I. Margo and Another Vs. The Inspector of Police, CBI (Anti Corruption Branch) and Another

I. Margo and Another Vs. The Inspector of Police, CBI (Anti Corruption Branch) and Another

SooperKanoon Citation : sooperkanoon.com/1185803

Court : Chennai

Decided On : Feb-06-2017

Judge : P. Velmurugan

Appeal No. : Crl. OP. No. 4534 of 2008

Appellant : I. Margo and Another

Respondent : The Inspector of Police, CBI (Anti Corruption Branch) and Another

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in connection with C.C.No.1 of 2008 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.)

1. The Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in connection with C.C.No.1 of 2008 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

2. The case of the petitioner is that the petitioners are the office bearers of a Society registered under the Society Registration Act. The first petitioner is the President of the Society. The 2nd petitioner is the International Representative of the said Society and the name of the society is Reach in the Nilgiris . The Society was registered on 1989 in the office of the District Registrar, Ooty, bearing

Registration No.25/89. The main object of the Society is to educate economically backward and downtrodden children and to educate orphans with shelter, food and education. During the process of development, the objects were altered to include that the donations received shall be used for charitable purpose and to mete out the objects of society. Initially society has seven members. The society approached the Government of India under the Foreign Contribution (Regulation) Act, 1976. The petitioner approached the similar agencies in USA by name Reach International for extending their charity to downtrodden and orphans in India. The petitioner approached the Union of India for grant of permission under Section 11 of the Act. The said permission was granted during 1992 bearing Registration No.7597077. The said permission was in force up to 31.12.2004. In the year 2002, there was some internal disputes between the members of the Society. The Foreign Donor, appointed the second petitioner as a International Representative of the Society and by a Resolution, the second petitioner was appointed as a Co-Signatory to the bank in letter dated 30.03.1992. The Society is having account in Indian Bank, Coonoor. The society is also having the assistance of Chartered Accountant M/s.Raj and Company. The Society is maintaining accounts for the donation received from the Reach International. As Donor, the society accounts are periodically audited by auditor. The Society is also having a permanent bank account bearing No.10609 in Indian Bank, Coonoor. The Society is maintaining proper accounts and the accounts are periodically audited and the second petitioner is the International Representative to the Society.

3. The development Activities as per the guidelines and instructions of the donor the society started more charitable organizations eleven more Orphanages and Matriculations School in Tamilnadu and four similar institutions in Assam, Maniur, Indoor and Trivendrum. All the projects and institutions are under the supervisions and control of the donor. The total number of beneficiaries of all the institutions are around 2000 students mostly orphans. All the institutions are running in their own lands and buildings. The donor is contributing Rs.250-300 to each of the students. Every month, the minimum requirement is not less than six lakhs. From 1992 to 2002, the contribution of the donor were sent to the bank directly and in turn, the monthly expenses of other branches were sent Demand Draft by respective institutions. The other expenses were properly vouchered till date, there is no

complaint or remarks from the donor or any other persons or beneficiaries that there is any mismanagement or functions in the society. To the shock and surprise, there was inspection by the authorities under the Act stating that they want to peruse the accounts of the society and the society was immediately responded for such direction and the accounts of the society was audited by the officials. Now to their shock and surprise, they were served on with summons from the Chief Judicial Magistrate, Coimbatore, that the respondent filed final report u/s.120 B r/w. 406 of IPC , Section 23 (1), 25, r/w. Sections 4 and 13 of the Foreign Contribution (Regulation) Act. On perusal of the final report, the petitioners finds that there is no offence committed as per the Investigation Records. On perusal of the charge sheet filed by the respondents, the mandatory provisions of the Act has not been followed. There is no offence made out even as per the final report when the present petition u/s.482 of Cr.P.C is filed herewith to quash the proceedings.

4. The case of the respondent is that the CBI:ACB:Chennai, registered R.C.No.26(A) 2005, on 27.05.2005, based on the source information that M/s.Reach in Nilgiris, an Association registered under The Tamil Nadu Societies Registration Act, 1975, represented by Dr.Paulraj, Yesudian, President, R/o.No.315/1, Samuel Nagar, Kottaiyur, Elagiri Hill- 635 853 and Shri.C.Paulrau, Asstt. Secretary/Treasurer, residing at Plot No.99, Sai Deep Apartments, VGP Sarvanan Nagar, Madambakkam, Chennai 73 and other office bearers, had violated certain provisions of Foreign Contribution (Regulation) Act, 1976, thus committed the offences u/s.4 and 13 of Foreign Contribution Regulation Act, 1976 and Section 8(1) of FCR Rules, 1976 r/w.Sec.23 of Foreign Contribution Regulation Act, 1976.

