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CRL.OP.(MD)No.13877 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.10.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.13877 of 2022

and

CRL.MP.(MD).No.8890 of 2022

Arulraj

: Petitioner/Sole Accused

Vs.

State through

1. The Sub-Inspector of Police,
North Police Station,
Karaikudi, Sivagangai District.
(Crime No.608/2017).

: 1st Respondent/Complainant

2. Maheswaran

The Tahsildar,
Karaikudi Taluk Office,
Karaikudi, Sivagangai District

Now working as

Taluk Supply Officer,
Sivagangai Taluk Office

: 2nd Respondent/
De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi and quash the same.

For Petitioner

: Mr.K.Samidurai



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For Respondents

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor for R1

: Mr.V.R.Shanmughanathan for R2

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No.1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi, Sivagangai District.

2. The brief facts, which are relevant to decide this petition, are as follows:

2.1.The Petitioner was working as Village Administrative Officer in Kazhanivasal Group, Karaikudi Taluk, Sivagangai District. He had removed encroachments from the public lands belonging to the Government which caused annoyance to the encroachers. Some of them even intimidated him with life threat. Therefore, on 28.11.2016, the Petitioner had sought protection for his life addressing the District Collector. Instead of giving protection to the Petitioner, the Petitioner was transferred to a distant place viz., 75 kilometres from Kazhanivasal to Thoothai Village, as per the proceedings of the Tahsildar, Karaikudi, dated 30.11.2016. Therefore, the Petitioner had filed Writ Petition No.23703 of 2016 in which



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the Respondents were (1) The District Revenue Officer, Sivagangai; (2) The Sub Collector-cum-Divisional Authority, Devakottai and (3) The Tahsildar, Karaikudi. By order dated 07.12.2016 interim stay was granted in W.M.P. (MD) No.17037 of 2016 in W.P.(MD) No.23703 of 2016 against the transfer. Subsequent to the stay order, the higher officials of the Petitioner, in order to victimize him, had foisted a case as though he had removed dhotis and sarees intended for distribution to the poor. The Petitioner is not responsible for distribution of dhotis and sarees. Those are the responsibilities of the Tahsildar or the Taluk Supply Officer. However, a case was foisted as though the Petitioner had removed two bundles of dhotis and sarees intended for public distribution. Further, witnesses were created by higher officials as though from the Petitioner's office-cum-residence, the higher officials had recovered the two bundles. At the time of giving complaint, the second Respondent was not the Tahsildar. Also, after foisting a case against the Petitioner, the higher officials of the Petitioner had issued a memo on 17.11.2017, the Petitioner had replied. The higher officials of the Petitioner entered the residence of the Petitioner in the midnight and harassed the family members which caused fear in the minds of the Petitioner's mother. Therefore, she had given a complaint. Only after the Petitioner's mother gave a complaint, the case was registered.



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It was only an action initiated to wreck vengeance on the Petitioner. The due procedures were not adopted in this case by the Investigation Officer.

The officials are the higher officials and their subordinates. The bundles, which are stated to be missing, are not in the custody of the Petitioner. He was not responsible for the distribution of dhotis and sarees. Before filing charge sheet, prior sanction has to be obtained. In this case, sanction had not been obtained. Therefore, there is a procedural lapse in the investigation. Wrecking vengeance on the Petitioner for approaching the Hon'ble High Court by filing Writ Petition, a case has been foisted and based on the case, the Petitioner had been suspended by the higher officials. Therefore, the Petitioner had approached this Court stating that there is no proper procedure adopted by the Investigation Officer in filing the final report. The FIR itself is motivated. As per the FIR and final report, the properties were not entrusted to the Petitioner. It is entrusted to one Sakthivel. He only took the properties in an auto rickshaw belonging to one Chellaiah to the office of the Village Administrative Officer and dropped five bundles in the office of the Village Administrative Officer. The Petitioner closed the Office. The said Chellaiah went to the Tahsildar Office and took two bundles to the office of Village Administrative Officer. Since it was closed, he had informed the Tahsildar that the office of the



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Village Administrative Officer was closed. The Tahsildar and Sakthivel instructed the said Chellaiah to drop the two bundles in the house of the Village Administrative Officer. The Petitioner was not in station on that day. On coming to know about the dropping of two bundles in his house, he immediately called the second Respondent/De-facto Complainant Tahsildar, Karaikudi Taluk through his mobile and informed that the Village Assistant had dropped two bundles in his house without the instructions of the Petitioner. The second Respondent herein informed the Petitioner that it is not an issue and within two days it can be shifted to Village Administrative Officer's office. Subsequently, the case had been registered. Therefore, the Petitioner had approached this Court by filing this Petition to invoke the powers of this Court under Section 482 of Cr.P.C. to quash the charge sheet.

