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Crl.O.P.No.30074 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.30074 of 2018
and Crl.M.P.No.17680 of 2018

Syed Kamal Batcha

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by
The Inspector of Police,
CCIW/CID Krishnagiri Unit,
(Crime No.2 of 2004)

2.T.Ramadoss

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the charge sheet laid in C.C.No.242 of 2021 (served on the petitioner only on 27.11.2018) on the file of the Learned Judicial Magistrate -II, Krishnagiri and quash the same.

(Amended as per order dated 05.09.2023 in Crl.M.P.No.13479 of 2023 in Crl.O.P.No.30074 of 2018)

For Petitioner : Mr.G.Ilamurugu

For R1 : Mr.A.Gopinath
Government Advocate(Crl.Side)

For R2 : Notice served
No appearance



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ORDER

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2. Heard the learned counsel on either side and perused the materials available on record.

3. On the complaint lodged by the petitioner, based on the report submitted by him under Section 81 of Tamil Nadu Cooperative Societies Act, the first respondent registered an FIR in Crime No.2 of 2004 for the offences under Sections 408 and 477A of IPC alleging that the accused persons had misappropriated the society funds. After completion of the investigation, the first respondent had filed a final report for the offences under Sections 408, 477A. The final report was filed initially as against two accused persons. Subsequently, he filed another report and accordingly, other accused were implicated as accused. By the 5th additional final report filed by the first respondent, the petitioner has been implicated as an accused for the charges under Sections 201(3) and 202 IPC.



4. The petitioner was working as an Extension Officer of Cooperatives in the Cooperative department. During the course of his supervision, he found certain irregularities in Arasukuppam Primary Agricultural Co-operative Bank No.664 in the sales remit challans prepared by the Salesman one Ramachandra Reddy. He also found certain other dereliction committed by other officers. He submitted a preliminary Special report dated 25.10.2002 to the second respondent, thereby recommended for conducting an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. Accordingly, the second respondent directed the petitioner to conduct an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. Thereafter, the petitioner conducted a detailed enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and submitted his report to the second respondent, dated 05.03.2003. He also recommended for criminal prosecution and also for departmental proceedings along with the depositions and other material evidences.

5. Based on the enquiry report, the second respondent lodged a complaint before the first respondent on 09.03.2004 alleging that the Salesman one R.Ramachandra Reddy had misappropriated the society funds to a tune of Rs.3,46,600/-. In fact, the said accused admitted his guilt and remitted the entire amount which was misappropriated by him. The second respondent also



initiated departmental proceedings as well as surcharge proceedings for the recovery of lands as against the erred officials for dereliction of duty while discharging their services.

6. After taking cognizance by the Trial Court in C.C.No.187 of 2005, it was renumbered in C.C.No.242 of 2021 on the file of Judicial Magistrate No.II, Krishnagiri. The first respondent filed an additional charge sheet alleging that the petitioner, on inspection, found irregularities of misappropriation of funds committed by the Arasakuppam Primary Agricultural Co-operative Bank by its Secretary M.Kalappan, President M.Chikkanna and Salesman Ramachandra Reddy and the Salesman of Bennangur one Subramani. On the basis of the special report, the second respondent directed the petitioner to conduct an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. He conducted an enquiry and he submitted a false report, varying the special report submitted by him. He had intentionally omitted to mention and include the complicity of the Secretary Kalappan in the commission of crime along with Ramachandra Reddy, Salesman in the enquiry report dated 05.03.2003.

7. He submitted a false report by furnishing false figures in his report in accordance with the adjustment receipts issued by the Secretary Kalappan to



the Salesman with an intention to screen the offender the Secretary Kalappan of the Bank. Therefore, he was charged for the offences under Sections 201(3) and 202 IPC. Before filing the additional charges, the first respondent failed to obtain the sanction as contemplated under Section 197 of Cr.P.C, since the petitioner while he was discharging his duty, he omitted to include the other accused in the case of misappropriation.

8. It is relevant to extract the provision under Section 197 of Cr.P.C.

"Section 197 of the Code of Criminal Procedure, 1973 is set out herein below for convenience:

197. Prosecution of Judges and public servants: *1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction.*

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State



Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted."

