IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.9970 of 2014

and M.P.No.1 of 2014 and Crl.M.P.No.8540 of 2016

P.Malles .. Petitioner/Accused No.9

vs.

The State rep by
The Deputy Superintendent of Police
Salem CCIW CID Unit
Salem District. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the charge sheet in C.C.No.87/14 on the file of Judicial Magistrate-II, Mettur and quash the same as illegal insofar as the petitioner/A9 is concerned.

For petitioner : Mr.K.Raja

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

RESERVED ON	PRONOUNCED ON
29.08.2016	09.09.2016

O R D E R

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This petition has been filed to call for the records pertaining to the charge sheet in C.C.No.87/14 on the file of Judicial Magistrate-II, Mettur and quash the same as illegal insofar as the petitioner/A9 is concerned.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

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3. It is common knowledge that Co-operative Societies breed less co-operation, but more corruption and are fertile grounds for misappropriation. The subject Society in this case is K.K.128, Mettur Factory Employees Co-operative Housing Society. It came to the notice of the higher ups in the Department that there has been planned siphoning of the funds from the said Society by Vishwanathan [A1], the Secretary of the Society in connivance with seven others and the modus operandi was that he had granted housing loans to various fictitious persons.

4. To start with, an enquiry u/s 81 of the Tamil Nadu Co-operative Societies Act [hereinafter referred to as "the Act"] was held, in which Vishwanathan and seven others were indicted and based on the report of Mr.Veerasamy, Deputy Registrar, Tamil Nadu Co-operative Societies (Housing), Salem, the police registered a case in Cr.No.6 of 2012 and after completing the investigation, filed a Final Report in C.C.No.87 of 2014 before the Judicial Magistrate-II, Mettur against 22 accused for offences u/s 120-B, 406, 408, 409, 419, 467 468, 471 and 477-A IPC, in which this petitioner has been arrayed as A9, challenging which Malles [A9] is before this Court.

5. The respondent police have filed a counter setting down the facts of the case and the allegations against the petitioner.

6. It is the case of the prosecution that a sum of Rs.52,58,700/- has been misappropriated from the accounts of the Society.

7. The learned counsel for the petitioner/accused made the following submissions:

- That the petitioner was not indicted in the enquiry u/s 81 of the Act and in fact, in the enquiry u/s 81 of the Act, the Special Officers like this petitioner were clearly exonerated;

- That the petitioner's name did not figure in the FIR;

- That the petitioner was holding the additional charge as the Special Officer in the said Society for a brief period, namely from 22.09.2006 to 22.02.2007 and that he had not sanctioned the disputed housing loan during his period;

- After enquiry u/s 81 of the Act, a departmental enquiry was conducted against the petitioner for the same allegation, in which he has been completely exonerated

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by the proceedings of the Joint Registrar, Co-operative Societies, dated 27.04.2012.

- That the alleged defalcated amount of Rs.97,650/- has been paid by Viswanathan [A1] to the Society even before the FIR was registered and there is no loss to the Society.

- That the Registrar of Co-operative Societies had issued a circular dated 11.12.1991 and 19.04.2002, in terms of which persons like this petitioner cannot be mulcted with criminal liability for their failure to have effective supervision over their subordinates.

8. Per contra, Mr.Emalias, learned Additional Public Prosecutor submitted that a learned Judge of this Court, in Crl.O.P.No.25816 of 2015 filed by one K.Indirani, challenging the same prosecution against her, dismissed the same on 18.11.2015 and therefore, there cannot be a different view with regard to the case of this petitioner.

9. This Court gave its anxious consideration to the rival submissions.

10. It is trite that just because a person has been exonerated either in an enquiry u/s 81 of the Act or in the domestic enquiry by the Department, it is not a thumbrule that he should not be prosecuted in a criminal Court for IPC offences. It is true that in the two circulars relied upon by the petitioner, the Registrar of Co-operative Societies has exhorted that, criminal prosecution against employees of the Co-operative Society should not be instituted in a routine manner and should be done with circumspection. Paragraph 3 of the circular dated 11.12.1991 may be relevant and it reads as follows:

> "3.Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the co-peratives who are involved vicariously has also been examined. The departmental officers, working on Foreign service terms in Co-operative organisations may not have the chance to scrutinise each and every transactions of the society. Though they may have an over all control, they cannot be held criminally liable, for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinise the accounts etc., or exercise

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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 or negligence and this may be dealt with through disciplinary proceedings. Hence it is informed that the departmental 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 complaints filed with the police."

11. The learned counsel for the petitioner relied upon paragraph 2(iv) of the circular dated 19.04.2002, which reads as follows:

> "2(iv) It has been decided that care may be taken to see, whether it is absolutely necessary to file criminal cases, in instances, involving amounts less than Re.1/- lakh and whether departmental disciplinary action would be suffice."

and submitted that only if the misappropriation exceeds Rs.1 lakh, should a prosecution be launched, whereas, in this case the amount is only Rs.97,650/-.

12. At the outset, this submission of the learned counsel for the petitioner deserves to be rejected on the short ground that the sum of Rs.1 lakh mentioned in the circular dated 19.04.2002 does not refer to the amount of defalcation concerning one instance in a case comprising several instances. For example, in this case, the total amount of money that is said to have been misappropriated is Rs.52,58,700/-which comprises several instances, of which one instance of Rs.97,650/-relates to this petitioner. When there is a charge u/s 120-B conspiracy and if all the instances have been committed in the course of a transaction, it will be ludicrous to test each instance of defalcation on the anvil of the aforesaid circular and grant the benefit of it to the accused. If that is done, no one can ever be prosecuted. Little drops of water make a mighty ocean and the sum of Rs.1 lakh mentioned in the circular refers to the depth of the ocean and not the depth of one drop.