3. The learned Counsel for the Petitioner submitted that the Petitioner was an honest Village Administrative Officer and he refused to cooperate with the higher Officials. Due to the vengeance taken by the Higher Officials, a false case had been foisted against the Petitioner. The alleged date of occurrence is 26.10.2017 and the date of report is 31.10.2017. Prior to the registration of the First Information Report, the mother of the



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Petitioner had lodged a Complaint against the De-facto Complainant and some of the Witnesses through online. There is no recovery Mahazar and Form-95 in this case. The matter was informed to the first Respondent Police only after 3½ days.

4.As per the reported ruling of the Hon'ble Supreme Court in ***AIR 1992 SC 604*** in the case of ***State of Haryana Vs. Bhajanlal*** the following guidelines have been famed:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but*



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constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Therefore, when the Complaint/FIR/Charge Sheet/Private Complaint is due to *mala fide* intention, it is one of the conditions to exercise extraordinary power of the High Court under Section 482 of Cr.P.C. As per the guidelines issued by the Hon'ble Supreme of Court in the said rulings, one of the conditions to quash the FIR/Complaint/Charge Sheet/Private Complaint is,



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it had been lodged with *mala fide* intention. Here, the submission of the learned Counsel for the Petitioner is that the Petitioner was serving as Village Administrative Officer and he had not been entrusted with the bundles of dhotis and sarees intended for public distribution. As per Section 409 of IPC, there shall be entrustment of property in the custody of the Accused to constitute an offence.

5.The learned Counsel for the Petitioner drew the attention of this Court to Section 409 of IPC which is extracted as under:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

6.In support of his contention, the learned Counsel for the Petitioner relied on the decision of the Hon'ble Supreme Court in ***Shreekantiah Rammayya Munipalli and Ors. -vs- State of Bombay [1955 (1) SCR 1177]*** wherein it is held as under:

“16. That a defect of this kind is fatal and cannot be cured is well settled. See the Privy Council in Gokulchand Dwarkadas v. King [AIR 1948 PC 82], the observations of Varadachariar, J. in Hori Ram Singh v. Crown [1939 FCR 159 at 184] and the decision of this Court in Madan Mohan v. State of



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Uttar Pradesh [AIR 1954 SC 637 at 641] . But the learned Attorney-General argued that no sanction was necessary because, according to him, despite what the second accused says, by no stretch of imagination can he be said to have been acting, or even purporting to act, in the discharge of his official duty. The argument ran as follows : The act complained of here is the breach of trust and the prior abetment of it : the breach occurred as soon as the goods were loaded on Mohsinbhai's lorries : it was no part of this accused's official duties to permit an unauthorised removal of the goods : therefore, when he allowed that he neither acted, nor purported to act, in the discharge of his official duties. Reference was made to the decision of the Federal Court in Lieutenant Hector Thomas Huntley v. King-Emperor [1944 FCR 262 at 269] where Zafrulla Khan, J. held that “it must be established that the act complained of was an official act”, and to the observations of Varadachariar, J. in Hori Ram Singh v. Crown [1939 FCR 159 at 186] where, dealing with Section 409 of the Indian Penal Code, he says—

“Though a reference to the capacity of the accused as a public servant is involved both in the charge under Section 409 and in the charge under Section 477-A, there is an important difference between the two cases, when one comes to deal with the act complained of. In the first, the official capacity is material only in connection with the ‘entrustment’ and does not necessarily enter into the later act of misappropriation or conversion, which is the act complained of.”

17. What this argument overlooks is that the stress in the passage quoted is on the word “necessarily” which we have underlined. A later passage at p. 187 explains this:

“I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests.”

With that we respectfully agree. There are cases and cases and each must be decided on its own facts.

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts



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must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an “entrustment” and/or “dominion”; second, that the entrustment and/or dominion was “in his capacity as a public servant”; third, that there was a “disposal”; and fourth, that the disposal was “dishonest”. Now it is evident that the entrustment and or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done : in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.”

7. The learned Counsel for the Petitioner also relied on the decision of the Hon'ble Supreme Court in ***Chelloor Manakkal Narayan Ittiravi Nambudiri -vs- State of Travancore [AIR 1953 SC 478]*** wherein it is held as under:

“23. ... to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do. It follows almost axiomatically from this definition that the ownership or beneficial interest in the



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property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”

8.The learned Counsel for the Petitioner further submitted that apart from that, before filing the charge sheet, the Prosecution ought to have obtained sanction under Section 197 of Cr.P.C.. Here, the sanction had not been obtained. Also, the learned Counsel for the Petitioner submitted that the procedures to be followed in cases of this nature by the Investigation Officer had not been followed i.e., no recovery mahazar in this case regarding the recovery of alleged bundles of dhotis and sarees. When there is no entrustment, there cannot be a case made out against the Petitioner as per Section 409 of IPC. Therefore, it is the contention of the learned Counsel for the Petitioner that the investigation at the instigation of the higher officials of the Petitioner to settle the scores against the Petitioner for having filed Writ Petition and obtained stay against the order of transfer against the higher officials of the Petitioner had made up the case with *mala fide* intention to wreck vengeance against the Petitioner. The entire procedure adopted by the higher officials of the Petitioner along with police officials in registering the FIR and ending of laying of the final report is vitiated with *mala fide*. The learned Counsel for the Petitioner invited the attention of this Court to the statement of witnesses in the case recorded by



