



Crl.O.P.(MD).No.7271 of 2022
& Crl.M.P(MD).No.4991 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 25.07.2024

Pronounced On: 31. 07.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.(MD).No.7271 of 2022
& Crl.M.P.(MD).No.4991 of 2022

M.Vincent.

Aged 70 years

Chairman/Managing Trustee,

VinsEducational & Health Trust,

No.314/E2, K.P.Road,

Kanyakumari District.

.... Petitioner/2nd Accused

/versus/

1. The State of Tamil Nadu

Rep by the Inspector of Police,

Vigilance & Anti-Corruption,

Nagercoil – 629 001.

Kanyakumari District.

2. S.John Benchamin.

3. J.Justin.

... Respondents/Complainants

R3 Impleaded as per order dated 25.07.2024 in Crl.M.P.(MD).No.12017 of 2023 in Crl.O.P.(MD).No.7271 of 2022

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in connection with FIR in Crime No.3 of 2022 dated 21.03.2022 on the file of the respondents and quash the same in so far as the petitioner is concerned.



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For Petitioner : Mr.P.Godson Swaminathan, Senior Counsel
for M/s.Isaac Chambers.

For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)

For R3 : Mr.V.L.Akshai Sajin Kumar

ORDER

This Criminal Original Petition is filed to call for the records in connection with F.I.R in Crime No.3 of 2022, dated 21.03.2022 on the file of the Inspector of Police, Vigilance & Anti-Corruption, Nagercoil and quash the same.

2. Gist of the First Information Report:-

After conducting preliminary enquiry and getting permission from the Competent authority, the Inspector of Police, Director of Vigilance and Anti Corruption, Nagercoil had registered a case in Crime No.3 of 2022 under Section 120 B, 13(2) r/w 13(1)(d) of P.C Act r/w Section 34 of I.P.C as against Tr.G.Nagarajan, Assistant Director, Town and Country Planning, Tirunelveli, a Public Servant and against Tr.M.Vincent, Former M.L.A and Proprietor/Chairman,Managing Trustee, Vins Education and Health Trust, Nagercoil.



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3. The substance of the complaint is that, the second accused the Managing Trustee of Vins Education and Health Trust is running an Engineering College at Villukuri 'C' village. The second accused, after obtaining planning permission from the local body to construct building to an extent of 1400 sq.ft and 7729.59 sq.ft in S.Nos.826, 828/5, 828/9, 828/1, 828/2 and 828/4 on 08/01/2001 and 23/02/2009 respectively, had put up construction in the said land. Till 29/12/2010, the Local body is competent to grant permission only upto 4000 sq.ft for residential building and upto 2000 sq.ft for Commercial building. As per Section 47-A(2) of the Town and Country Planning Act, for all Commercial Building and Educational Buildings above 2000 sq.ft planning permission must be granted by Deputy Director, Town and Country Planning. While so, the 2nd accused/petitioner herein had put up construction of three storey building measuring 3896 sq.ft in S.No.825/1A in Villukuri "C" village.

4. One Mr.J.Justin, after obtaining information under R.T.I Act, gave a representation to the First accused Tr.G.Nagarajan informing that the land in S.No.825/1A belongs to him and the Second accused had put up unauthorised construction in his land, therefore, sought action against the second accused for putting up unauthorised construction in his land. Since no



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action taken by the first accused, the said Mr.J.Justin had filed a Writ Petition in W.P.(MD).No:2441 of 2017 to cause enquiry and take appropriate action regarding the unauthorised construction.

5. The Hon'ble High Court disposed the Writ Petition on 20/07/2017 with direction to the authorities to consider the representation and take action within a period of 3 months. The first respondent, despite court order did not act on the representation. Hence, Contempt Petition was filed by the said Mr.J.Justin. Knowing about the filing of Contempt Petition against him, the said Nagarajan hurriedly issued a show cause notice to Vincent/the second accused/petitioner herein on 22/01/2018. The second accused gave a reply admitting that he put up construction in S.No:826, 828/5, 828/9, 828/2, 828/1, 828/4, after obtaining permission from the Aloor Town Panchayat on 08/12/2001. The second respondent did not furnish the plan approval dated 08/12/2001 along with his reply.

6. The Investigation reveals that A-2 did not obtain permission for constructing building in S.No.825/1A either from the Town Panchayat or from Director of Town & Country Planning. The first accused knowing well that there is no planning permission for the building in S.No.825/1A, instead of



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taking action against A-2 for illegal construction, colluded with A-2 and facilitated A-2 to file false document before the High Court of Madras to claim falsely that he has permission for the constructing building in S.No.825/1A.

7. Thus, for not taking action against the illegal construction and for facilitating A-2, F.I.R was registered against A-1 and A-2 after prima facie satisfaction about the allegations. In the course of investigation, material for commission of offences under Section 465, 468 and 471 of I.P.C came to light. Therefore, the Investigating Officer had sent an alternation report to the Judicial Magistrate by including above Sections along with Sections 120B, 13(2) r/w 13(1)(d) of P.C Act and Section 34 of IPC.

