Selvaraj and Others Vs. State represented by The Inspector of Police and Another

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Court : Chennai

Decided On : Jun-27-2016

Judge : C.T. Selvam

Appeal No. : CRL.R.C.Nos. 321 & 322 of 2015 & M.P. Nos. 1 & 1 of 2015

Appellant : Selvaraj and Others

Respondent : State represented by The Inspector of Police and Another

Judgement :

(Prayer: Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned XVII Metropolitan Magistrate, Saidapet, Chennai, passed in Crl.M.P.No.2768 of 2014 in C.C.No.1208 of 2013 on 20.02.2015.

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned XVII Metropolitan Magistrate, Saidapet, Chennai, passed in Crl.M.P.No.2767 of 2014 in C.C.No.1208 of 2013 on 20.02.2015.)

1. Case in Crime No.1202 of 2011 on the file of the respondent was registered for offences u/s.406, 420, 477-A r/w 120-B IPC. The complaint was preferred by second respondent, the acting President of the South India Cine and TV Drivers Association, informing that the first accused as President, the second accused as Secretary and the third accused (since deceased) as Treasurer of the Association,

wrongfully had drawn a sum of Rs.11,00,000/- from the Association's savings fund of about Rs.1 crores on the pretext of advancing monies towards purchase of land at Nallore Nagar, Ulundurpet Cuddalore District. The said advance was not evidenced by any receipt and there was no account regards the registration of the sale deeds of the said land or plotting out thereof. Instead of allotting plots to the members, plots have been sold to outsiders, no accounts there regards had been produced or submitted to audit and having dealt with a sum of Rs.8 crores, a sum of Rs.3 crores has been defalcated. The accounts of the Association for the period 2008-2010 had not been subjected to audit. When asked for accounts, the accused resorted to acts of violence, defamation and spreading falsehood. The complaint also informs of one of the accused having done away with documents using a pendrive. On completion of investigation, the final report informs that the committee comprising of 19 persons with first accused as President, second accused as Secretary and third accused (since deceased) as the treasurer, decided to allot a half ground plot free of costs to each of its members. Without obtaining the concurrence of the General Body, accused 1 to 3 withdrew a sum of Rs.11 lakhs from the account of the Association, informed of having acquired an extent of 230 acres at Nallore Nagar near Ulundurpet and without disclosing any accounts or allotting free plots to the members, collected sums of Rs.24,000/- from some of them and sold the plots to outsiders for a total sum of Rs.9 crores and enriched themselves in a sum of Rs.2,84,88,958/-. The charge sheet informed of commission of offences by eleven persons along with the deceased erstwhile treasurer. Upon conduct of audit, it was found that the accused have done away with a sum of Rs.2,84,88,938/-. The third accused has embezzled a sum of Rs.2,00,000/- and the fourth accused, without consent of the Association, has sold the plots purchased by the Association to outsiders. Hence, the accused were charged for offences u/.406, 420, 477-A r/w 120-B, 380 r/w 34 IPC. Challenging the same, revision petitioners have preferred discharge petitions in Crl.M.P.Nos.2767 and 2768 of 2014 on the file of learned XVII Metropolitan Magistrate, Saidapet, Chennai, which were dismissed under orders dated 20.02.2015. There against, the present revisions have been filed.

2. Heard Mr.R.Shanmugasundaram, learned senior counsel for petitioners and Mr.C.Iyyapparaj, learned Government Advocate [Crl.side] for first respondent and

Mr.V.Raghavachari, learned counsel for second respondent.

