(2001) 06 MAD CK 0035

In the Madras High Court

Case No : Criminal Original Petition No. 3750 of 2000 and Criminal M.P. No. 1288 of 2000

A. Kanagasabapathy and Another APPELLANT

Vs

State RESPONDENT

Date of Decision : 08-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 409, 467, 468, 471

Citation : (2001) CriLJ 4036

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Rathinam, for the Appellant; V.R. Balasubramaniam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Kanagasabapathy, the first petitioner is the Executive Secretary of Tamil Nadu Sarvodaya Mandal,

Ranganathan, the second petitioner is the District Co-ordinator of the Mandal in Vellore District.

2. The Inspector of Police, District Crime Branch, Vellore, the respondent herein filed a charge-sheet against both the petitioners for the offences

under Sections 467, 468, 471 and 409, I.P.C. alleging that the petitioners who were entrusted with the work of digging and constructing irrigation

wells in Vellore District, misappropriated certain amount while executing the said work under the Jeevan Dhara Million Wells Scheme. Seeking for

quashing of the above proceedings, the petitioners/accused have filed this petition u/s 482, Cr. P.C.

3. The crux of the accusation as mentioned in the charge-sheet is summarised as

below :--

The Government of Tamil Nadu under the Jawahar Velai Vaippu Thittam executed a scheme called Jeevan Dhara Millian Well Scheme introduced

by the Government of India. The Tamil Nadu Sarvodaya Mandal under the leadership""'' of the first petitioner Kanagasabapathy was authorised to

undertake work under Je''evan Dhara Million Well Scheme for the year 1995-96. 290 beneficiaries were'' identified under the scheme in Vellore

District by the petitioners (A 1 and A2), who are the Secretary of the Tamil Nadu Sarvodaya Maridal and the District Organiser of the Vellore

District respectively. Each beneficiary- was sanctioned an amount of Rs. 42;000/- to develop their work. The petitioners (A1 and A2) were

responsible for the execution of the said work. The amount of Rs. 1,21,.80,0007- was sanctioned by the Government, along with 2 per cent for

the administrative expenses and the same was ''received by the first petitioner. After having been entrusted with the said sum, the petitioners (Al

and A2) j pined together .with common intention and misappropriated a portion of the said amount, by defrauding the Government and the,

beneficiaries and falsifying the accounts and reported as if the sanctioned, amount was fully utilised.

4. Along with the charge-sheet, the particulars regarding the names of the beneficiaries, the actual amount paid to them and the balance amount yet

to be paid have been given.

5. The learned Counsel for the petitioners, while arguing the matter, would contend that the charge-sheet and other documents would not satisfy

the ingredients of the alleged offences under Sections 467, 468, 471 and 409, I.P.C. and the witnesses P.Ws. 1 to 90, who are the beneficiaries,

never spoke anything about the forgery of misappropriation and other witnesses, namely, P.Ws. 91 to 93 also did not state anything against the

petitioners with reference to the alleged offences and as such, the proceedings as against the petitioners are liable to be quashed.

6. The learned Government Advocate has filed the counter on behalf of the respondent and contended that since a portion of the amount was not

paid to the beneficiaries, the charge-sheet had been filed against the petitioners for the alleged offences.

7. I have heard the counsel for the parties and gone through the affidavit filed by

the petitioners, counter filed by the respondent and also gone

through the typed set, which contains the documents filed u/s 173, Cr. P.C. As directed by this Court, the learned Government Advocate has

produced the case diary. I have perused the same also.

8. On going through the papers furnished u/s 173, Cr. P.C. contained in the typed .set filed by the counsel for, the petitioners and the case diary, I

am of the considered opinion that without any material, the charge-sheet has been filed against the petitioners for the above offences.

9. There is no dispute in the fact that the Tamil Nadu Sarvodaya Mandal was authorised to undertake the work of digging and constructing wells

for the year 1995-96 in Vellore District. The first petitioner is the State Secretary of the Tamil Nadu Sarvodaya Mandal and the second petitioner

Is the Vellore District Organiser of the said Sarvodaya Mandal.

