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CRL. R.C. Nos.509/2023 – 459/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.07.2024	01.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NOS. 509 OF 2023 & 459 OF 2024

AND

CRL. M.P. SR NO.18045 OF 2024

CRL. R.C. No.459 of 2024

M/s. Rotary International South Asia Office
Rep. By Rajesh Anand
Pullman/Novotel Commercial Tower
1st Floor, Asset No.2, Hospitality District
Aerocity, New Delhi 110 037.

.. Petitioner

- Vs -

Salem Central Rotary Club
Rep. By Jaiseelan Gopalakrishnan
30/15, Kulberalakshmi Nagar
Kannankurichi Post, Salem 636 008.

.. Respondent

CRL. R.C. No.509 of 2023

R.Vasu

.. Petitioner

- Vs -

Salem Central Rotary Club



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Rep. By its President Jayseelan
S/o Gopalakrishnan
30/15, Kulberalakshmi Nagar
Kannankurichi Post, Salem 636 008.

.. Respondent

CRL. R.C. No.459 of 2024 filed u/s 397 r/w 401 Cr.P.C. praying this Court to call for the original records and set aside the cognizance order dated 27.01.2023 in Crl. M.P. No.1973 of 2022 passed by the learned Judicial Magistrate No.IV, Salem.

Crl. R.C. No.509 of 2023 filed u/s 397 r/w 401 Cr.P.C. praying this Court to set aside the order passed in Crl. M.P. No.1973 of 2022 dated 27.01.2023 in taking cognizance and culminated the complaint into C.C. No.113 of 2023 on the file of the Judicial Magistrate No.IV, Salem District, by allowing the criminal revision petition.

For Petitioners : Mr.G.Rajagopalan, SC, for
Mr. N.Vijayabaskar, for M/s.Law
Vision in Crl. RC No.509/23
Mr. K.P.Ananthakrishnan in Crl.
RC 459/2024

For Respondent : Mr. Jayaseelan Gopalakrishnan
Party-in-Person in both revisions

COMMON ORDER



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The cognizance of the alleged offence taken by the learned Judicial Magistrate No.IV, culminating in the case in C.C. No.113/2023 by order dated 27.01.2023 in Crl. M.P. No.1973/2022 is put in issue before this Court by filing the present revision petitions.

2. The facts leading to the filing of the present revision petitions, in a nutshell, are as under :-

The petitioner is the President of the society under the name and style of Salem Central Rotary Club, a registered society as per the Tamil Nadu Societies Registration Act, 1975 (for short 'the Act'). It is the case of the complainant in the petition filed u/s 200 Cr.P.C. that the accused persons 2 to 26, as shown in the complaint are the members and administrators of various Rotary Clubs within the District of Salem and the said clubs are unregistered. In this regard, the defacto complainant addressed the Deputy Registrar to call upon the said clubs to register themselves under the act for which no action had been taken by the District Registrar and, hence the present private complaint was filed by the complainant.



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3. Based on the said complaint, the court below ordered for enquiry u/s202 Cr.P.C. and in the absence of the report of the Station House Officer, inspite of repeated adjournments, after hearing the complainant, who appeared as party-in-person and after perusal of the records, found that the accused 2 to 26 were not registered under the Act and further inspite of the directions of the 1st respondent therein calling upon the respondents 2 to 26 therein to pay as the said societies were running for more than 45 years without registration and as no action had been taken to collect the fine and no steps also having not been taken by the 1st respondent therein on the complaint given by the complainant, held that a *prima facie* case had been made out for taking cognizance against the respondents therein and, accordingly, took cognizance against the 1st and 2nd respondents therein u/s 119, 166 and 166A of IPC and u/s 420 IPC against respondents 5 to 26 therein. Aggrieved by the said order, the present revision has been preferred by the respective petitioners.

4. Learned senior counsel, leading the arguments on behalf of the petitioners submitted that the allegations raised by the complainant are false and fabricated as the registration of the complainant association is "Salem Central



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Rotary Club” while that of the petitioner is “Rotary Club of Salem Central”. It is therefore the submission of the learned counsel that without even looking into the name, the private complaint has been filed which is only in vested interest.

5. It is the further submission of the learned senior counsel that international organisations need not register their branches under the local law and the petitioner being a branch of a global continent organisation, it need not be registered, however, without appreciating the above, the court below has erroneously took cognizance of the complaint, which deserves to be quashed.

6. It is the further submission of the learned senior counsel that the petitioner and the other accused persons had not committed any fraud or cheating activities u/s 420 IPC and that the action of fraud is committed only by the complainant, who had misused and registered the name of Rotary, which is an International Trade Mark and Copyrights Organization, which was misused by the complainant.