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13. In the light of the aforesaid discussion, now, it is imperative for this Court to analyse the materials on record to find out if the prosecution is an abuse of process of law.

14. Admittedly, this petitioner was holding additional charge as Special Officer of the Society for a brief period from 22.09.2006 to 22.02.2007. It is the allegation of the prosecution that he had signed the cheque dated 19.02.2007 for Rs.97,650/- towards disbursement of a part of housing loan to one N.Selvi. In State of Orissa vs. Dabendra Nath Padhi [2004 AIR SCW 7813], the Supreme Court has held that this Court can look into certain unimpeachable records produced by the defence while dealing with a petition u/s 482 Cr.P.C. The fact that this petitioner was holding additional charge as Special Officer of the Co-operative Society for a brief period from 22.09.2006 to 22.02.2007 is not in dispute. A Special Officer comes into picture when the elected Board of Directors of the Co-operative Society is absolved by an executive fiat and a Special Officer takes on the duties and responsibilities of the Board with the assistance of the Secretary of the Society. In this case, R.Vishwanathan [A1] was the Secretary of the Society during the relevant point of time. In the Section 81 enquiry report dated 20.03.2012, a clear finding has been given that with regard to sum of Rs.97,650/- disbursed to N.Selvi, R.Vishwanathan [A1] has repaid the amount to the Society together with interest and penal interest amounting to Rs.1,56,877/-[Rs.97,650 + Rs.48,728 + Rs.10,499 = Rs.1,56,877] even before the FIR in this case was registered. Even in the enquiry u/s 81 of the Act, this petitioner has been exonerated, despite which, a domestic enquiry was conducted against him for the same charge of having disbursed Rs.97,650/- to N.Selvi. In the enquiry conducted by the Joint Registrar of Co-operative Societies, the petitioner took a stand that even before he had taken charge as Special Officer, housing loan for N.Selvi was sanctioned vide sanction order No.143/03-04 and that it was not the petitioner who had sanctioned the housing loan. The petitioner has produced unimpeachable records before the enquiry authority which have been accepted by the enquiry authority and who has given a finding that the petitioner had not sanctioned the loan and therefore, there was no necessity for him to once again go into the loan papers and the bona fides of Selvi. The police investigation has miserably missed this aspect and had gone on the premise that the fictitious loan was sanctioned by the petitioner. There is no other material in the final report or the accompanying documents to show that the petitioner had sanctioned the fictitious housing loan to N.Selvi. When once an Officer sanctions housing loan after the papers are processed, it is not open to an Officer succeeding him to once again review the sanction, unless if it comes to his notice that there is

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something hanky panky about it. If each time a succeeding Officer starts reviewing the sanction made by the previous Officers, it will only breed corruption.

15. It is alleged by the prosecution that the petitioner had not crossed the cheques and had not directly seen N.Selvi. This issue has also been answered by the petitioner in the domestic enquiry by relying on Rule 36A(3) of the Bye-laws of the Co-operative Society, according to which, it is the duty of the Secretary of the Society to hand over the cheque to the beneficiary after due identification. The cheque was not crossed, because the Secretary will have to take the beneficiary to the Bank and after identifying the beneficiary, sign in the reverse of the cheque, for the Bank to disburse the amount. In this instance, this has been done by R.Vishwanathan [A1]. Even according to the prosecution, the disbursement of the amount covered by the cheque has been done by R.Vishwanathan [A1] and that is perhaps the reason why he has refunded the amount with penal interest, as stated above.

16. Unlike in a criminal prosecution where the guilt of the accused should be proved beyond reasonable doubt, in a domestic enquiry, such strict proof is not required. A person can be held guilty in a domestic proceedings, even if materials may not pass the twin test, viz., relevancy and admissibility envisaged by the Indian Evidence Act. Bearing this principle in mind, if the Section 81 enquiry report and the domestic enquiry report are viewed, it is apparent that the petitioner has been given a clean chit and has been honourably exonerated. This Court cannot close its eyes and simply say that the petitioner should undergo the ordeal of criminal prosecution once again to prove his innocence.

17. The order passed by this Court in Indirani's case that has been relied upon by the prosecution does not throw much light on the facts and circumstances of the indictment against her. This Court, in paragraph 6 of the order, has stated as follows:

> "6. From a careful perusal of the chargesheet and the complaint, it is seen that there is a specific allegation against the petitioner herein stating that the petitioner herein colluded with the other accused persons and misappropriated the Society's fund. Therefore, it is incorrect to state that absolutely there is no allegation against the petitioner herein. The submission made by the learned counsel for the petitioner would be

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his defence during the course of trial, but certainly it would not be a ground to quash the chargesheet. Hence, I am not inclined to quash the chargesheet and the present criminal original petition is liable to be dismissed."

18. In Indirani's case, in the domestic enquiry, a minor penalty was imposed upon her, whereas, in this case, the petitioner has been honourably exonerated in the domestic enquiry, as stated above. Under such circumstances, this Court is not able to rely upon the order passed in Indirani's case to hold in favour of the prosecution and against the petitioner herein.

19. In the light of the above, this Court is of the view that the prosecution of the petitioner, in the peculiar facts and circumstances which have been narrated above, is an abuse of process of law and accordingly, this petition is allowed and the proceedings against the petitioner in C.C.No.87 of 2014 on the file of the Judicial Magistrate-II, Mettur, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

gms
To

1.The Deputy Superintendent of Police
Salem CCIW CID Unit
Salem District.

2.The Judicial Magistrate-II,
Mettur.

3.The Public Prosecutor
High Court,
Madras 600 104.

+cc to Mr.K.Raja, Advocate Sr.51255

Crl.O.P.No.9970 of 2014

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