8. The present Criminal Original Petition is filed by A-2 to quash the above complaint. Mr.J.Justin, who claims ownership of the land in S.No.825/1A and set the law into motion by filing W.P.(MD).No.2441/2017 got himself impleaded as 3rd respondent being victim of the crime and one of the prosecution witness.



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9. Submission by the petitioner:-

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The Learned Senior Counsel for the petitioner/A2 submit that the petitioner is an innocent person. Based on the motivated complaint by the impleaded 3rd respondent, the first respondent police has acted upon by registering F.I.R without proper preliminary enquiry. The petitioner belongs to A.I.A.D.M.K party and was Former Member of the Legislative Assembly, Former Minister and Former Rajya Sabha Member. He is running the Engineering College by name Vins Christian College of Engineering at Chunkankadai, Nagercoil. Mr.J.Justin is a member of the present ruling party. Due to political rivalry, he had initiated complaint without any iota of truth. Even if the entire complaint taken on its face value, no ingredient for offence under Sections 13(2) r/w 13(1)(d) of P.C Act r/w 34 of I.P.C or 120B I.P.C could be made out. The college is situated in S.Nos:825/1, 825/2, 825/4, 826, 828/1, 828/2, 828/4, 828/5 at Villujuri Village and 828/9 at Chunkankadai, Aloor Village and Town Panchayat, Kanyakumari District. The land in R.S.No:825/1 measures about 2½ acres was purchased by the petitioner under three sale deeds dated 30/10/2002, 25/11/2002 and 30/10/2002. He got planning approval *vide* order No:C.C.No.694/2001 dated 08/12/2001 and put up construction upon the said land. In S.No.825/1 student's hostel in 3 floors is constructed in the year 2003 at the cost of Rs.5 crores. The claim of Mr.J.Justin



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that he purchased S.No.825/1A in the year 2009 is denied.

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10. Listing out the cases filed against him by Mr.J.Justin, the petitioner submitted that the F.I.R registered with malafide intention due to political rivalry has to be quashed.

11. Response by the State:-

The learned Government Advocate (Criminal side) for the respondents submitted that admittedly, the construction in S.No.825/1 is an unauthorised construction. To facilitate the second accused, the first accused has misused his official position to obtain undue advantage. The case registered only after being satisfied in the preliminary enquiry that the first accused has abused his official position to make undue advantage for A-2. The case is under investigation only at the end of investigation, the entire scheme of conspiracy will come to light. When there is *prima facie* material available discloses commission of cognizable offence, investigation need not be quashed.

12. Response of the 3rd respondent:-

The learned Counsel for the 3rd respondent listing out the litigations initiated by him against the petitioner herein submitted that the building in



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S.No:825/1A is an authorised building. The petitioner claims that he purchased the property during the month of October-November 2002 from the lawful owners under three sale deeds. While 3rd respondent being the true owner of the land from 2009, the sale deeds relied by the petitioner is apparently false and fabricated. Further, the planning permission for the college hostel measuring 3896 sq.ft cannot be granted by Town Panchayat as per Section 47-A of the Town & Country Planning Act. The petitioner rely upon a fake planning permission alleged to have been issued on 08/12/2001 which is much prior to his alleged purchase of the land. Therefore pleaded that, the petition to quash has to be dismissed.

13. The case in Crime No.3 of 2022 is registered by DV&AC under P.C Act, after making preliminary enquiry and obtaining permission under Section 17(A) of the Act. The fact that the building permission for 3896 Sq.ft not issued by the Director, Town & Country Planning, is *per se* indicates that the construction is unauthorised. The material placed by the prosecution reveals that, despite Court direction, action against A-2 was not taken by A-1 for the said illegal construction. The prosecution attributes conspiracy to make unlawful gain and undue advantage is the reason for A-1 not taking action against A-2.



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14. It is trite law that F.I.R which discloses commission of cognizable offence should not be interfered by High Court by exercising its power under Section 482 Cr.P.C. The said power has to be sparingly used only in cases of gross miscarriage of justice, apparently found on the face of the record.

15. This Court on perusal of records find that sufficient material against this petitioner available which discloses commission of cognizable offence hence same cannot be overlooked or ignored. The Investigating Officer must be allowed to conduct the investigation in fair and free manner and concluded the investigation in accordance with law.

16. Therefore, this Court holds that the facts of the case does not warrant any interference in the investigation of Crime No.3/2002 which is registered based on available substantial material about commission of cognizable offence.



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17. In the result, this Criminal Original Petition to quash the F.I.R stands dismissed. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

Index :Yes/No.

Internet :Yes/No.

bsm

To:-

1. The Inspector of Police, Vigilance & Anti-Corruption, Nagercoil – 629 001.
Kanyakumari District.
2. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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Pre-delivery order made in
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