



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2015

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

Cr1.R.C. (MD) No. 67 of 2015

and

M.P. (MD) .No. 1 of 2015

Mr. Venkataseetharaman

... Petitioner

Vs.

1. Mr. Kalyani

2. Mr. A.C. Murugan

... Respondents

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records and set aside the order dated 28.06.2010 in Cr.M.P.No.3639 of 2010 on the file of the Court of District Munsif cum Judicial Magistrate, Usilampatti and remand the matter back to the said Court.

For Petitioner	: Mr. Pinaygash for Mr. T. Lajapathi Roy
For R2	: Mr. G. Sundaram R1 given up

O R D E R

The revision petitioner is the Deputy Registrar of Co-operative Societies, Usilampattai Circle, Thirumangalam, Madurai District and aggrieved by the dismissal of the petition in Cr.M.P.No.3639 of 2010 filed under Section 93 of Cr.P.C. r/w. 165 of the Tamil Nadu Co-operative Societies Act, 1983, he has filed this Criminal Revision Petition for setting aside the said order dated 28.06.2010.

2. It is the case of the revision petitioner that the second respondent was employed as a Secretary of Valanthur Primary Agricultural Co-operative Society and he was in-charge of handling the funds, disbursement of loan and agricultural insurance and while discharging the duties, he has indulged in various illegal activities and thereby caused loss to the Society. It is further stated by the revision petitioner in the said petition that the respondent has already been placed under suspension and the order of conditional attachment also came to be passed under Section 167 of the said Act and he has been repeatedly asked to

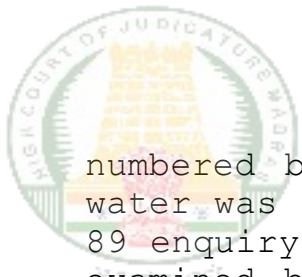


furnish the documents maintained by him, while he was discharging duty as a Secretary of the said Society and he has failed to do so and a criminal prosecution has also been lodged against him and since he has deliberately failed to hand over the records, there is a likelihood to tamper and destroy the records, came forward to file the said petition praying for issuance of search.

3. The said petition was opposed by the President of the Society by filing a counter stating that the Court of Judicial Magistrate No.I, Usilampatti lacks jurisdiction for the reason that all the issues arisen pertains to CBI cases which would lie within the jurisdiction of the Court of Judicial Magistrate No.III, Madurai and admittedly, the said petition was not filed before the said Court. On the merits of the case, the first respondent would contend that in terms of Section 165(1) of the said Act, the only Special Officer appointed under Sections 88 or 89 or the Liquidator appointed, under Section 137 can invoke the said provision and as per Sub-Section (3) of Section 165, every application under sub-section (1) shall be accompanied by a copy of the order made under sub-section (1) of Section 88 or, as the case may be, Section 89 or under Section 137 of the said Act and admittedly, no such order has been enclosed along with the present petition and prays for dismissal of the petition. The District Munsif cum Judicial Magistrate No.I, Usilampatti, on taking into consideration of the rival submissions, felt that it lacks jurisdiction to take up the application, as the jurisdiction is vested with Court of Judicial Magistrate No.III, Madurai and dismissed the petition vide order dated 28.06.2010 and aggrieved by the same, the present Criminal Revision Petition is filed.

4. The learned counsel for the revision petitioner would contend that what was invoked under Section 165(2) of the Tamil Nadu Co-operative Societies Act, 1983 and as per the definition of the Registrar under Section 2(23) of the Tamil Nadu Co-operative Societies Act, which includes the Deputy Registrar of the Co-operative Societies also and the said petition can be filed on the file of the Court of Metropolitan Magistrate or a Judicial Magistrate of the first class in whose jurisdiction the office of the society or the records and properties of that Society is or are situate for delivery of possession of the records and properties of the society and admittedly, the society lies within the jurisdiction of the Court of District Munsif cum Judicial Magistrate, Usilampatti and the said vital aspect has been completely looked into by particulars.

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Mr.N.Anandakumar, learned counsel appearing for the second respondent would vehemently contend that though the revision petition was filed in the year 2010, it came to be



numbered belatedly only in the year 2015 and in between, much water was flown has under the bridge for the reason that Section 89 enquiry was also initiated and the relevant records were also examined by the jurisdictional Deputy Registrar and the report is also ready and therefore, at this belated point of time, no purpose would be served by ordering this revision petition. The learned counsel would further submit that the application under Section 165 can be filed only by the Special Officer or the Liquidator and the present revision petitioner cannot maintain the petition and that the jurisdiction Court is only Court of Judicial Magistrate No.III, Madurai and not the Court of District Munsif cum Judicial Magistrate No.I, Usilampatti and the trial Court has rightly taken into consideration the question of jurisdiction and dismissed the petition and hence, prays for dismissal of this revision.

