminal complaint by the



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second respondent is not well founded. When the petitioners refused to respond the notice issued by the second respondent, it appears that the complaints have been given as if the money has been misappropriated.

30.The Bye-Laws of the old Society 9 and 30(a) and (b) read as under:-

"9-The District Collector of Thanjavur shall be the President of the Society.

30-(a)The President of the Society shall preside at all meeting of the General Body and the Executive Committee at which he may be present. In his absence, any one of the Vice Presidents present shall be voted to the chair. In the absence of the Present and the Vice Presidents any member present at the meeting shall be elected to preside over the meeting.

(b)The District Collector and the President of the Society shall have over-all control and supervisions of the work of the Society."



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31. So this indicates that the District Collector is the President of the old Society and is having every control over the Society. As mentioned above, it is not the complaint of the second respondent as the President of the Society in making the complaint against the misappropriation. But as mentioned above, only as the President of the new Society, he made the complaint.

32. As mentioned above, initiation of the complaint itself is faulty. So I am of the considered view that continuation of proceedings in this direction may take no one to nowhere.

33. The second respondent if still feels that misappropriation was made in the old Society, then he can very well maintain a fresh complaint. As the President of the new Society, he cannot make any complaint against the functioning of the old Society, even though, it was not renewed for some time in between. But absolutely, it has no connection with the new Committee formed by the second respondent. So this aspect was not properly looked into, either at the time of preferring the complaint or during the course of the investigation.



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34.On that sole ground, without going into the other aspects, the entire prosecution is bad in law.

35.In the result, this criminal original petition is **allowed**. The FIR in Crime No.9 of 2022 on the file of the 1st respondent is hereby quashed in entirety, of course with the above said liberty. Consequently, connected Miscellaneous Petition is closed.

14/12/2023

Index:Yes/No
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To,

- 1.The Inspector of Police,
District Crime Branch Police Station (DCB),
Thanjavur District.
- 2.The President-cum-District Collector,
District Collector Office,
Thanjavur,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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