10. According to the petitioners the Tamil Nadu Sarvodaya Mandal has been in existence from 1956 and it is a Gandhian Institution. It has been

propagating the Gandhian principles on villages and had taken'' part in Boodhan Movement and had been effectively assisting the village people to

uplift their economy as well as social status.

11. In the year 1988-89, the Central Government formulated a scheme called ""Million Wells Scheme"" whose beneficiaries were targeted to be the

small farmers belonging to the Scheduled Castes and Scheduled Tribes without irrigation facilities. The scheme is 100 per cent subsidised. The

Central Government implemented the scheme through the State Governments, which, in turn, implemented through District Rural Development

Agency. The said scheme was named as ""Jeevan Dhara Wells Scheme"".

12. The Tamil Nadu Sarvodaya Mandal of which the petitioners are the office-bearers, was entrusted with the work of digging and constructing

irrigation wells in Thanjavur District in 1988-89. In 1991. the Mandal was entrusted with the similar projects in other districts including the Trichy

District. Up to 1995-96, the Mandal had dug and constructed about 5,5000 irrigation wells under the scheme in the districts in which the Mandal

was entrusted with the work, handling more than Rs. 20 crores, without giving any room for complaint.

13. In 1995-96, the Mandal was entrusted with the work of digging and constructing 290 irrigation wells in Vellore Distrct. The project was

estimated around Rs. 1,20,00,000/-. As per the agreement between the Mandal and the Project Officer of the District Rural Development

Agency, 95 per cent of the cost of the project will be released in advance by the Project Officer to the ''Mandal and the remaining 5 per cent

would be disbursed on completion of the project. As soon'' as the ''predict is completed ,an Engineer who had been in the rank of A.D.E. will

assess and arrive at a valuation of the project. On that basis, the completion report would be submitted to the Project Officer. Up to 184 wells;

were dug and constructed as per the guidelines On obtain ing the Engineer''s report, the completion report was submitted tot the Project Officer

14. At that stage, an F.I.R. was registered against the petitioners in Crime No. 9/98 on the complaint given by the Additional. Collector,

D.R.D.A., Vellore as if the petitioners did not spend entire amount for the project and misappropriated the same. The petitioners were arrested

and released

15. Subsequently, the petitioners explained to the Collector stating that the amounts had not been misappropriated and the said amounts were still

available in the banks in the account of Mandal. They further requested the Collector to allow them to withdraw the amount and disburse the

balance amount to the beneficiaries and also to complete the further work of digging other wells. On verification of their statement, the Collector

allowed them to withdraw the amount from the bank and to complete the work.

16. Furthermore, on the opinion obtained from the Public Prosecutor, all the account books seized from the Mandal were returned to the

petitioners to enable them to complete the entire work entrusted to them. Accordingly, the amounts in the various banks were mobilised and the

balance amount has also been paid to all the beneficiaries.

17. These factual aspects cannot be disputed by the prosecution, since the same have been admitted by the investigating agency itself in the case

diary in the form of a report.

18. The F.I.R. was registered against the petitioners on 17-9-1996. The first petitioner was released on bail on 25-11-1996. On 4-12-1996, the

Collector sent a letter to the Superintendent of Police to defreeze the bank amount in favour of the first petitioner Kanagasabapathy to enable him

to withdraw the amount so as to disburse the same to the beneficiaries and to complete further work entrusted to him. Accordingly, he was

allowed to withdraw the amount from the bank, which is available in the account of Mandal, as the Secretary of the Mandal.

19. The respondent police continued the investigation and sent a report to the Superintendent of Police on 29-2-1997 stating that the Secretary

Kanagasabapathy had fairly utilised the grant of Rs.42,000/- for each well and there was no misappropriation of the grant in the Million Well

Scheme. The relevant portion of his report is as follows : --

During the course of investigation the Addl, Collector (Dev.), N.A.A.Dt. informed in his letter dated 14-12-96 that in view of the past good

performance of the said Tamil Nadu Sarvodaya Mandal the completion of the scheme was allowed and requested to defreeze the bank account in

favour of Kanagasabapathy. The Secretary was ordered to continue the work vide letter dated 6-1-97 of Addl. Collector (Dev.), N.A.A.Dt. At

the time of defreezing the account, an amount of 21,01.831/- rupees was mobilized in the State Bank, Walajha besides 2,20.851/- in the bank of

SBI, Vellore which was sent through Court. After the disbursement of the dues for the completed wells the Secretary had furnished a report that

he had disbursed an amount of Rs. 8,37,899/-among the 180 beneficiaries whose well the completion report was already submitted. Besides he

had disbursed about 6 lakhs among the beneficiaries whose well the work is yet to be completed. A balance of amount 9 lakhs is available for the

completion of the remaining work.

