IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23-9-2015

Pronounced on : 5-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.21714 of 2015
M.P.Nos.1 & 2 of 2015

P. Mohan ... Petitioner

Vs.

State, rep.by

1. The Deputy Superintendent of Police,
C.C.I.W C.I.D.,
Salem (Crime No.1 of 2009)

2. A. Periyasamy, Sub-Registrar,
Co-Oerative Society Office,
Dharmapuri Zone,
Dharmapuri. ... Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for all the records and quash the proceedings in C.C.No.85 of 2009 on the file of the learned Judicial Magistrate No.I, Dharmapuri, in Crime No.1 of 2009 on the file of the Deputy Superintendent of Police, CCIW-CID, Salem.

For Petitioner : Mr.P.Kumaresan

For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

Based on the enquiry conducted under Section 81 of the Tamil Nadu Co-Operative Societies Act, 1983, a case in Cr.No.1 of 2009 was registered by the respondent Police on 11.2.2009 for the offences under Sections 120B, 406, 408, 465, 467, 471 and 477 IPC against 15 persons, and after completing the investigation final report was filed against 14 accused, challenging which Mohan (A-14) is before this Court for quashing the proceedings against him.

2. It is the case of the prosecution that from 24.6.2000 to 24.9.2003 all the accused entered into a criminal conspiracy to siphon huge amounts of money by creating fictitious accounts, as if loans were sanctioned and given to members on various dates.

3. Mr.P.Kumaresan, learned Counsel appearing for the petitioner (A-14) submitted that certain irregularities were committed by the Secretary and others in the Ettimarathupatti Primary Agricultural Co-Operative Bank, in connection with which it was this petitioner who acted as a Whistle-Blower and sent a report to the Joint Registrar, based on which enquiry was conducted under Section 81 of the Act. In the surcharge proceedings liability was mulcted on this petitioner against which the petitioner had preferred CMA(CS) No.70 of 2008 before the District Court, Dharmapuri, which was allowed on 30.4.2009 and the proceedings were set aside. The learned Counsel further submitted that the petitioner was not arrayed as an accused in the FIR, and only subsequently in the final report he has been falsely implicated. He further contended that as Special Officer, he was in charge of several other Societies, and therefore he was not aware of the happenings in the Ettimarathupatti Primary Agricultural Co-Operative Bank.

4. The respondent/Police filed a counter affidavit wherein paragraph 6 reads as follows:

> "6. It is submitted that the investigation reveals that the petitioner/accused (A-14), who was working as a Special Officer of said Society for the period from 25.5.2001 to 24.9.2003, by virtue his capacity as special officer he needs to supervise the functions of the Primary Agricultural Co-operative Societies under his control. Supervising means that he should supervise the day to day administration from time to time and inspect the accounts of the society and ensure its genuineness. On the other hand he should have caused random check on the disbursement of few loans to its members. The genuineness of the loans issued to its members were not scrutinised by him.
>
> But, the petitioner/accused causing random

check on the entries caused by its employees, joined hands with the other accused persons and got involved in commission of offence as mentioned below.

(i) Without giving agriculture loans to the four members had fraudulently made false entries in the day-book, cash chitta, loan ledger and vouchers and misappropriated the Society amount to the tune of Rs.38,970/-.

(ii) Without getting loan application from the 75 loanees, fraudulently made voucher in their name and made forged entries in the relevant records and thus misappropriated to the tune of Rs.15,38,596/-.

(iii) Without giving agriculture loans to 24 members had fraudulently made false entries in the records and deposited the same to the members Saving Account, subsequently, withdraw the said amount and thus misappropriated the Society amount to the tune of Rs.4,80,014/-.

(iv) Without giving agriculture loans to 52 members had fraudulently made false entries in the day-book, cash chitta, loan ledger and vouchers and thus misappropriated the Society amount to the tune of Rs.11,85,046/-.

(v) Granted loan to the loanees, who already got loan from the Society and at the time of pending of earlier loan, had fraudulently make false entries in the Society records, misappropriated to an amount of Rs.1,51,958/-.

(vi) Without balance in the Savings account of the Society members, fraudulently withdraw the money from the said account and thus misappropriated to an amount of Rs.2,27,634.54.

(vii) Without giving agriculture loans to four members had fraudulently made false entries in the day-book, cash chitta, loan ledger and vouchers and misappropriated the Society amount to the tune of Rs.85,820/-.

(viii) Made correction in the original V.A.O. Certificate of 16 members and used for getting excess crop loan and thus misappropriated to the tune of Rs.2,39,205/-.

(ix) Created forged V.A.O.Certificate in favour of 219 members and used as genuine for getting excess crop loan and thus misappropriated to the tune of Rs.51,78,553/-.