6. This Court has carefully considered the rival submissions and perused the records.

7. It is relevant to extract the provisions of Section 165 and Section 2(23) of the Tamil Nadu Co-operative Societies Act, 1983.

165. Delivery of possession of records and properties of a registered society.- (1)

Where a Special Officer is appointed under section 88, or under section 89 or where the society is ordered to be wound up and a Liquidator is appointed under section 138 and such reconstituted board, Special Officer, or Liquidator is resisted in, or prevented from obtaining possession of the books, accounts, documents, securities, cash and other properties, whether movable or immovable, of the society (hereafter in this section referred to as the records and properties of the society) by the board which has been reconstituted or superseded or by the society which has been ordered to be wound up or by any person who is not entitled to be in possession of the records and properties of the society, the reconstituted board, Special officer or Liquidator may apply to any Metropolitan Magistrate or a Judicial Magistrate of the first class in whose jurisdiction the office of the society or the records and properties of that society is or are situate for delivery of possession of the records and properties of the society.

2. Where in the opinion of the Registrar, the records and properties of any society are in possession of a person not entitled to be in possession thereof for any reason or where the Registrar is satisfied that the records and properties of the society are likely to be



tampered with or destroyed, or the funds and properties of the society are likely to be misappropriated or misapplied, he or any person authorised by him in this behalf may apply to any Metropolitan Magistrate or a Judicial Magistrate of the first class in whose jurisdiction the office of the society or the records and properties of that society is or are situate for delivery of possession of the records and properties of the society.

8. As per the said definition of Section **2(23)**, the "Registrar" means an officer of the Government appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes any other officer of the Government [or any officer of body corporate owned or controlled by the Government] on whom all or any of the powers of a Registrar under this Act have been conferred under Section 3;

9. Section 3 of the Tamil Nadu Co-operative Societies Act, 1983 reads that

"The Registrar.- The Government may appoint any officer of the Government to be Registrar of Co-operative Societies for the State of Tamil Nadu or any portion of it or for any class or classes or category or categories of registered societies and may, by general or special order, confer on any other officer of the Government [or any officer of any body corporate owned or controlled by the Government] all or any of the powers of a Registrar under this Act."

Therefore, in the light of the said provisions, it is not necessary that the Registrar have to invoke Section 165(2) to file such an application.

10. In the considered opinion of the Court, the petitioner invoked Section 165(2) of the Tamil Nadu Co-operative Societies Act, 1983 and the perusal of the petition would also disclose that specific allegations have been levelled against the respondent stating that he can tamper / destroy the records and therefore, issuance of search warrant is absolutely necessary. Though it is the vehement submission of the learned counsel for the petitioner that on the facts and circumstances of the case, only Section 165(1) of the Tamil Nadu Co-operative Societies Act was applicable, this Court is of the view that Section 165(2) alone would come into play and the petition filed by the revision petitioner before the lower Court is only under Section 165(2) of the Tamil Nadu Co-operative Societies Act, 1983.

11. No doubt according to the learned counsel appearing for



the respondent, enquiry under Section 81 of the said Act has been completed and therefore, there is no necessity to summon the records at this point of time and also pointed out the delay on the part of the revision petitioner to number this revision.

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12. This Court in this revision, is call upon to decide the legal plea as to the invocation of the provision under Section 165(2) of the Tamil Nadu Co-operative Societies Act, and it is always open to the respondent to raise the plea with regard to the completion of the enquiry under Section 81 and the report submitted by the jurisdictional Deputy Registrar and this Court is not expressing any opinion on the said Court proposed by the respondent.

13. In the considered opinion of the Court, insofar as the jurisdictional aspect is concerned, in the light of the wordings 'employed' under Section 165(2) of the said Act, the Office of the Co-operative Society lies with the jurisdiction and therefore, it is having the jurisdiction and the competency to entertain such a petition. The trial Court has not properly appreciated the legal position pointed out above in proper perspective and therefore, the impugned order passed by the learned District Munsif cum Judicial Magistrate, Usilampatti warrants interference.

14. In the result, the Criminal Revision Petition is allowed and the impugned order dated 28.06.2010 passed by the learned District Munsif cum Judicial Magistrate, Usilampatti in Cr.M.P.No.3639 of 2010 is set aside and the consequential Miscellaneous Petition is allowed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Usilampatti, Madurai District.

+1cc to Mr.T.Lajapathi Roy,Advocate Sr.No.16462

+1cc to Mr.G.Sundaram ,Advocate Sr.No.16341

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Cr1.R.C. (MD) No.67 of 2015
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