

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.212 of 2010
and
M.P.No.1 of 2010

Krishnakumar

.. Petitioner/A1

Versus

State rep.by
The Inspector of Police
Kumarapalayam Police Station
Namakkal District.

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 read with Sec. 401 of Cr.P.C. against the order dated 08.12.2009 passed by the learned Judicial Magistrate, Tiruchengode in Crl.M.P.No.8745 of 2008 in C.C.No.4 of 2007.

For Petitioner : Mr.A.M.Rahamath Ali
For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

ORDER

The above Criminal Revision Case has been filed challenging the order dated 08.12.2009 passed by the learned Judicial Magistrate, Tiruchengode in Crl.M.P.No.8745 of 2008 in C.C.No.4 of 2007 in dismissing the discharge petition filed by the petitioner for the alleged offences under Sections 409, 420, 468, 471 IPC r/w 109 of IPC.

2. The case of the prosecution is that the petitioner, who was working as a Principal of SSM Institute of Textile Technology, Komarapalayam was also in-charge of the Co-operative Society attached to the said college in the capacity of the President and is alleged to have created forged bills and misappropriated funds to the tune of Rs.7,52,999.05 and also a sum of Rs.45,000/- on the ground of repairing the car, which does not belong to the college during the period from 07.07.2003 to 06.06.2004. Hence the complaint. As against the said complaint preferred, the petitioner herein filed a petition

under Section 239 of Cr.P.C., seeking to discharge him from the alleged offence. However, the court below dismissed the said petition. Hence the revision.

3. Learned counsel appearing for the petitioner would submit that the Court below failed to see that except for a statement in the complaint that the petitioner was responsible for the misappropriation, as per the bye-laws of the society no other document has been filed by the complainant. Further he would contend that the court below failed to see that if the society is a registered co-operative society, the same is governed by the Tamil Nadu Co-operative Societies Act, which provides for mandatory checks in the form of audit and enquiries as contemplated under Sections 65 and 81 of the Act; however, the complainant has not produced any audit report of the society to prove the fact that the petitioner has misappropriated the funds of the society. Further as per the said Act, Section 81 enquiry has to be conducted; but the same has not been conducted. Accordingly, he would pray for setting aside the order passed by the Court below and to discharge him from the alleged offence.

4. Learned counsel for the petitioner by referring to the additional typed set of papers filed before this Court, would also submit that the petitioner has obtained a report through Right to Information Act, wherein the Co-operative Department has given a reply stating that no complaint on misappropriation has been received by the Deputy Registrar of the Co-operative Society during the year 2003-2004 but the audit report states that there is a due of Rs.14,81,804.73 to the society and directed the authorities to recover the same. Accordingly, he would pray for setting aside the order passed by the Court below.

5. Learned Government Advocate (Crl.side) would submit that the Court below has not taken into account the fact that the Society is a registered one and has stated that it is only a private thrift society functioning in the college for the benefit of the staff working in the said institution and accordingly passed the order dismissing the discharge petition filed by the petitioner.

6. Heard both sides and perused the papers.

7. On a perusal of the impugned order, it is seen that the Court below by taking into account the fact that the Society is a private thrift society functioning for the benefit of the staff working in the complainant's college has dismissed the petition filed by the petitioner seeking to discharge him from the alleged offence. However, the perusal of the additional typed set of papers filed by the petitioner, it is seen that the Deputy Registrar attached to the Co-operative Department in

Tiruchengode Circle has stated by way of reply dated 30.05.2007 to the query raised under Right to Information Act by the petitioner that the SSM IIT Students Co-operative Stores is a Registered Co-operative Society functioning the said College is registered under the Act vide Registration No.SN266. It further states that no complaint has been received in the said office regarding misappropriation of funds during the year 2003-2004.