(x) Make false entries in the Society member's savings bank account's pass book and misappropriated to the tune of Rs.6,34,008.43.

(xi) Made false entries in the V.A.O. certificates, whose loan amounts were already pending and thus misappropriated for an amount of Rs.10,753/-.

The petitioner/accused along with other accused persons had misappropriation of Society's funds totalling amount Rs.97,88,557.97/-.

Further, the petitioner/accused has not submitted any records showing that the petitioner/accused at least tendered visit to this society to cause supervision over the accounts during the period between 2001 and 2003 in which period the offence of criminal breach of trust had taken place."

5. As regards the contention that the petitioner was a Whistle-Blower, the Police have stated that the petitioner had signed in hundreds of cheques in different categories of loans, and when the offence came to light in the year 2007, the petitioner, in order to save his skin, had sent a letter to the Registrar, asking him to hold an enquiry.

6. This Court gave its anxious consideration to the submissions made by either side. Admittedly, the petitioner was Special Officer from 25.5.2001 to 24.9.2003 and during this short period, lakhs and lakhs of rupees have been siphoned-off under cheques, that were signed by the petitioner. Till 2007, this offence never came to light. Only when the noose started tightening, the petitioner sent a report to the Registrar, pretending to be a Whistle-Blower.

7. In a case of criminal conspiracy, there will be seldom direct evidence unless one of the conspirator becomes a turn coat. That is why Section 10 of the Indian Evidence Act has been so drafted to make admissible evidences against one person relevant as against the other, if the Court finds that there is a prima facie material for conspiracy. Just because the petitioner's name does not figure in FIR, and that the surcharge proceedings against him were set aside by the District Court, the materials gathered during prosecution against the petitioner cannot be quashed.

8. Mr.P.Kumaresan, produced Section 161 statement of all the witnesses and submitted that none of the witness has spoken about the role played by the petitioner. As stated above, in the case of conspiracy, there will not be a witness in every case, who speaks about the involvement of all the accused. That is why in Firozuddin Basheeruddin v. State of Kerala ((2001) 7 SCC 596) it is held as follows:

> "26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:
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> "Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States, (13 F 2d 961, 967 (2d Cir 1926))"
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> 27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confréres."

9. That apart, this petitioner has filed a petition under Section 239 Cr.P.C. for discharge, and the same was dismissed by the trial Court, aggrieved by which he filed a revision petition, which also came to be dismissed, and thereafter he has come up before this Court by way of quashment of the prosecution under Section 482 Cr.P.C. In the final report, there is one specific allegation which states that between 6.3.2001 and 24.9.2003, this petitioner along with Krishnan (A-10), Area Manager, Periyasamy (A-13), Site Manager, had created records as if 24 members of the Society were given

agricultural loan on 6.8.2001 amounting to Rs.4,80,014/-, even without a resolution of the Board, and also without obtaining permission from the Central Bank. In the teeth of such allegations, it cannot be stated that there are no materials as against the petitioner in the proceedings against him to be quashed.

10. Mr.P.Kumaresan relied upon the Judgment of this Court in R.Manoharan Jebaraj Julian v. State & Another (Crl.O.P.(MD)No.981 & 982 of 2010 dated 28.4.2010 and R.Siva Subramanian v. State ((2008) 1 MLJ (Crl) 810).

(a) The facts obtaining in Julian's case is that the Departmental Proceedings against the accused were dropped and the Deputy Director of Prosecution had given an opinion that the accused cannot be criminally prosecuted as he was only a Special Officer, and the fudging of records was done by the Secretary of the Society and others. In those circumstances, the Court quashed the proceedings in that case.

(b) In R.Siva Subramanian's case, the accused took over as Special Officer of the Society only on 6.7.2001, but the irregularities in jewel loan were committed prior to his appointment and the allegation against him was that he did not bring the irregularities to the notice of the higher-ups after he took over the charge. In those circumstances, the prosecution against the accused therein was quashed.

11. In the case in hand, all the irregularities have taken place while the petitioner (A-14) was in office, and that he has signed the cheques through which the Society's money was milked. Therefore, the aforesaid judgments will not come to the rescue of the petitioner (A-14).

12. In the result, this Criminal Original Petition is devoid of merits and accordingly the same is dismissed. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vr

To

1.The Deputy Superintendent of Police,
C.C.I.W C.I.D.,
Salem (Crime No.1 of 2009)

2.The Judicial Magistrate No.I,
Dharmapuri

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Kumaresan, Advocate, S.R.No.53764

Crl.O.P.No.21714 of 2015

SK(CO)
CA(12/10/2015)