

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 555, 556, 557, 558, 559,
560, 561, 562, 563, 564, 565, 566 and 573 of 2010
and

M.P. Nos. 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1,
2, 2, 2, 2, 2, 2, 2, 2, 2, 2, 2 and 2 of 2010

R. Renu

...Petitioner in all CrI.R.C.

Versus

State by
Inspector of Police
CCIW CID
Vellore
Crime No. 7/2004

...Respondent in all CrI.R.C.

CrI.R.C. No. 555 of 2010: Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. against the Order dated 05.04.2010 passed in CrI.M.P. No. 1058, 1059, 1060, 1063, 1064, 1062, 1062A, 2576 to 2579 of 2009 and 698 and 1061 of 2009 respectively in C.C.Nos. 16 to 23/2009 respectively on the file of the Judicial Magistrate No.2, Vellore.

For Petitioner : Mr. Karthick
for M/s. T.S. Gopalan and Co.,
in all the Criminal Revision Cases

For Respondent : Mr. V. Arul
Government Advocate (CrI.side)
in all the Criminal Revision Cases

COMMON ORDER

The revision petitioner in CrI.R.C. Nos. 555 to 561 of 2010 as well as CrI.R.C. No. 573 of 2010 is the third accused in C.C. No. 16, 17, 18, 19, 20, 21, 22 and 23 of 2009. He has filed Criminal Miscellaneous Petition Nos. 1058, 1059, 1060, 1063, 1062A, 1062, 1064A and 1061 respectively seeking discharge. On dismissal of the application for discharge on 05.04.2010, the above said Criminal Revision Cases have been filed.

2. Similarly, Criminal Revision Case Nos. 562 to 565 of 2010 have been filed by Chakravarthy, who is arrayed as 4th accused in C.C. Nos. 18, 19, 20 and 21 of 2009 respectively. He has also filed Criminal Miscellaneous Petition Nos. 2576, 2577, 2578 and 2579 of 2009 for discharge before the trial court, which were dismissed by an order dated 05.04.2010. As against the same, he has filed the above said Criminal Revision Cases.

3. Criminal Revision Case No. 566 of 2010 has been filed by Kasinathan, who is arrayed as 4th accused in C.C. No. 23 of 2009. He has filed Crl.M.P. No. 698 of 2009 for discharging him from the criminal case and it was dismissed by the order dated 05.04.2010. It is against the said order, he has come forward with the above said Crl.R.C. No. 566 of 2010.

4. The facts which led to the launch of criminal prosecution against the revision petitioners are identical and similar. The court below passed an identical, but separate orders on 05.04.2010 in respect of each of the revision petitioners herein. The learned counsel for the revision petitioners as well as the learned Government Advocate appearing for the State also advanced common arguments in all Criminal Revision Cases. Therefore, all these Criminal Revision Cases are taken up together and are disposed of by this common order.

5. The prosecution came to be launched against the petitioners and others on the basis of an audit conducted in to the affairs of the C.2482, Chinnakannupalli Primary Agricultural Cooperative Bank. On receipt of the audit report, the Deputy Registrar of Cooperative Societies proposed to initiate surcharge proceedings against the persons responsible for the irregularities in disbursement of savings bank account, loan towards mortgage of jewels etc., Accordingly, the Deputy Registrar of Cooperative Societies, by proceedings dated 05.05.2004 issued show cause notice to the delinquents, including the revision petitioners herein. Subsequently, by proceedings dated 22.02.2005 of the Deputy Registrar of Cooperative Societies, an enquiry was ordered to be conducted. During the course of such enquiry, the statement of the delinquents were recorded. Thereafter, first information report has been registered against the petitioners and others. Upon investigation, the respondent police filed charge sheet before the court below, which were taken on file as C.C. Nos. 16 to 23 of 2009.

6. Before the trial Court, the revision petitioners have filed Criminal Miscellaneous Petitions seeking to discharge them from the Criminal prosecution on the ground that there is no iota of evidence made available against them by the prosecution and therefore, they need not undergo the ordeal of trial. According to the petitioners, none of the statement given by the witnesses implicate them to the offence complained of. According to the petitioners, in the absence

of any incriminating materials made available against them, the entire prosecution case is vitiated and they are entitled for discharge.

