

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Seventh day of July Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice B.PUGALENDHI

CRL OP(MD) No.1403 of 2020

1 PASTOR GIDEON JACOB
S/O. ABRAHAM JACOB, DIRECTOR, M/S. GOOD
SHEPHERD EVANGELICAL MISSION PVT. LTD., ANNA
NAGAR, SUBRAMANIAPURAM, TRICHY - 620 020.

... PETITIONER(S) / ACCUSED

Vs

1 THE INSPECTOR OF POLICE
C.B.I./SCB/CHENNAI, FIR NO.RCI (S) 157/2016.
2 M/S. CHANGE INDIA
REPRESENTED BY ITS DIRECTOR A.NARAYANAN, NO.
7C, DAFFODIL, CEBROS GARDENS ARCOT ROAD,
VIRUGAMBAKKAM, CHENNAI - 600 092.

... RESPONDENT(S) / COMPLAINANT(S)

ORDER : The Court Made the following order :-

Heard, Mr.Isaac Mohanlal, learned Senior counsel for Mr.K.Samidurai, learned counsel for the petitioner. The learned Senior counsel submits that the entire prosecution revolving around the issue that the petitioner Charitable Institution has taken female children and has conducted the Charitable Home without any valid approval as contemplated and as required under the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960, Juvenile Justice (Care and Protection of Children Act) 2015 and Tamil Nadu Hostel and Homes for Woman and Children (Regulation) Act, 2014. Apart from this averment, a vague allegation has also been made against the petitioner for the offence under Section 363 and 368 IPC, when the prosecution case itself is that the inmates of the home were handed over to the petitioner Charitable Home by their parents as well as by the Government. He also relied upon the communications of the District Administration and the Social Welfare Officer for handing over the children to the petitioner organisation for taking care of those female children, prior to the Registration of the case.

2.The learned Senior counsel further submits that this Charitable Home was started as early as in the year 1994, where the female infanticide was more in Madurai District, particularly at Usilampatti, where several female children were killed immediately after their birth. Therefore, in order to save the female children, the petitioner started the organisation as a private company. At that relevant point of time, there was no such Act or Rules contemplating any such prior permission to run such Organisation or Charitable Institution. The District Social Welfare Officer and the District Administration are well aware that the petitioner is taking care of the female children and has also brought up those children by providing good Education and there is no complaint, whatsoever, from the inmates of the home. However, at the instance of some people, this case has been foisted and the final report has also been mechanically filed by the respondent police. In fact, the respondent/CBI has also filed this final report for the offences under Section 370A of IPC, when the alleged occurrence is said to have taken place prior to the enactment of <http://www.judis.ecn> law, which is also bad in law.

3.The learned Assistant Solicitor General who is representing the CBI has

filed a detailed counter affidavit and by referring the counter affidavit, he submits that apart from these offences there are other IPC offence and for each offence, there are enough witnesses and they have also collected volume of documents and that apart, the final report has been filed as incomplete with the permission of the trial Court to file additional documents, as required under Section 173(8) of Cr.P.C.

4. According to the learned Assistant Solicitor General, the sanction report from the District Collector has not been obtained so far and therefore, a permission was sought for before the trial Court to file a further final report in this case and therefore, when the full fledged final report has not been filed, entertaining of this case at this stage is not proper. He would further submit that though this case was filed before the Chief Judicial Magistrate, Tiruchirappalli, now the case has been referred to the Mahila Court, Tiruchirappalli. The Mahila Court, Tiruchirappalli, has also taken the case in S.C.No.48 of 2020, whereas the present original petition is filed as against the C.C.No.2534 of 2019 pending on the file of the learned Chief Judicial Magistrate, Tiruchirappalli.

5. On this submission, the learned Senior counsel has pointed out that at the time the petitioner has challenged the final report, it was pending before the Chief Judicial Magistrate, Tiruchirappalli and even this Court, in an earlier occasion, has taken cognizance of the same that now the case has been referred to the Mahila Court and pending in S.C.No.48 of 2020 and therefore, it is not an impediment for entertaining this Criminal Original petition. However, he sought time for filing appropriate application to amend the prayer in this petition also.

6. After hearing this matter and going through the facts involved, this Court understands that this Court as a Special Government Pleader and as an Additional Advocate General, on the earlier occasions represented the Government in a Public Interest Litigation filed against the petitioner and this Court has also pointed out the same to the learned counsel on either side and both counsels have also reposed confidence on this Court to proceed with this matter.

7. The learned Assistant Solicitor General has also brought to the knowledge of this Court that when the CBI has registered a case in the year 2016, the petitioner has already filed an application to quash the FIR in CrI.O.P.(MD).No.14558 of 2019 and the same is still pending before this Court and sought indulgence of this Court to take the said Original Petition also along with this petition for adjudication. No doubt, the other petition filed by this petitioner in CrI.O.P.(MD).No.14558 of 2019 become infructuous in view of the filing of the final report by the CBI.

8. The learned Assistant Solicitor General has also pointed out that the Second respondent/defacto complainant is yet to appear before this Court. It appears, as per the earlier orders of this Court, the petitioner has taken a private notice to the second respondent/defacto complainant and has also filed the proof of service. Even then there is no representation for the second respondent/defacto complainant. Therefore, Registry is directed to print the name of the second respondent in the cause list.

9. Since the connected Criminal Original Petition referred to by the learned Assistant Solicitor General is of the year 2019 pertaining to CBI and this Court holds the portfolio of the same, Registry is directed to post the other petition in CrI.O.P.(MD).No.14558 of 2019 along with this petition on 07.08.2020, for further hearing. In the mean time, the learned counsel for the petitioner shall file necessary amendment application and shall also take out one more private notice to the second respondent/defacto complainant informing the date of hearing as 07.08.2020.