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7. It is the further submission of the learned senior counsel that the petitioner's club is already chartered by the Rotary International on 29.09.1982 and is functioning all these days and is in fact carrying on charitable activities by registering its activities under the Trust Act which registration is as early as on 21.05.2007, with the District Registrar, Salem West, Salem District. It is therefore the submission of the learned senior counsel that as the parent entity is already registered and the charitable acts of the petitioner Association is also registered under the Trust Act, there is no necessity for registering the same under the Societies Registration Act. Further, it is the submission of the learned senior counsel that Rotary International, the parent Society, having already been registered and the petitioner Association is merely a branch of the parent association, Section 4 (4) of the Act does not contemplate registration of the branch of any society under the Act if it is already registered under a different law.

8. It is the further submission of the learned senior counsel that Section 52 of the Act bars initiation of prosecution without the previous sanction in writing by the Inspector General of Registration or any other officer of the Registration



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Department not below the rank of Deputy Inspector General of Registration as may be authorised by the Government in this behalf. Therefore, the present cognizance taken at the behest of the complainant is wholly misconceived and perverse.

9. It is the further submission of the learned senior counsel that even otherwise, the respondent is estopped from challenging the credentials of the petitioner Association, as formerly the respondent was also a member of the Association, who has since been expelled for certain reasons, which had prompted the respondent to float a new Association under the name and style of Salem Central Rotary Club, which name is almost akin to that of the petitioner Association, which has been done with a calculated attempt to wreak vengeance against the petitioner. Therefore, the complaint at the instance of the respondent itself is not maintainable.

10. It is therefore the submission of the learned senior counsel that the cognizance taken by the Magistrate, which is not only against the provisions of the Act, but the learned Magistrate is not clothed with any power to take penal



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prosecution against non-registration of society, even if it is made out, as it is purely within the domain of the Registering Authority, who has to take up the matter and if the District Registrar has not taken any action, that cannot be the basis to proceed with penal prosecution and the Magistrate has lost sight of the basic aspect while taking cognizance and, therefore, the same needs to be set aside.

11. Per contra, the respondent/party-in-person appeared before the court and submitted that the stand of the revision petitioners that the petitioner is an arm of the Rotary International South Asia Office is a complete falsehood designed to deceive the Indian law and strictly prohibits the establishment of such offices with the compliance of Section 6(6) of the Foreign Exchange Management Act, 1999.

12. It is the further submission of the party-in-person that though the petitioner portrays itself as an Indian office of a foreign company “Rotary International” however, as per the Articles of Association and list of shareholders, the petitioner is a major shareholder of the parent company Rotary International



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South Asia Office registered in India under the Companies Act, 1956 and, therefore, the entity operates independently and is not registered under the Foreign Exchange Management Act.

13. It is the submission of the party-in-person that the Indian Constitution prohibits foreign entities from controlling associations operating under its jurisdiction regardless of any charter agreements and such being the case, the present act of the parent company in controlling the Indian company is against the law of the land.

14. It is the further submission of the party-in-person that under the umbrage of the foreign company, the petitioner is collecting membership fees without the entity being registered under the Tamil Nadu Societies Registration Act and, therefore, there is a loss caused to the exchequer, which has been rightly appreciated by the court below while taking cognizance and, therefore, all those aspects have to be proved by the petitioner before the trial court and even at the nascent stage, it would not be in the interest of the parties to set aside the cognizance and, therefore, prayed for dismissal of the revisions.



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15. In support of the aforesaid submissions, the respondent/party-in-person, placed reliance on the following decisions :-

- i) *Raghu Raj Singh Rousha – Vs – M/s. Shivam Sundaram Promoters (P) L. & anr. (CRL. A. No.2054/2008 – Dated 17.12.2008);*
- ii) *Shivjee Singh – Vs – Nagendra Tiwary & Ors. (CRL. A. No.1158/2010 – Dated 6.7.2010);*
- iii) *Viswanathan & Anr. – Vs – Basan & Ors. (Crl. O.P. (MD) Nos.9128/2019, etc. – Dated 10.07.2023).*

16. This Court gave its careful consideration to the submissions advanced on either side and perused the materials available on record as also the decisions relied on by the respondent/party-in-person.

17. Even before advertng to the submissions made and the materials available on record, it could be stated without a semblance of contradiction, upon going through the various decisions relied on by the respondent/party-in-person, the said decisions, in no way are applicable to the case of the respondent. The facts in the present petitions are not in any way equatable with the facts in



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the said decisions and, therefore, this Court is not looking into the said decisions, as the present case is to be decided on the facts as it stands and the provisions of law, which is applicable to the facts in the present case.