8. Therefore, in view of the change in circumstances, at this distant point of time, due to the subsequent development that has taken place, this Court does not want to give any opinion regarding the merits of the matter. Hence, it is suffice to state that since the petitioner has produced a subsequent document through Right to Information Act it may throw some light on the subject. Hence, the order dated 08.12.2009 passed by the Court below is set aside and the learned Magistrate shall consider the discharge petition afresh, in accordance with the document now produced by the petitioner, viz., the report received under the RTI Act.

9. At this juncture, learned counsel for the petitioner submitted that the petitioner is being harassed by the respondent under the guise of investigation. He would also submit that the petitioner has now retired and is a Senior Citizen aged about 60 years. Hence, he would pray for dispensing with the appearance of the petitioner.

10. In view of the above submission, the appearance of the petitioner, viz., Krishnakumar, who is arrayed as A1 in the matter alone is dispensed with.

11. With the above observation, this Criminal Revision Case is allowed. Consequently, the connected miscellaneous petition is closed. Registry is directed to send back the records, if any, received from the Court below immediately.

सत्यमेव जयते

-s/d-
Assistant Registrar

True Copy

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Sub-Assistant Registrar

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To

1. The Judicial Magistrate, Tiruchengode

2.The Chief Judicial Magistrate, Namakkal

3.The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District

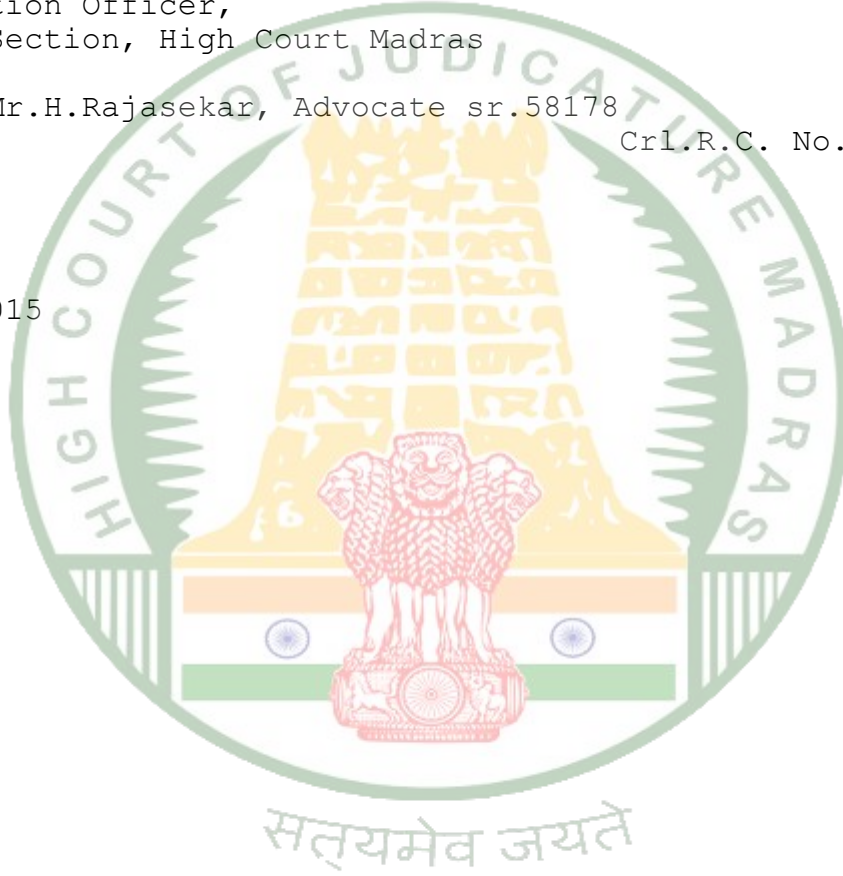
4. The Public Prosecutor, Madras

5.The Section Officer,
Criminal Section, High Court Madras

+1 cc to Mr.H.Rajasekar, Advocate sr.58178

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