7. The trial Court dismissed the petitions for discharge on the ground that there are evidence available to suggest that the petitioners with an ill intention failed to exercise their duty and furnished false information by way of report which facilitated the other accused to misappropriate the funds of the society. Therefore, while dismissing the petitions for discharge, the trial Court concluded that the role played by the petitioners could be assessed and examined only at the time of trial in the Criminal case.

8. Mr. Karthick, learned counsel appearing for the petitioners would vehemently contend that the petitioners were employees of Central Cooperative Bank and they have nothing to do with the offence complained of. The petitioner in CrI.R.C. No. 555 of 2010 was employed as Circle Supervisor and the other two petitioners were employed as Field Managers. According to the counsel for the petitioners, the petitioners are not responsible for sanctioning the jewel loan but they are responsible for verifying only 25% of the jewel loan and to submit a report thereof and it is not possible to verify the genuineness or otherwise of all the transactions of the bank. The petitioners cannot be made responsible for the misappropriation of amount of the society especially when they are working in the Central Cooperative Bank. In the statement made under Section 161 of Code of Criminal Procedure, none of the witnesses have stated anything against the petitioners. In any event, there is no evidence made available to even suggest that the petitioners, who are employees of the Cooperative Bank, have colluded or hatched a criminal conspiracy with the other accused, who are Secretary and President of the Cooperative Society, to cause loss to the society. In the absence of any evidence to prove the mensrea or ill-intention on the part of the revision petitioners to cause loss to the society, they are entitled for discharge. The trial court failed to consider that if at all, the petitioners can be held to be guilty of negligence or slackness in discharge of their duty without any criminal intention to cause wrongful loss to the society for which criminal prosecution need not be launched against them. The petitioners are not directly involved in the transaction which resulted in causing loss to the society. In support of this contention, the learned counsel for the petitioners relied on the decision reported in the case of (C. Selvakumar vs. State through Inspector of Police, C.C.I.W. CID, Tirunelveli) 2011 1 Law Weekly 314 in which this Court had an occasion to consider that for committing an offence, two basic elements are required (i) actus reus and (ii) Mensrea. It was further held that misbehaviour or misconduct leads to disciplinary proceedings, which would not be sufficient to be construed as guilty mind or mens rea to initiate criminal proceedings. By relying on the aforesaid decision, the

learned counsel for the petitioners would contend that improper discharge of duty on the part of the petitioners cannot be a ground to launch of criminal prosecution against the petitioners and he prayed for allowing the Criminal Revision Cases.

9. On the contrary, the learned Government Advocate would contend that even as admitted by the petitioners, they are guilty of improper discharge of duty and whether such improper discharge of duty is coupled with mens rea or ill intention can be gone in to by the trial Court only at the time of trial. The other accused could not have committed the offence of misappropriation without the aid of the revision petitioners herein inasmuch as they alone facilitated the other accused to commit the crime. The statements recorded under Section 161 of the Code of Criminal Procedure do implicate the petitioners and there are also other evidences made available by the prosecution to prove their guilt. Therefore, at this stage, it is not open to the petitioners to file the petition for discharge. Whether the petitioners have acted with an element of mens rea or not can be tested only at the time of trial in the criminal case. For the purpose of framing charge, it is enough if the prosecution produces prima facie evidence against the petitioners and only for the purpose of conviction the prosecution is required to prove the genuineness of such evidence. When prima facie evidence have been made available by the prosecution in the form of statements recorded under Section 161 of Cr.P.C. In such circumstances, according to the learned Government Advocate, the trial Court is right in dismissing their petition for discharge and he prayed for dismissal of the Criminal Revision Cases.

10. I heard the learned counsel for the revision petitioners and the learned Government Advocate appearing for the prosecution. The learned counsel for the revision petitioners had taken me to the statements recorded under Section 161 of Cr.P.C. and other material evidence to contend that there is no iota of evidence made available against the petitioners requiring them to face the ordeal of trial.