18. There is no quarrel with the fact that the petitioner's entity is "Rotary Club of Salem Central" while the respondent's entity is "Salem Central Rotary Club". Though both have some close nexus, but definitely both are not identical. It is even the admitted case of the respondent/party-in-person that the petitioner Association has been functioning even prior to that of the respondent, but it is not registered as required under the Act, whereas the respondent Association is registered under the Tamil Nadu Societies Registration Act. The whole grievance of the respondent is premised on the non-registration of the petitioner Association under the Act.

19. Be that as it may. The main grievance canvassed on behalf of the complainant before the Magistrate, which has led to the Magistrate taking cognizance is on account of the petitioner's entity not having got itself registered under the Tamil Nadu Societies Registration Act. It is the stand of the



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complainant that all the entities functioning as a club should be registered under the Tamil Nadu Societies Registration Act for the reason that for each member registered, a fee has to be collected and paid to the exchequer and the said loss to the exchequer has necessitated the filing of the complaint, as inspite of representations filed by the complainant before the District Registrar, the same has not evoked any response.

20. In this regard, it is borne out by record that the petitioner is an Indian office of the Foreign entity Rotary International and the Rotary International South Asia Office is registered under the Companies Act, as would be evident from the Memorandum of Association of Rotary International South Asia Office. Further, the Articles of Association of the petitioner Association have also been filed and so also the Certificate of Incorporation.

21. Further, it is borne out by record that the Rotary Club of Salem Central, viz., the petitioner, is also registered as Rotary Club of Salem Central under the Trust Act vide Doc. No.795/2007 dated 21.05.2007 with the District Registrar, Salem West, Salem District. The said fact is not disputed by the



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respondent/party-in-person. However, the grievance espoused by the party-in-person is only relatable to non-registration under the Tamil Nadu Societies Registration Act.

22. In this regard, the petitioner places reliance upon Section 4 (4) of the Act to submit that there is no necessity for the petitioner to register itself under the Societies Registration Act, as it had already registered under the Trust Act. In this regard, useful reference can be drawn to Section 4 (4), which is quoted hereunder :-

“4. Compulsory registration of certain societies. (1) Subject to the provisions of sub-sections (3) and (4), every society formed on or after the date of commencement of this Act, which has for its object any object mentioned in, or prescribed under Section 3 and

(a) Which consists of not less than twenty members;

(b) Whose annual gross income or expenditure in any financial year after the date of the commencement of this Act, is not less than ten thousand rupees,

shall be registered under this Act within such period as the case may be prescribed.

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(4) Nothing contained in this Act shall be deemed to require the registration under this Act of any society formed, established, registered or incorporated under any other law.”

(Emphasis Supplied)

23. From sub-section (4) to Section 4 of the Act, it is evident that if the entity is formed, registered, established or incorporated under any other law, then there is no requirement for registering the same under the Tamil Nadu Societies Registration Act.

24. A perusal of the materials available on record reveals that the foreign entity of the petitioner is incorporated under the Companies Act, as is evident from the Memorandum of Association and Articles of Association and the materials further reveal that the petitioner is an off-shoot of the said international entity, which comes under the umbrage of Rotary International, a service organization in the world.



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25. Further, it is also borne out by record that the petitioner's club is chartered by Rotary International on 29.09.1982 and its Club Chartered number is Club No.15884 and the said society is functioning all these days and is also owning a trust, viz., Rotary Club of Salem Central Charitable Trust, which is also a registered body under the Trust Act, vide Doc. No.795/2007 dated 21.05.2007 with the District Registrar, Salem West, Salem District. Therefore, even the charitable activity done by the petitioner is registered under the Trust Act and, therefore, there is no necessity for the petitioner to register itself u/s 4 of the Tamil Nadu Societies Registration Act. Further, it is also evident from the material placed before this Court that the Rotary Foundation (India) is a society registered under the Societies Registration Act, 1860 on 22.2.1988 and the petitioner being a branch under it, there arises no necessity for the petitioner Association to register itself once over under the Tamil Nadu Societies Registration Act. Further, Rotary Foundation (India) is also registered under the Foreign Contribution and Regulation Act. Therefore, the contention in this behalf, which has been entertained by the court below, is not only perverse and vitiated, but is wholly misconceived and, therefore, the same does not deserve to be sustained.



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26. Coming to the power of the Magistrate to entertain the petition u/s 200 Cr.P.C. in relation to infractions under the Tamil Nadu Societies Registration Act, it is to be pointed out that non-registration of the society, even if it to be accepted, is not a penal offence, and, therefore, it would not be within the purview of the Magistrate to entertain any petition filed u/s 200 Cr.P.C. with regard to any violation under the Tamil Nadu Societies Registration Act.