9. Thus, it is clear that when the petitioner was discharging his official duty, no Court shall take cognizance of such offences except with the previous sanction, for which the learned counsel for the petitioner relied upon the Judgment reported in **2020 7 SCC 695** in the case of **D.Devaraja Vs Owais Sabeer Hussain**, wherein it was held that the application under Section 482 of



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the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or abuse of process of Court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of Court.

10. In the case on hand, the petitioner only conducted an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and found that there was misappropriation by the Salesman Ramachandra Reddy. The relevant portion of the enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, dated 05.03.2003 is extracted herein:-

“ திரு.எம்.காளப்பன் செயலாளர் தனது வாக்குமூலத்தில், வாங்கித் தனி அலுவலரின் எழுத்துமூலமான அறிவுரைகளுக்குப் புறம்பாகவும், எவ்வித எழுத்து மூலமான ஆணைகளும் வழங்கப்படாத நிலையிலும், விற்பனையாளர் விற்பனைத் தொகையை அரசுப்பம் வங்கியில் நேரடியாக செலுத்தாமல், தொடர்ந்து தேன்கனிக்கோட்டை மத்திய வங்கிக் கிளையில் இருசால் செய்து வந்ததாகத் தெரிவித்துள்ளார். விற்பனையாளர் தொடர்ந்து 36 சலான்களை திருத்தம் செய்யப்பட்டதை செயலாளர் கூர்ந்து கவனித்திருந்தால், மேற்கண்ட குறைபாடுகள் நடைபெற்றதை



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முற்றிலும் தவிர்த்திருக்கலாம். மேலும், மத்திய கூட்டுறவு வங்கியில் பொது விநியோகத்திட்ட காசுக்கடன் கணக்கினை ஒத்திசைவு செய்திருந்தாலும், இக்குறைபாடுகள் நிகழ்ந்ததை கண்டுபிடித்திருக்கலாம். ஆனால் இதனைச் செய்ய செயலாளர் திரு.எம்.காளப்பன் தவறியுள்ளார்.

திரு.ஆர்.ராமச்சந்திரா ரெட்டி, விற்பனையாளர் பல்வேறு தேதிகளில் விற்பனைத் தொகைகளை தொடர்ந்து தாமதமாக செலுத்தியும், 36 சலான்களிலும் திருத்தம் செய்ததை செயலாளர் கண்டுபிடிக்காததும், நடவடிக்கை எடுக்காததும் வங்கிச் செயலாளர் திரு.எம்.காளப்பன் தனது பணியில் அசிரித்தையாக செயல்பட்டது புலனாகின்றது. ஆனால், விற்பனையாளர் தனது வாக்குமூலத்தில் அனைத்து சலான்களையும், தானே திருத்தம் செய்ததாகவும், கையாடல் செய்யப்பட்ட அனைத்து தொகையும் தன்னுடைய சொந்த உபயோகத்திற்காக பயன்படுத்தி கொண்டதாகவும், இதனால், வேறு எந்த பணியாளருக்கும் எவ்வித தொடர்பும் இல்லை எனவும், உறுதி செய்ததுடன், இழப்புத்தொகை முழுவதையும் தானே செலுத்தியுள்ளார். எனவே, இக்கையாடல் இனத்தில் செயலாளருக்கு எவ்வித நேரடி தொடர்பும் இல்லாததினால், செயலாளர் திரு.எம்.காளப்பனை மேற்படி குற்றங்களுக்கு நேரடியாக பொறுப்பாக இயலவில்லை. மேலும், செயலாளர், தொடர் நடவடிக்கைகள் மேற்கொண்டு விற்பனைத்தொகை இழப்பு முழுவதையும், வசூலித்ததுடன், வட்டியை வசூலிக்கவும் நடவடிக்கை மேற்கொண்டு வருகின்றார். எனவே, மேற்கண்ட கையாடல் இனங்களில் விற்பனையாளர் திரு.ஆர்.ராமச்சந்திரா ரெட்டியைத் தவிர ஏனைய பணியாளருக்கு எவ்வித நேரடி தொடர்பும் இல்லை என உறுதி செய்யப்படுகிறது.



