IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2016

(Orders reserved on 03.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.659 of 2015
& M.P.No.1 of 2015

S.Soundarajan .. Petitioner/Accused

Vs.

The Inspector of Police,
Vigilance and Anti-Corruption,
Salem. (Crime No.3/AC/2009) .. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the order dated 28.05.2015 passed in Crl.M.P.No.155 of 2014 in Spl.C.C.No.109 of 2014 on the file of the Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem.

For petitioner : Mr.R.Nalliyappan
For respondent : Mr.P.Govindarajan, Addl.P.P.

ORDER

This Revision Petition is filed by the petitioner against the order dated 28.05.2015 passed in Crl.M.P.No.155 of 2014 in Spl.C.C.No.109 of 2014 on the file of the Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem, in and by which, the discharge petition filed by the petitioner under Section 239 Cr.P.C., was dismissed.

2. The brief case of the prosecution is as follows:

(a) The petitioner is an accused in Spl.C.C.No.109 of 2014. The petitioner was working as Secretary, Kolathur Urban Co-operative Housing Society, Kolathur, Mettur Taluk, Salem District, during the period between 03.04.2003 and 18.03.2009 and is a public servant as defined under Section 2(c)(ix) of the Prevention of Corruption Act. By-laws 36 to 40 of the said Society describes the following duties of the Secretary:

(i) to maintain Day Book showing daily receipts and expenditure and cash balance at the end of each day;

(ii) to maintain and keep receipt book and challan, for money received on behalf of the society;

(iii) to maintain voucher file containing all vouchers for expenditure incurred by the society numbered serially and filed chronologically;

(iv) to maintain ledger of borrowings showing deposits and other borrowings of all kinds

(v) to maintain Daily Chitta Register and to make entries of all receipts of cash received from the member of the Society at the end of each day;

(vi) to remit all the cash receipt from the members on behalf of the Society without any delay into the account of the Society maintained in the concerned Co-operative Central Bank;

(vii) to issue cheque in case of any payment made on behalf of the Society exceeding Rs.500/-, shall not have cash on hand exceeding Rs.50/- in the amount of the Society.

(b) During the period between 03.04.2003 and 18.03.2009, the petitioner being a public servant, while working as Secretary of the said Society, with fraudulent and dishonest intention to misappropriate the amount belonging to the Society to the tune of Rs.4,08,731.50, had wilfully omitted to make entries in the Day Book and Daily Chitta Register of payments made by the members of the Society having received the amount and issued receipts to the members in his capacity as the Secretary of the Society. The petitioner/accused being a public servant, had been entrusted with the total amount of Rs.11,56,732/- being the collection of housing loan repayments paid by the respective members/borrowers of the Society by way of cash receipts and Day Book closing balance cash, had misappropriated a sum of Rs.4,08,731.50 out of Rs.11,56,732/-.

(c) During the period between 05.08.2008 and 18.03.2009, the petitioner/accused maintained false account by wilfully omitting to make relevant entries of the receipts of the payment of loan amount made by the member of the Society in the Day Book, classifying Day Book and in Daily Chitta Book and misappropriated the funds of the Society to the tune of Rs.4,08,731.50. Thus, the accused has committed breach of trust and falsification of accounts, punishable under Sections 409 and 477-A of IPC and also committed the offence of misappropriation and criminal misconduct punishable under Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act.

3. The petitioner/accused filed discharge petition under Section 239 Cr.P.C., before the Court below, stating that the materials placed by the investigating officer are not sufficient to frame charge against him and he is not a public servant. The entire prosecution initiated against the petitioner under the penal provisions of Prevention of Corruption Act before the Special Court, is not maintainable. It is his further case that the entire prosecution is based on the inspection report submitted by one P.Gunasekaran, the then Deputy Tahsildar Zone-I, who was placed in-charge of the post of Inspection Cell Officer, but since the said Officer has no authority to inspect the Co-operative Societies, the entire prosecution is vitiated.

4. Opposing the above pleadings of the petitioner, counter objections were filed by the prosecution before the Court below, stating that at the relevant point of time, the petitioner was serving as Secretary of the said Society, and as such, he is a public servant as defined under Section 2(c)(ix) of the Prevention of Corruption Act. It is incorrect to state that the Inspection Cell Officer has no power to inspect the Society. It is further stated that as per G.O.Ms.No.3392, Public (Inspection-I) Department, dated 25.10.1975, District Inspection Cells were created by the Government of Tamil Nadu and as per the guidelines formulated by the Government for the functioning of the Inspection Cell, the Inspection Cell Officer was empowered to conduct surprise checks. It is further stated that the present case was diligently investigated by the DVAC Department by verifying all the relevant records and since investigation disclosed involvement of the petitioner in the offences alleged, final report was laid along with all relevant materials.

