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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD).No.12560 of 2020
and
Crl.M.P.(MD).No.5705 of 2020

Ponnuthai ... Petitioner

Vs.

1.The State Rep by
The Deputy Superintendent of Police,
C.C.I.W,
Tirunelveli,
Tirunelveli District.

2.Paramasivan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in connection with the impugned Charge sheet in C.C.No.78 of 2009 pending on the file of the Judicial Magistrate Court No-2, Virudhunagar, Virudhunagar District and quash the same insofar as the petitioner is concerned.

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For Petitioner : Mr.S.Saravagan Prabhu

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.Side) for R1

ORDER

This Criminal Original Petition has been filed to quash the impugned Charge sheet in C.C.No.78 of 2009, pending on the file of the Judicial Magistrate Court No-2, Virudhunagar, Virudhunagar District.

2.A-1, G.Mariappan was working as Secretary in Mamsapuram Primary Agriculture Cooperative Society (on deputation from RamnadDist Cooperative Bank working as Manager) since 07.06.1991. As per instruction of Special Officer vide Resolution No.1 (Book Page No.77 dated 30.08.1993) and SO Resolution No.7 (Book pageNo.118) dated 15.10.1993, the deputation of A-1 was extended and he was continuously working as Secretary from 17.09.1993 onwards. During the period of deputation, he affixed his signature in the Attendance register from 07.06.1991 till his date of retirement ie. 30.08.1998. Rules and regulation clearly state in the SO resolution (page No. 1 , 2) Nos.3, 4 dated 28.07.1991 and resolution (page

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No.85, 86) No.2 dated 16.09.1993, that the Secretary of the Society is duty bound to follow his duties and responsibilities. The role of the Secretary was to sign cash receipt, authorising cash payments, verifying and tallying cash register on daily basis before closure of day to day transactions, monitoring cash and jewel on hand by the Cashier, supervising Clerks and other staff members in order to have overall control of the Society. PACS rules state that the Secretary is wholly responsible for maintaining daily transactions, all assests viz. cash, jewels, land records, loan documents, books and forms, other records as per Sub Rule No.38, Tamilnadu Cooperative Society Law 1983 Section 84. Under his supervision and control, all the activities of the Society were being done. For having accepted the duties and responsibilities for running the Society, he signed the Resolution book (Page 3) dated 28.07.1991. Further, he was managing the Society by signing Daily resolution book. A-2, SmtSeetha was working as Clerk from 01.10.1986 in the PACS as per Special Officer resolution (page 107) No.4 A dated 29.11.1986. Special Officer resolution (page 47) No.2 dated 16.09.1993 stipulated the duties and responsibilities of the Clerk. In accordance with the above resolution, the Clerk was to accept

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cash, pay cash for deposit, loan transactions from the Society members by making proper entries in the daily receipt and payment registers / books and to get authorised by the Secretary. The clerk is jointly responsible for all cash, jewel holding along with the Secretary and also to maintain DCB with all daily transactions which are subject to audit by LF authorities. A-2 was promoted as Assistant Secretary vide Administrative Committee resolution (page 56) No. 1 dated 07.11.1998. Administrative Committee (page 203) No.4 dated 03.01.2002 stilpulated the duties and responsibilities of the Assistant Secretary and A-2 signed the resolution book page 116 for having accepted the duties and responsibilities. SO resolution No.5 dated 05.04.2003 (page 276) stated that the role of Assistant Secretary. Daily routine job included verifying the receipts and payments with ledgers, tallying the closing balance before handing over and keeping in the Locker with the Secretary and processing the loan applications and forwarding to the Secretary duly signing the forms as Assistant Secretary after scrutiny. In the absence of Secretary, Assistant Secretary was to take charge and run the Society till herejoing duty. The Assistant Secretary was fully responsible for the overdues in the loan accounts, time barred loan accounts along with the