27. The Tamil Societies Registration Act provides for the necessary mechanism with regard to registration of a society and failure to register the society and all its allied activities, necessary provision is made under the Act, including the filing of appeal against any order that is passed by the District Registrar. Therefore, there is a built-in mechanism available with regard to action that could be taken in case of violation of any of the provisions of the Act.

28. It is to be pointed out that Sections 36 to 44 of the Act clothes the Registrar with power to look into the affairs of the any society and in the present case, no adverse acts have been taken by the District Registrar against the



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petitioner. Merely because a representation has been given by the respondent raising certain allegations, if the same are not made out, it is always open to the District Registrar to not proceed further in the matter. However, if the respondent has any grievance, the course open to the respondent is to approach the Inspector General of Registration, who is the highest authority, who can look into the matter and without the approval of the Inspector General of Registration, as provided for u/s 52 of the Act, no prosecution could be initiated under the Act. If the respondent really had any grievance against the inaction of the District Registrar to his representation, the course open to the respondent was to have approached the Inspector General of Registration. However, for reasons best known, the respondent had gone before the Magistrate u/s 200 Cr.P.C.

29. Against any act relating to non-discharge of duty by a Government servant, the course open to the individual is to approach the higher authority. It is not open to the individual to approach the Magistrate u/s 200 Cr.P.C. with regard to any act of non-performance of the duty cast on the authority under the provisions of the Tamil Nadu Societies Registration Act. If the District Registrar



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had not performed the work in the manner as provided for under the Act, no action entailing penal consequences under the Code of Criminal Procedure could be resorted to and the correct course open to the individual is to approach the higher authority under the provisions of the said law. Therefore, the act of the respondent in approaching the Magistrate u/s 200 Cr.P.C. with regard to non-discharge of duty by the District Registrar is wholly erroneous and the Magistrate ought not have entertained the said complaint, as the Magistrate is not vested with powers to look into acts relating to not discharging the duties by any authority.

30. When the Act provides for the necessary provisions to deal with all the scenarios relating to violation of any of the provisions of the Act, if the complainant is aggrieved by any inaction on the part of the authority, the complainant has to approach the higher authority seeking necessary action on the said representation and it is not open to the complainant to go before the Magistrate u/s 200 Cr.P.C. by filing a complaint and entertaining of the said complaint by the Magistrate is wholly an illegal act, which is nothing but



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usurpation of power of another authority, which is not conferred on the Magistrate.

31. The power of this Court with regard to interfering with the cognizance is dealt with by the Apex Court in the case of ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***, wherein the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. The relevant portion of the said judgment is quoted hereunder :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:



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(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 F.I.R. 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 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;



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(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.

(Emphasis Supplied)

32. The above decision of the Supreme Court unambiguously makes it clear that the exercise of power by the court should be either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge/allegation do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the complaint or even cognizance taken thereof and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the



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accused due to private and personal grudge, then the Court can interfere with the charge sheet.

33. The ratio laid down in the aforesaid decision squarely stands attracted to the case on hand, as in the present case, the discussion made above, reveals that not only cognizance could not be taken of an offence against an official for not discharging his duty properly, but even otherwise, the Act bars any action to be taken without the approval of the Inspector General of Registration. Further, when the acts, which are alleged to have not been performed, which do not make out any cognizable offence, the cognizance taken by the Magistrate of the offence with regard to non-discharge of duties is against the rudimentary principles of criminal jurisprudence and the said cognizance cannot be allowed to subsist.

34. For the reasons aforesaid, these criminal revision petitions are allowed by setting aside the order passed by in Crl. M.P. No.1973 of 2022 passed by the learned Judicial Magistrate No.IV, Salem. Consequent upon the above order, Crl. M.P. SR No.18045/2024 filed to vacate the interim order passed by this Court in



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Crl. M.P. Nos.3920 of 2023 and 3923/2023 in Crl. RC No.509/2023 does not require consideration and, accordingly, Crl. M.P. SR No.18045/2024 is dismissed and the interim order granted by this Court in Crl. M.P. No.3920 of 2023 and 3923/2023 in Crl. RC No.509/2023 is made absolute.

01.08.2024

Index : Yes / No

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CRL. R.C. Nos.509/2023 – 459/2024

M.DHANDAPANI, J.

GLN

To

The Judicial Magistrate No.IV
Salem.

**PRE-DELIVERY ORDER IN
CRL. R.C. NO.509 OF 2023
AND
CRL. R.C. NO. 459 OF 2024**



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**Pronounced on
01.08.2024**