5. Investigation into the case, revealed the following facts that M/s.Reach in the Nilgiris is a Society, registered vide Registration No.25/1989, under The Tamil Nadu Societies Registration Act, 1975. The Office bearers of the Society on its inception were, Sri. I.Margo, Sri P.K.Manoharan and Sri.N.A. Bellie, as the President , Secretary and the Treasurer of the Society respectively Smt.Thangam Margo, Sri.I.Marshall, Smt.Emelda Marshall and Smt.GB.Saroja were the other members of the Society. The registered address of the Society was No.86, Mount

Road, Coonoor and the Administrative office was at Plot No.25, Ravananan Nagar, Puzhuthivakkam, Madras-91. The main objects of the Society as per their Memorandum of Association, are to educate economically backward and downtrodden children and to give shelter and food to fatherless and motherless children. The Memorandum has been subsequently changed and the following objects were added i.e., (30) the funds which the society receives, will be spent only for charitable purposes. (32) The income and the funds of the society will be solely utilised towards the objects of the society on which it was formed and no portion of it will be utilised for payment to trustees/members by way of profit, interest, dividends, etc, in their periodical reports addressed to the Distritct Registrar/Ooty, the Society had declared ten Reach hostels/schools, as its Branches, in the year 1993. The society has been registered under Foreign Contribution Regulation Act, 1976. in the year 1992, vide Registration No.7597077 to receive and utilise foreign contribution for the specific purposes for which it was formed.

6. An SB A/c.No.10609 in the name of M/s.Reach in the Nilgiris, was opened at Indian Bank, Coonoor Branch and operated by Sri.I.Margo, President of the Society, since the year 1990, which was the designated account for the purpose of receiving and utilising foreign contribution for the Society. On 30.03.1992, Sri Ravi Gnanakkan in the capacity of Acting President, Reach in the Nilgiris (who in fact was not even a member of the said Society) signed and sent a letter to the Indian Bank, Coonoor Branch, informing therein that the SB A/c.No.10609 would thereafter be jointly operated by himself and Sri.I.Margo, Sri.I.Margo was opening an SB A/c. Bearing No.7321 at Indian Bank, Coonoor Branch in his name.

7. During the period from 1989-90 to 2001-2002, an amount of Rs.91108992.83 was received as foreign contribution by the Society from 1989-90 to 2001-2002. On 5.10.2000 Sri.I.Margo, had received an amount of Rs.2292000/- as foreign contribution directly into his SB A/c No.7321 and fraudulently shown it as a cash receipt in the Society's cash book. The acts of Sri.I.Margo, in receiving foreign contribution in his personal SB account and showing it as a cash receipt in the books of accounts of the Society, was a misrepresentation of facts and violation of FCRA, 1976. During the period from 1996 to 2002, on atleast 75 such occasions,

Sri.I.Margo had diverted the funds received through foreign contribution in the SB A/c.No.10609, to his personal SB A/c.No.7321 at Indian Bank, Coonoor Branch and to his other savings Bank accounts maintained at SBI, Coonoor and canara Bank, Coonoor, to the tune of Rs.4,72,47,000/- in violation of Section 4 of FCRA, 1976 On these occasions, Sri.I.Margo had issued cheques from the society's SB A/c favouring himself and these cheques were signed by Sri.I.Margo and Sri.Ravi Gnanakkan. Sri.Ravi Gnanakkan not being the member of the society, had signed the said cheques as Joint Signatory. Out of this diverted funds I.Margo had taken demand drafts in the names of various Reach Hotels and individuals to the tune of about Rs.3 crores and utilised/diluted the remaining amount of about Rs.1 crore lying in his SB account, without reflecting it in the books of accounts of the society. Ouot of the amount of the demand drafts also. Sri.I.Margo had sent demand drafts to various private persons, who are not the authorised branches of the society, in violation of Section 4 of FCRA, 1976 sri.I.Margo had shown these transfers to his personal savings bank accounts, as cash receipts in the books of accounts of the society, which is in violation of Section 13 of FCRA, 1976.

