



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.O.P.(MD)No.20994 of 2014

and

M.P.(MD)No.1 of 2014

M.Poyyamozhi

... Petitioner / 5th Accused

-Vs-

1.The Inspector of Police,
Commercial Crime Investigation Wing
(CCIW CID)
Karur, Karur District
In Crime No.2 of 2014

... 1st Respondent / Complainant

2.Balamurugan
Deputy Registrar of
Co-operative Society,
Kulithalai, Karur District.

... 2nd Respondent /
Defacto complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.2 of 2014 on the file of the 1st respondent police and quash the same in so far as the petitioner alone.

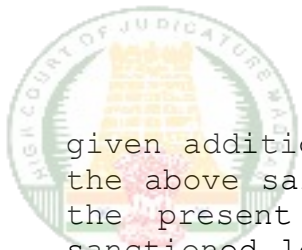
For petitioner : Mr.V.Bharathidasan

For Respondent-1 : Mr. K.Anbarasan
Government Advocate (Crl. Side)

O R D E R

This petition has been filed praying this Court to call for the records in Crime No.2 of 2014 on the file of the 1st respondent police and to quash the same insofar as the petitioner is concerned.

2. On a complaint given by the 2nd respondent / defacto complainant the 1st respondent has registered a case in Crime No.2 of 2014 against the petitioner, for the offences under Sections 403, 406, 408, 409, 420, 468, 471, 477-A, 120(B) r/w 34 of IPC. In the FIR, it has been stated that the amounts of a Co-operative Society were misappropriated on the basis of false / forged documents and on falsification of accounts. The first accused in this case has functioned as Secretary of the Society throughout the entire occurrence period I..e, between 25.11.2009 to 24.11.2010. The total misappropriation is to the tune of Rs.1,52,000/-. This petitioner has been functioning as Special Officer of another society and has been



given additional charge as Special Officer in the Society concerned during the above said period. The sum and substance of the allegation as against the present petitioner is that he has cleared loan applications and sanctioned loans without proper verification of the records placed before him.

3. In enquiry proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act, the first accused / Secretary of the Society has admitted to being the person behind the entire wrong doing and as a consequence, surcharge proceedings under Section 87 of such Act were initiated only against him.

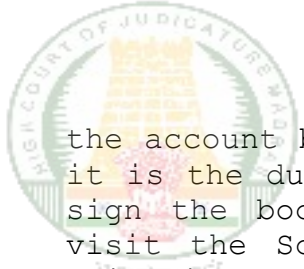
4. Learned counsel for petitioner would submit that the petitioner has accorded sanction of loans on the basis of documents put up for his perusal and then having no occasion to suspect such documents were forged or fabricated. He would rely on a circular, dated 11.12.1991 issued by the Registrar of Co-operative Societies, Chennai and submit that though as a Special Officer in charge of the Society, the petitioner may have over all control but cannot be held liable merely because he is in additional charge for a particular period. The relevant portion of the circular is extracted in Crl.OP.No.5745 of 1999 dated 10.01.2001 and usefully may be reproduced.

"6. Moreover, as per the circular dated 11.12.1991 issued by the Registrar of Co-operative Societies, Chennai, it is clear that though the officers incharge may have overall control, they cannot held to be criminally liable merely because they failed to check and scrutinize the accounts for a particular period and that in those cases, no complaint should be filed against those officers with the police. The relevant portion of the circular is this:-

"Taking Criminal action against the departmental officers holding chief Executive or Administrative and the supervisory posts in the co-operatives who are involved vigorously has also been examined. The departmental officers, working on Foreign service terms in co-operative organizations may not have the chance to scrutinize each and every transactions of the society. Though they may have an over all control, they cannot be hold criminally liable for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinize the accounts etc., or exercise effective control over subordinate staff such failure may not deserve criminal action. On the other hand, the failure of this nature, will be failure to discharge their duties properly on negligence and this may be dealt with though officers who are not directly involved in the frauds or misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaint filed with the Police"

5. Learned counsel for petitioner would further submit that the 4th accused in this case, who stood on similar footing had been granted the relief of quash by an order of this Court in Crl.O.P.(MD)No.1873 of 2014, dated 06.11.2014

6. The learned Government Advocate (crl.side) raised objections and <https://hcservices.ecourts.gov.in/hcservices/> on counter of the first respondent informs of statement of the first accused / Secretary to the effect that he did not maintain



the account books for the entire period for more than three years and that it is the duty of the petitioner / Special Officer to verify the same and sign the books. Though it is not possible for the Special Officer to visit the Society daily, he was duty bound to see if the accounts are maintained properly when he visited the Society. He would further submit that as against the order made in CrI.O.P.(MD)No.1873 of 2014, dated 06.11.2014, the State intends to move the Hon'ble Apex Court by way of Special Leave Petition.

7.On consideration of the rival submissions, this Court is of the view that in circumstance where there now is no material directly to implicate the petitioner and the possibility of the petitioner's oversight cannot be ruled out it would be inappropriate to proceed against him. It is considered appropriate to pass the following order:

(I) the case in Crime No.2 of 2014 on the file of the 1st respondent police shall stand quashed insofar as the petitioner is concerned.

(2) in the event of any evidence / materials surfacing in the course of trial that may ensue, it would be open to the trial court to act in accordance with Section 319 of Cr.P.C.

8.With the above observation, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(C.S.)

To

1.The Inspector of Police,
Commercial Crime Investigation Wing
(CCIW CID)
Karur, Karur District

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

TS/30.01.2015/3P-3C

CrI.O.P. (MD)No.20994 of 2014

20.01.2015