3. It has been submitted on behalf of petitioners that the South India Cine and TV Drivers Association and South India Cine and TV Drivers Welfare Society were two distinct entities. The Society was one registered under the Tamil Nadu Societies Registration Act. The Registrar of Society had found no wrong doing in the conduct of the Society. The contention of prosecution that the Society was a branch of the Association was not supported by any material. There were civil suits wherein injunction stood granted against the de facto complainant from acting in respect of the Society and hence, the de facto complainant lacked authority to file a complaint on its behalf. The Registrar of Societies had not ordered any audit of the Society. Audit had been done at the behest of the de facto complainant. The de facto complainant who was the President of the Association did not have control or domain over the accounts of the Society which continued to be under the control of the first and second accused. While so, the audit of the accounts of the Society wrongly had been ordered. The audit report simply informed that the auditors did not obtain sufficient audit evidence and hence, were expressing an adverse opinion. Therefore, it was clear that the audit reports were not based on the accounts maintained by the Society. The final report contended that offences have been committed in respect of the Association while the audit reports relied upon by the prosecution pertain to the Society. The Court below failed to note that the investigating officer had not seized or scrutinized the accounts of either the Society or the Association and had filed the final report even there without. Learned Magistrate, while admitting such position, fell into error in holding that the accounts could be produced even during trial. It was contended that in the absence of accounts of either the Society or of the Association there would be no material to make out even a prima facie charge.

4. Learned counsel for second respondent/de facto complainant submitted that no separate elections were held for the welfare Society. On assumption of office as office bearers of the Association, persons automatically became office bearers of the welfare Society. The welfare Society was a sub society of the association and had been found exclusively for the purpose of distributing house sites to members of the Association. Learned counsel submitted that much money had found its way

to the personal accounts of the accused from the account of the Association. Monies towards purchase of lands had been drawn only from the Association account. Monies collected from members of the Association had also been credited to the Association account. This reveals the position that both the Association and the Society are interlinked and are being operated by the same administrative body. Referring to a tabular statement, learned counsel submitted that the same made explicit the diversion of funds to the accused and third parties from two accounts of the Society and two accounts of the Association.

5. Learned Government Advocate [Crl.side] would submit that upon a thorough investigation, a final report informing commission of offences stands filed. The Court below has taken a reasoned decision in dismissing the petitions seeking discharge and hence, this Court would not interfere.

6. This Court has considered the rival submissions and perused the materials on record.

7. A perusal of the typed set of papers reveals that Account No.777660032 in the name of South India Cine and TV Drivers Welfare Society was maintained with the Indian Bank, Vadapalani Branch, Chennai. Huge sums of money have been transferred from this account to various persons. Similarly, three other accounts, one standing in the name of the Welfare Society as account No.810818072 with the Indian Bank, Vadapalani Branch, Chennai and two other accounts in the name of the Association as accounts Nos.3200 with the Canara Bank and 769937288 with the Indian Bank, Vadapalani Branch reveal very many transactions. Particularly, account No.777660032 with the Indian Bank reveals transactions in huge sums. The account statements also inform that monies in sums as large as Rs.30,00,000/-, Rs.10,00,000/-, Rs.15,00,000/- and the like have been drawn in favour of accused and individuals. The report of the auditors, be they rightly or wrongly appointed, informs that particulars are not available. This Court, without hesitation, would inform that on the final report presently filed, there hardly would be any possibility of bringing home the offences alleged as the same is bereft of material in support of the charges made. However, where the second respondent/de facto complainant has produced statements of bank accounts

which reflect much dealing with the monies of the Association and that monies have found their way to the hands of the accused, the same is a matter for concern. So is the report of the auditors to the effect that particulars are not available. It is for the prosecution to establish the interlink between the Association and the Society, their accounts, monies that have been fallen into the hands of the accused persons and third parties and to unravel the offences, which stand committed. Towards such end, this Court would pass the following order:

i. A further investigation shall be carried out by one not below the rank of Assistant Commissioner of Police, Central Crime Branch, Chennai.

ii. The officer designated for such purpose shall complete the further investigation and file his report within a period of two months from the date of receipt of this order.

iii. Pending receipt of the report of further investigation, proceedings in C.C.No.1208 of 2013 on the file of learned XVII Metropolitan Magistrate, Saidapet, Chennai, shall stand stayed. Upon receipt thereof, the Court below shall proceed further with the case.

The Criminal Revisions, accordingly, are ordered. Consequently, connected miscellaneous petitions are closed.