8. Further I.Margo, as the President of the Society, in violation of Section 4 of FCRA, 1976, during the period from 1992 to 2002, had sanctioned and disbursed loans to various individuals to the tune of about Rs.50 lakhs from the Foreign Contribution account and did not recoup the loans, which is in violation of Section 4 of FCRA, 1976. Sri.I.Margo did not properly reflect the status of the loans and advances sanctioned/disbursed/recouped in the books of accounts and the receipts and payments account/balance sheet of the society for the relevant period, which is in violation of Section 13 of FCRA, 1976.

9. Further Sri.I.Margo and Sri.Ravi Gnanakkan, during the period from 1992 to 2002, as the joint operators of the SB A/c.No.10609 of the Society, did not properly account for deposits made, for about Rs.90.86 lakhs from the said SB Account in the name of society and to the tune of about Rs.2.79 crores for the deposits matured in the said account and diverted the proceeds of the said deposits to the personal savings bank A/c.No.7321 of I.Margo, which is also in violation of Section 4 of FCRA, 1976. Sri.I.Margo also failed to properly account for the deposits in the books of accounts of the society and failed to reflect the same

in the receipts and payments account and balance sheet of the society for the relevant periods in violation of Section 13 of FCRA, 1976.

10. Heard both sides.

11. Learned counsel for the petitioner would submit that the petitioners have not violated any provisions under the Foreign Contribution (Regulation) Act. On perusal of the charge sheet filed by the prosecution, there is no offence made out. Even as per the final report filed by them, the sanctioning authority has accorded the sanction without applying to mind. The sanctioning authority before granting sanction has not gone through the records of the Government of the some department which conducted enquiry. Before the filing of FIR, the Central Government conducted enquiry and the respondent also registered case. The sanctioning authority has accorded sanction for prosecution with non-application of mind. The respondent has not filed any documents to show that the sanctioning authority was provided with all documents collected during the investigation. But the sanctioning authority has passed orders as if he had perused the records. The trial court ought not to have accepted the sanction order and charge sheet filed by the prosecution. Therefore, the present petitioner has filed this petition u/s.482 of Cr.P.C to call for the records in connection with C.C.No.1/2008 on the file of the Chief Judicial Magistrate, Coimbatore and to quash the same.

12. Learned Special Public Prosecutor appearing for the State would submit that the once the foreign donor had sent the contribution, it was the duty of the petitioners to spent the same for the purpose for which the society was formed and to properly account for the same as per the provisions of FCRA, 1976. The petitioners have not maintained the account and have not properly shown vouchers which was in violation of Section 13 of FCRA, 1976. He would further submit that the charge sheet filed against the petitioner especially reveals the offence committed by the petitioner under the relevant provision of IPC and FCRA. The petitioner has violated the various provisions under the FCRA 1976. Further, he would submit that the charges in the case were already framed during February, 2008 itself. Five witnesses were already examined and marked 286 documents. The trial of the case is in advanced stage. The petitioners are herein

which at liberty to raise all the grounds raised herein before the trial court, during the trial proceedings. In case they arrived at a conclusion of the trial proceedings, there are other remedies available in law. Therefore, this petition seeking to quash the trial proceedings in C.C.No.1 of 2008 is a premature one and the averments made in the petitions are not sustainable under law. Since the charge sheet reveals the prima facie case against the petitioners, the petitioners by invoking the inherent powers of this court u/s.482 of Cr.P.C., for quashing the prosecution is not maintainable and the same is liable to be dismissed. He would place reliance on the citation of this Court reported in A.Govindarajan and six others v. The Inspector General of Police, W-5 AWPS, Chennai-40 2007 1- LW (Crl.) 493. The learned counsel for the second respondent relied on the judgment of the Hon'ble Supreme Court reported in Satish Mehra V. State (NCT of Delhi) - (2012) 13 SCC 614

13. Records perused.

14. On perusal of the records, it reveals that during the course of investigation relating to the allegations against the society, it was revealed that from the period from 1992 to 2002, Sri I.Margo, President of the state society and Sri. Ravi Gnanakan and an outsider are not a member of the said society and entered into the criminal conspiracy to commit the criminal breach of trust in respect of said society and to divert the funds of the society for their personal use by violating the provisions of Foreign Contribution Regulation Act, 1976. In pursuance of the said conspiracy, the SBI account A/c.No.10609 at Indian Bank, Coonoor Branch was opened in the name of M/s.Reach in the Nilgiris and operated at Sri.I.Margo, the then President of the society which he declined as the description bank account for receiving and utilizing Foreign Contribution Regulation Act. Sri.Margo also opened and operated a SB A/c.No.7321 in his personal name, in Indian Bank, Coonoor Branch.