11. On careful perusal of the statements made under Section 161 of Cr.P.C. it is clear that no where the witnesses have implicated the petitioners or anything has been stated about their involvement in the offence. It is also not indicated in any one of the statements that the petitioners were aware of the misdeeds committed by the other accused or they involved themselves in the offence complained of. Admittedly, the petitioners are employees of the Central Cooperative Bank and their responsibility is to ensure whether sanction was accorded for disbursing jewel loan and they are not the authority to sanction the jewel loan. The case of the prosecution is that loans have been given in fictitious name or to persons who are ineligible by the Secretary of the Society, which resulted in causing loss to the society. In such view of the matter, it has to be said that the petitioners have failed to

discharge their duty in verifying the loan transactions and mechanically submitted a report to the Central Bank stating that the loan was issued in a proper manner. Therefore, as rightly pointed out by the learned counsel for the petitioners, at best, the petitioners can be fastened with liability towards improper discharge of duty and they cannot be implicated in the criminal prosecution. It is to be mentioned that mere failure to properly discharge one's duty will not constitute a criminal offence. However, if such failure to discharge one's duty is coupled with mens rea or ill-intention to gain unlawfully, then it will constitute an offence and the offender has to be prosecuted by launching criminal prosecution. In the present case, as mentioned above, the improper discharge of duty by the petitioners is without any mens rea and therefore the petitioners are entitled for discharge. In fact, surcharge proceedings have been taken against the petitioners for the improper discharge of the duty on their part. However, that will not be a ground for proceeding against the petitioners with criminal prosecution. Therefore, as rightly pointed out by the learned counsel for the petitioners, at best, the irregular or improper discharge of duty by the petitioner will not constitute any offence as contemplated under the Indian Penal Code and criminal prosecution against them is not warranted. This is more so that none of the statement given by the witnesses implicated the petitioners with the offence complained of. At least there is no evidence to suggest that the petitioners were aware of the misdeeds committed by the Secretary and others of the society.

12. In this background, it is worthwhile to refer to the decision relied on by the learned counsel for the petitioners in the case of (C. Selvakumar vs. State through Inspector of Police, C.C.I.W. CID, Tirunelveli) 2011 1 Law Weekly 314 wherein this Court had an occasion to consider an identical case wherein enquiry was ordered under Section 81 of the Tamil Nadu Cooperative Societies Act against the petitioners therein, who were employed in Cooperative Bank for the offence of misappropriation of the funds of the society and for causing loss thereof. The petitioners therein contended that their responsibility is to supervise the work done by other officials and when discrepancies were not noted, it could at best be construed as an improper discharge of work and it does not warrant initiation of criminal prosecution. This Court, following the decision of the Honourable Supreme Court in Union of India and others vs. J. Ahmed, AIR 1979 SC 1022, held that misbehaviour or misconduct leads to disciplinary proceedings and it would not be sufficient to be construed as guilty mind or mens rea to initiate a criminal proceedings. In Para Nos. 16 to 18, this Court held as follows:-

"16. In Union of India and others vs. J. Ahmed reported in AIR 1979 SC 1022, the Honourable Supreme Court held as follows:-

"The High Court was of the opinion that misconduct in the context of disciplinary proceedings means misbehaviour involving some form of guilty mind, mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

17. It is a settled proposition of law that to constitute an offence, two basic elements are required 1. 'actus reus' and 2. 'mens rea'. In the abovesaid decision of the Hon'ble Supreme Court, it is made clear that misbehaviour or misconduct leads to disciplinary proceedings which would not be sufficient to be considered as guilty mind or mens rea to initiate a criminal proceeding. It is an admitted fact the petitioner herein was working in a supervisory capacity as Field Manager of Central Co-operative Bank, hence, in the absence of conspiracy or any favour relating to conspiracy between the petitioner and the accused/A1 to A3, who subsequently paid the amount, it cannot be decided that there was mens rea to initiate criminal proceeding against the petitioner/A8, apart from the findings of the departmental proceeding.