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Secretary. A-3, Sri V Karunanithi was appointed as Clerk on 20.05.1991 and was made permanent employee vide SO resolution 2, page 131 dated 17.07.1992. He was promoted as Accountant from 07.11.1998 as per Administrative Committee resolution no.1 (page 56) dated 07.11.1998. SO resolution 2 (page 88) dated 16.09.1993, solution No.2 (page 117, 118) dated 03.01.2002 stipulated the duties and responsibilities. For having accepted the above terms and conditions, he signed in the resolution no.2 (page 117). Being a Clerk, he was assigned to the duties viz. disbursement of crop loans, preparing loan documents till disbursement, maintain loan registers, sanction of hypothecation loans, monitoring overdues in the loan accounts, assisting during auditing. After promoted as Accountant, he was to discharge his durities viz. preparation of loan applications, renewal and maintaining the loan ledgers, recovery of loan instalments, initiation legal actions against the defaulters, keeping land records properly and safely in the locker under the supervision of Secretary. He was to keep available all records pertaining to loan accounts, disbursement register, loan documents, loan account vouchers, receipts before the audit officials and attending all audit remarks. A-4, SmtPonnuthai is presently working as Cashier in

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District Central Cooperative Bank, Ambalapuli Bazaar, Rajapalayam branch. Through District Employment Office, she was appointed as Clerk in Mamsapuram PACS on 20.05.1991. Vide Special Officer resolution 2 page 131 dated 17.07.1992 and her service was confirmed. So resolution 4 dated 16.09.1993 was passed for defining the duties and responsibilities of a Clerk. In accordance with the above resolution, she was assigned to make entries in the daily ledgers, preparing monthly income and expenditure statement, maintaining General Ledger, recovery of loan instalments, year end audit work, updating deposit registers, DCB for the purpose of auditing, assisting during audit etc. Administrative Committee resolution no.1 (page 56) dated 07.11.1998, she was promoted as Accountant on 07.11.1998. Vide So resolution 2 (page 88) dated 16.09.1993, she was designated as Accountant. As per orders of the resolution, she was assigned the duties and responsibilities viz. maintaining daily registers, General ledgers. She accepted all the conditions of the resolution by signing the relevant resolution copies. By colluding with each other, all the above accused defrauded the 508 Mamsapuram PACS by fraudulently and dishonestly siphoning of society's funds to the tune of Rs.25,65,499/- during the period

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from 07.04.1997 to 31.03.1998. While working in the above period, the accused persons made bogus entries of withdrawals in the SB ledgers without mentioning any voucher number, member's account number, name etc.

2.1. Further during the period from 02.07.1997 to 07.04.1998, several fraudulent entries were made in the loan registers, without sanction of any loan. From the above evidence it appears all the above accused persons are involved bymanipulating the society's records and members' accounts and defrauding Mamsapuram PACS to the tune of Rs.47,71,469 /- for personal gain. Therefore A1 to A4 are liable to be punished u/s 408, 477 (120 B) and 204 of Cr.P.C.

3. Today, when the matter was taken up for hearing, the learned Government Advocate (Crl.Side), on instructions, submits that the trial was commenced and witnesses P.W.1 to P.W.4 have been examined.

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4.At this stage, the petitioner seeks permission of this Court to withdraw this case, with liberty to raise her contention before the trial Court and also seeks directions to dispose the case within the stipulated time.

5. In view of the request made by the petitioner, this Criminal Original Petition stands dismissed with the following terms:

5.1.The learned Judicial Magistrate No.II, Virudhunagar, is directed to dispose of the case in C.C.No.78 of 2009 within a period of six months from the date of receipt of a copy of this order.

5.2.The petitioner is directed to raise all the points before the trial Court.

5.3.The appearance of the petitioner is dispensed with before the trial Court on all hearing dates except the following hearings:

5.3.1.The date of furnishing copies under Section 207 Cr.P.C, and initial questioning to answer the charges;

5.3.2.The date of questioning under Section 313 Cr.P.C;

5.3.3.On the date of Judgement.

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5.4. The petitioner is directed to give an undertaking in the form of affidavit that she will be duly represented by a counsel on all hearing dates.

5.5. The petitioner shall not dispute the identity of the witnesses.

5.6 The petitioner shall appear before the Court in the event her presence is insisted by the trial judge for the purpose of identification.

5.7 If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for her appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India in ***State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667.***

Consequently, connected Criminal Miscellaneous petition is closed.

30.10.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

1.The Deputy Superintendent of Police,
C.C.I.W, Tirunelveli,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J.

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