15. On perusal of the charge sheet, it reveals that during the period from 1996 to 2002, on atleast 75 such occasions, sri I.Margo had diverted the funds received as foreign contribution in the SB A/c.NO.10609 to his personal l SB account No.7321 at Indian Bank, Coonoor Branch and to his other savings bank accounts

maintained at State Bank of India, Coonoor and Canara Bank, Coonoor, to the tune of about Rs.4,72,47,000/- in violation of Section 4 of FCRA, 1976. On these occasions, Sri.I.Margo had fraudulently issued cheques from the soceity's SB A/c favouring himself and these cheques were signed by sri I.Margo and Sri Ravi Gnanakkan, Sri. Ravi Gnanakkan, not even being the member of the society, had signed the said cheques as Joint Signatory, out of this diverted funds Sri.I.Margo had taken demand drafts in the names of various Reach Hostels and individuals to the tune of about Rs.3 crores and utilised/diluted the remaining amount of about Rs.1 crore lying in his savings bank account, without reflecting it in the books of accounts of the society. Thus, Sri.I.margo acting in conspiracy with Sri.Ravi Gnanakkan, being entrusted with the property of the society, dishonestly converted the said property for their own use and dishonestly diverted the property not for the purpose of the society.

16. Perusal of the sanction order before according sanction , the sanctioning authority has gone through the entire documents placed before him and after applying his mind has accorded the sanction for prosecution against the petitioners.

17. Further as contend by the learned Special Public Prosecutor in this case, the trial Court has already framed charges against the petitioner and trial also commenced and prosecution has examined five witnesses and marked 286 documents, even in the year of 2008 itself. In this regard, it is relevant to refer the citation of this Court reported in A.Govindarajan and six others v. The Inspector General of Police, W-5 AWPS, Chennai-40 2007 1- LW (Crl.) 493 wherein this Court has relied on the decision of the Hon'ble Apex Court reported in Amar Chand V. Shanti Bose AIR 1973 SC 799 that,

Where the accused moved the High Court at the time when the trial was almost to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the ground that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High

Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence.

In this case on hand also five witnesses has been examined and 286 documents were marked prior to the date of this petition, therefore, the case reported in A.Govindarajan and six others v. The Inspector General of Police, W-5 AWPS, Chennai-40 2007 1- LW (Crl.) 493 is squarely applicable to the facts of the present case in hand.

18. In the case of Satish Mehra V. State (NCT of Delhi) and another reported in (2012) 13 SCC 614 wherein the Hon'ble Supreme Court held that:

the power of the interdict a proceedings either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in the case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceedings that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test, namely that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact, the power to quash a proceeding after framing of charge would appear to be some what wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

19. The trial court has considered the entire materials placed before in C.C.No.1 of 2008 and has found that prima facie materials are available for framing charge against the petitioners. Accordingly, framed the charge and trial commenced, some of the witnesses have been examined and documents have been marked. On perusal of the entire records placed before this court, it is seen that even in the charge sheet, there is a specific allegations against the petitioner for violating the Foreign Contribution(Regulation) Act, 1976. There is no sufficient reason to quash the proceedings in C.C.No.1/2008 on the file of the Chief Judicial Magistrate, Coimbatore.

20. When exercising jurisdiction u/s.482 Cr.P.C., the High court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the Trial Judge. The scope of exercise of power u/s.482 of Cr.P.C., and the categories of the cases where the High Court may exercise its power under it relating to cognizable offences to prevent the abuse of process of any court or otherwise to secure the ends of justice. The powers possessed by the High Court u/s.482 of Cr.P.C., are very wide and at the same time, the power requires great caution in its exercise . The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stiffle the legitimate prosecution.

21. Under the above said circumstances, since, it is found that in this case prima facie materials are available to proceed further against the petitioner and there is no valid reason to quash the criminal prosecution initiated against the petitioners in C.C.No.1/2008 on the file of the Chief Judicial Magistrate, Coimbatore, this petition is liable to be dismissed.

22. In fine, this criminal original petition is dismissed.