18. In the light of the decision of the Honourable Apex Court, referred to by both the learned counsel, I am of the view that there is no prima facie case made out against the petitioner/A8 who was subsequently arrayed as one of the accused in the Criminal case and accordingly he is entitled to get discharged and accordingly, the impugned order passed by the Court below is liable to be set aside.

13. The above said decision rendered by this Court squarely applies to the facts of the case on hand. In this case also, the petitioners are employees of the Central Bank and there is no evidence made available against them to suggest that they have colluded with the other accused or involved themselves in the offence complained of. As mentioned above, the petitioners are guilty of improper discharge of work and for such negligence, initiation of criminal prosecution against them is not warranted. A wrong has been committed by the Secretary of the Society for which the petitioners, who are employed in the Central Cooperative Bank need not be subjected to criminal prosecution. In any event, as there is no evidence to suggest that the petitioners are guilty of criminal conspiracy and that they have committed the misdeed with mens rea, they are entitled to be discharged from the criminal prosecution.

14. In the light of the above discussion, all the Criminal Revision Cases are allowed by setting aside the order passed by the Court below. Consequently, the petitions filed by the revision petitioners for discharge are allowed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar
rsh

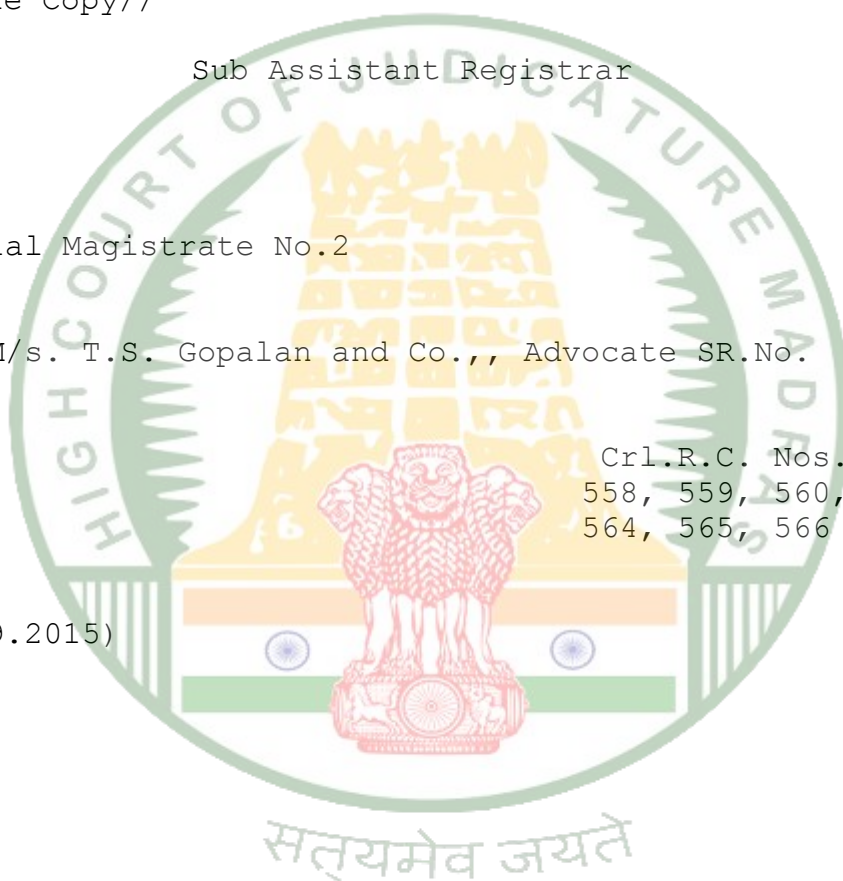
To

The Judicial Magistrate No.2
Vellore.

3 CCs to M/s. T.S. Gopalan and Co.,, Advocate SR.No. 36814 & 37093

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KGK (CO)
PSI (10.09.2015)



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