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திரு.ஆர்.ராமச்சந்திரா ரெட்டி, விற்பனையாளரும் தனது

வாக்குமூலத்தில் ரூ.3,46,000/- ஐயும் தானே கையாடல் செய்ததாக ஒப்புக்கொண்டு முழுத்தொகையையும் தானே வங்கியில் திரும்பச் செலுத்தி, வங்கி இழப்பினை ஈடு செய்துள்ளார். எனவே, மேற்படி குற்ற இனங்களுக்கு திரு.ஆர்.ராமச்சந்திரா ரெட்டி விற்பனையாளரே முழு பெறுப்பாவார். வங்கிக்கு ஏற்பட்ட இழப்புத்தொகை முழுவதும் வசூலான நிலையில் மேற்படி நிகழ்வுகள் நடைபெற காரணமாக இருந்த திரு.ஆர்.ராமச்சந்திரா ரெட்டி விற்பனையாளர் மீது துறை அளவில் மற்றும் குற்றவியல் நடவடிக்கைகள் மேற்கொள்ளலாம் என பரிந்துரை செய்கின்றேன்.”

11. Since the Salesman Ramachandra Reddy admitted his guilt, the petitioner recommended for departmental enquiry as well as criminal proceedings as against the Salesman. Therefore, on the strength of the said report, the second respondent herein had taken departmental proceedings as well as lodged a complaint before the first respondent. Hence, the sanction under Section 197 Cr.P.C is very much required in this case. Admittedly, the first respondent failed to obtain any sanction in order to proceed against the petitioner for the charges under Sections 201(3) and 202 IPC.

12. Mr.A.Gopinath, learned Government Advocate (Crl.Side) submitted that the sanction can be challenged even at the time of trial or in the fag end of



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13. He also relied upon the Judgment of the Hon'ble Supreme Court of India in ***Crl.Appeal No.1598 of 2023*** in the case of ***State of Karnataka Lokayukta Police Vs S.Subbegowda***, wherein the Hon'ble Supreme Court of India held as follows:-

“10. Having regard to the afore-stated provisions contained in Section 19 of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in the case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law”.



14. The above judgment arises out of Prevention of Corruption Act under Section 19(1) of the Act. It is no way applicable to the case on hand.

That apart, in the above case, already sanction was accorded and the same was under challenge. Whereas, in the case on hand, no sanction was accorded in order to prosecute the petitioner as contemplated under Section 197 Cr.P.C. Therefore, the prosecution ought to have obtained previous sanction in terms of 197(1) of Cr.P.C. for prosecuting the petitioner for the offences under Section 201(3) and 202 of IPC. That apart, no prosecution shall be instituted under the Co-operative Societies Act without previous sanction of the Registrar and such sanction shall be given without giving to the person concerned a reasonable opportunity to represent his case as contemplated under Section 164(3) of the Tamil Nadu Cooperatives Societies Act.

15. Admittedly, no opportunity was given to the petitioner before initiation of prosecution. That apart, no sanction was accorded before the initiation of prosecution. Further, there is a protection under Section 176 of Tamil Nadu Co-operative Societies Act, while taking action in good faith. Accordingly, no suit, prosecution or other legal proceeding shall lie against the Government or any officer or servant of the Government or the Registrar or any person authorized by him for anything which is in good faith.



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16. The petitioner found only certain irregularities in the society funds and also found there was misappropriation on his supervision. He submitted a Special Report. On receipt of such report, the second respondent ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, thereby, appointed the petitioner to conduct an enquiry. He conducted an enquiry and submitted his report. Therefore, he acted in good faith and as such, no prosecution can be initiated against the petitioner.

17. In view of the above, the proceedings in C.C.No.242 of 2021 cannot be sustained. Therefore, the proceedings in C.C.No.242 of 2021 on the file of the Judicial Magistrate-II, Krishnagiri is hereby quashed as against the petitioner. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous petition is closed.

06.10.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Inspector of Police,
CCIW/CID Krishnagiri Unit.
- 2.The Public Prosecutor,
High Court, Madras.

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and CrI.M.P.No.17680 of 2018

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