Investigation in this case disclosed that the Secretary Kanagasabapathy had fairly utilized the grant of 42,000/- among the 180 beneficiaries on

those well he had already furnished the certificate. The remaining wells have to be inspected by .the Assistant Executive Engineer concerned and

U.T.C. has to be filed by him. Misappropriation of grant in the Million-Well Scheme (Jeevan Dhara) by the Tamil Nadu Sarvodaya Mandal led by

Kanagasabapathy did not disclose in the investigation so far done. The Secretary has filed . a petition for the return of the records seized already to

file the UTC based on the records and spot verification and for the disbursement of money to the remaining beneficiaries. Hence I request suitable

instruction may please be passed in this regard. The details of disbursement of the grant among 180 beneficiaries by the Secretary after his release from the jail is herewith enclosed.

20. Another report also has been sent by the Inspector of Police, District Crime Branch to the Assistant Public Prosecutor, Vellore, seeking for the

legal opinion, giving the details of the investigation, the relevant portion of which is this : --

The Addl. Collector (Complainant) in his letter dated 4-12-96 had issued instruction to defreeze the account of Kanagasabapathy stating that he

had allowed him to complete the work and he had issued a proceeding on 6-1-97 in this aspect By that time an amount of 23,22,682/- rupees was

mobilized in the State Bank at Walajha including the seized amount which was deposited in SBI at Vellore through Court. On instruction the

Secretary had distributed the money among the beneficiaries. An amount of 8,37,899/- was distributed to the 180 beneficiaries whose wells were

already completed and they had given in written that they had no dues from the Mandal authorities. Verification of the present work balance shows

an amount of 6,01,831/- with the cash on hand of 82,000/- with the Secretary and an amount of 2,20,851/- in the Court custody amount of

rupees 9 lakhs were available and verification of the account tallies with the amount needed for the work. As such no misappropriation of the funds

allotted for the execution of the scheme forth comes from the investigation.

21. Similarly, on 19-3-1997, the Inspector of Police sent a report along with the legal opinion of the Assistant Public Prosecutor to the Judicial

Magistrate-I, Vellore, where the F.I.R. is pending, which contains the following remarks :--

As per the instruction of the Addl. Collector (Dev), Vellore noted in the reference dated 4-12-96 and 6-1-97 the freezed amount in the bank was

defreezed and the Secretary was allowed to operate the scheme for the benefit of the public and the entire seized records were returned back to

the concerned persons for the completion of the scheme. The further action in this case will be dropped on receipt of the utilization certificate for

the remaining 90 wells as per the direction of the District Collector, N.A.A.Dt. The legal opinion of the Addl. Public Prosecutor is herewith

enclosed.

22. When such is the conclusion arrived at by the Investigating Officer as seen from these records, there is no reason as to why the respondent

police have chosen to file the charge-sheet against the petitioners for the offences under Sections 467, 468, 471 and 409, I.P.C. None of the

witnesses would speak anything about the forgery of falsification of the accounts or misappropriation.

23. As a matter of fact, as indicated above, the entire account books, which were seized from the Mandal were returned to the petitioners to

enable them to continue their work of digging the remaining wells.

24. As noted above, it is also noticed from the case diary that the first petitioner was allowed to handle the bank accounts by the order of

Collector by defreezing the same. In pursuance of the said order, the first petitioner mobilised the amount and disbursed the balance amount to the

beneficiaries.

25. Under those circumstances, the proceedings initiated against the petitioners in the absence of any material to connect them with the offences

alleged are not valid in law. Accordingly, the proceedings are quashed. Thus, the petition is allowed. Consequently, Crl. M.P. No. 1288 of 2000 is

closed.