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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/03/2023

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The Hon'ble Mr. Justice **G. ILANGO VAN**

Cr1.OP(MD)No.13098 of 2022
and
Cr1.MP(MD)No.8336 of 2022

P.Manickavel : Petitioner/A2

Vs.

1.The Sub Inspector of Police,
Masarpatti Police Station,
Masarpatti-628 904,
Ettayapuram Taluk,
Tuticorin District.
(Crime No.72 of 2019) : R1/Complainant

2.Shri.M.Sivabalan,
Block Development Officer (Village Panchayat)
Pudur Panchayat Union,
Pudur-628 905,
Vilathikulam Taluk,
Tuticorin District. : R2/De-facto Complainant

PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.72 of 2019, dated 03/11/2019 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.



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For Petitioner : Mr.V.Karthikeyan

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking quashment of the FIR in Crime No.72 of 2019, dated 03/11/2019 on the file of the 1st respondent.

2.The facts in brief:-

The de-facto complainant was the Block Development Officer of Pudur Panchayat Union, Vilathikulam Taluk. He lodged a complaint stating that a sum of Rs.1,68,300/- has been misappropriated through a cheque without proper authorisation. Over which, a report has been received requesting proper investigation by registering the FIR. So, he lodged a complaint.

3.It is further stated that the alleged cheque was bearing No.620739 and it was issued in favour of one Lakshmi Electrical Company, on 13/08/2018. Later that amount was redeposited by the Secretary namely A3, on



01/10/2018. Since it is a temporary misappropriation, all the persons, who are involved in the above said offence must be enquired. During the Departmental Enquiry, A1 and A2 have stated that they have not signed in the above said disputed cheque. To find out the truth only, as per the instructions given by the District Collector, he lodged the above said complaint.

3.In the complaint, this petitioner was arrayed as A2 and the investigation has been undertaken. During the course of investigation, this petitioner as well as A1, who was working as Block Development Officer alleged to have signed in the above said disputed cheque, also appeared before the 1st respondent police and gave statement that they have not signed in the above said disputed cheque. On that account, sample signatures have been collected and sent for expert examination.

4.In pursuance of the above said request made by the Investigating Officer through the Court, the Hand Writing Expert attached to Tamil Nadu Forensic Sciences Library, Chennai also sent a report to the Court, which is also available on record.



5. Now pointing out this development, the learned counsel appearing for the petitioner would submit that even as per the case of the prosecution, the above said misappropriated amount was repaid to the Government Account by A3; A3 was terminated from service because of the above said malpractice; In the course of enquiry by the Department, it was found that this petitioner and A1 were the custodians of the cheque book. So without their knowledge, A3 would not have used the cheque and misappropriated the amount.

6. Per contra, the learned Additional Public Prosecutor would submit that even though, in the report of the Hand Writing Expert, it has been stated that this petitioner has not signed in the disputed document, other evidences are available. So according to him, the connivance of this petitioner is also noticed during the course of investigation.

7. But perusal of the records in the form CD file does not indicate any involvement of this petitioner as well as A1 in the above said misappropriation of the amount.



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8.No doubt, this petitioner and A1 are the custodians of the disputed cheque and responsible for the financial transactions. If any lapse has been committed by them, they ought to have been proceeded Departmentally. But for attracting the criminal prosecution, enough materials must be available. But instead, the complaint was given by the de-facto complainant that too for finding of the truth. No other materials are available.

9.The Expert report was also supporting the case of this petitioner. In the Expert report, it has been pointed out that the disputed signature was not made by this petitioner, so also A1. There is no positive indication in the report also, supporting the case of the prosecution. Since the purpose, for which the above said complaint given by the de-facto complainant has been served by way of the expert report. The report completely supporting the case of A1 and this petitioner to the effect that they have not signed in the disputed cheque.

10.In the light of the above discussion, I am of the considered view that continuation of the criminal



prosecution may not be proper, since there will be no possibility to convict the petitioner. So on that ground, the FIR in Crime No.72 of 2019, dated 03/11/2019 on the file of the 1st respondent is liable to be quashed.

11.In the result, this criminal original petition is **allowed** and FIR in Crime No.72 of 2019, dated 03/11/2019 on the file of the 1st respondent is quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

29/03/2023

Index:Yes/No
Internet:Yes/No

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Note:Issue order copy on 30/03/2023

To,

- 1.The Sub Inspector of Police,
Masarpatti Police Station,
Masarpatti-628 904,
Ettayapuram Taluk,
Tuticorin District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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