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the first Respondent/Investigation Officer which were his own subordinate and higher officials viz., Revenue Inspector and Village Assistant. The bundles of dhotis and sarees were distributed or placed or dropped in the Village Administrative Officer's office through auto rickshaw driver. When the Village Administrative Officer's office was closed, the higher officials of the Petitioner – the Tahsildar had informed him to keep custody of the same in his office and the Tahsildar will take it away in two days. Subsequently they had lodged complaint as though the Petitioner had taken the bundles intended for public distribution and lodged FIR. The Petitioner's family members were threatened in his absence when he was away from his house in the middle of the night culminating in the Petitioner's mother lodging the complaint against the higher officials of the Petitioner for trespassing into the house and threatening the family members in the middle of the night as though the Petitioner had committed the offence. Therefore, the learned Counsel for the Petitioner seeks to quash the final report as it is filed without following due procedures as per the offence alleged against the Petitioner right from registration of FIR till laying of the final report due procedures had not been followed. Above all, the properties which are alleged to have been misappropriated was not given custody of the Petitioner to lay the final report for the offences of breach of trust by public



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servant. Therefore, applying the principles/guidelines in the reported decision of the Hon'ble Supreme Court in ***Chelloor Manakkal Narayan Ittiravi Nambudiri -vs- State of Travancore [AIR 1953 SC 478], Shreekantiah Rammayya Munipalli and Ors. -vs- State of Bombay [1955 (1) SCR 1177] and State of Haryana Vs. Bhajanlal [AIR 1992 SC 604]*** the learned Counsel for the Petitioner seeks to quash the case in C.C.No. 1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi.

9. The learned Additional Public Prosecutor submitted that based on the Complaint given by the Village Assistant to the Revenue Inspector and the Deputy Tahsildhar, this case has been registered. The bundles have been recovered from the house of the Petitioner. More than 100 numbers of dhotis and sarees were found to be missing. The De-facto Complainant is not the Tahsildhar from the year 2017. On the confession of this Accused, three bundles were recovered. In order to cover this issue, the Petitioner had asked his mother to lodge a Complaint on the previous day against the higher Officials. He further submitted that it is a matter for trial and it cannot be quashed at this stage.

10. The learned Counsel for the second Respondent submitted that the previous occurrence took place in the year 2016 and the De-facto



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Complainant was not Tahsildar at the relevant point of time. Recovery has been made at night and the delay is a matter for evidence. The complaint has been lodged after occurrence and the recovery was made by the Tahsildar. There is no legal ground to quash the charge sheet.

11. Point for Consideration:

Whether the case in C.C.No.1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi is to be quashed?

12. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioner is found acceptable considering the fact that he is only the Village Administrative Officer and he is not entrusted with the properties for public distribution viz., Sarees and dhotis, which are the duty of the Tahsildar. Also, as rightly pointed out by the learned Counsel for the Petitioner as per Section 197 of the Code of Criminal Procedure applies and that sanction is necessary to prosecute the case. In the reported ruling of the Hon'ble Supreme Court reported in the case of ***Shreekantiah Rammayya Munipalli and Ors. -vs- State of Bombay [1955 (1) SCR 1177]***, considering the fact that the Petitioner is the sole Accused, to prove the charge under Section 409 of IPC, there shall be entrustment of the property. The Village Administrative Officer is not the person with



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whom the distribution of sarees and dhotis intended for poor, was entrusted.

It is in the custody of the Taluk Supply Officer or the Tahsildar concerned.

Considering those facts of this case, to attract the offence under Section 409 of IPC, there shall be entrustment of the property, to attract the offence of breach of trust. In the light of the reported ruling in the case of ***Shreekantiah Rammayya Munipalli and Ors. -vs- State of Bombay [1955 (1) SCR 1177]***, the case against the Petitioner is not found acceptable.

Hence, this Petition is to be allowed.

13. In the light of the above discussion, the point for consideration is answered in favour of the Petitioner and against the Prosecution. The charge sheet in C.C.No.1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi, is to be quashed.

In the result, this ***Criminal Original Petition is allowed.*** The charge sheet in C.C.No.1100 of 2022 on the file of the learned Judicial Magistrate, Karaikudi is quashed. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh/srm

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1. The Judicial Magistrate,
Karaikudi, Sivagangai District.
2. The Sub-Inspector of Police,
North Police Station,
Karaikudi, Sivagangai District.
3. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

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