5. Learned counsel for the petitioner/accused mainly submitted that the petitioner was working as Secretary of the said Society and the Secretary of the Society is not a Government employee. The Society is not a statutory body and is not performing any public function and it will not come within the expression of the "State" as mentioned under Article 12 of the Constitution of India, and therefore, the petitioner cannot be construed as a public servant as defined under Section 2(c)(ix) of the Prevention of Corruption Act. That apart, learned counsel for the petitioner submitted that the Zonal Deputy Tahsildar, on credible information that there are large scale malpractices and irregularities committed in the said Society, conducted a surprise check on the day of the occurrence, but the Zonal Deputy Tahsildar being a Revenue Authority, is not a competent and statutory person to conduct any surprise check of accounts of the Co-operative Society, which is under the control of the Committee elected by the members of the Society, and therefore, the entire prosecution case based on the complaint of the Zonal Deputy Tahsildar, is not maintainable.

6. Learned counsel for the petitioner further submitted that the persons who witnessed the surprise check, i.e. Inspector of Police, V and AC, Salem, and Co-operative Sub-Registrar (Execution/Liquidation) are no way connected with the affairs of the Society. Only on the complaint of a member, if at all any discrepancy is found in the accounts, the concerned authority may conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act by appointing enquiry officer and may initiate criminal prosecution. Therefore, the learned counsel for the petitioner submitted that since the petitioner is not a public servant and the Society is not coming within the meaning of "State" under Article 12 of the Constitution of India, the charges cannot be framed against the petitioner/accused under the provisions of the Prevention of Corruption Act. Without considering all the above aspects properly, the trial Court dismissed the discharge petition and hence, he prayed for allowing the Revision Petition.

7. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner/accused was working as Secretary of the Society and his duties and responsibilities are preparing of files for housing loans, supervising the accounts, inspecting the sites to construct houses, along with the Special Officer and Co-operative Sub-Registrar, collection of loan amounts, remitting the collection amount to the Bank, getting loan from the Federation Bank (Headquarters) and disburse the loan amount to the members and looking after the affairs of the Society and also the administration of the Society. He further submitted that during the period between 05.08.2008 and 18.03.2009, the petitioner was entrusted with an amount of Rs.4,08,731.50 in his capacity as a public servant and he committed criminal breach of trust and falsification of records and thereby, he committed offences punishable under Sections 409 and 477-A IPC. Learned Additional Public Prosecutor further submitted that as per G.O.Ms.No.3392, dated 25.10.1975, the Inspection Cell Officer is empowered to conduct surprise check in the offices at points and places of corruption, which act as source of discontent from the point of view of the public and as per the above said authorisation, Mr.P.Gunasekaran, attached to Omalur Taluk Office, Deputy Tahsildar, in-charge of Inspection Cell Officer, Salem District, conducted the inspection and found the misappropriation committed. In this regard, learned Additional Public Prosecutor relied upon Section 2(c)(ix) of the Prevention of Corruption Act and submitted that the petitioner will come within the purview of a public servant.

8. Learned Additional Public Prosecutor invited the attention of this Court to Section 2(b) of the Prevention of Corruption Act, which defines "public duty" as a duty in the discharge of which the State, the public or the community at

large has an interest. So far as the present case is concerned, the petitioner as Secretary is involved mainly in the functions of disbursing the loan amounts to the members, supervising the accounts, remitting the collection amount to the Bank, etc. He further submitted that all the Co-operative Societies are managed and related as per the Tamil Nadu Co-operative Societies Act, enacted by the State of Tamil Nadu with the assent of the President of India and all the Co-operative Societies within the Tamil Nadu State, have been established under the above said Act and they are controlled by the Government of Tamil Nadu through their Registrar of Co-operative Societies and the Secretary to Government, Co-operation, Food and Consumer Protection Department, and therefore, the petitioner being an employee of the Co-operative Society and being its Secretary, squarely falls within the definition of "public servant" under Section 2(c)(ix) of the Prevention of Corruption Act. Hence, no case has been made out warranting this Court to discharge the petitioner/accused from the case and he prayed for dismissal of the Revision Petition.

9. By way of reply, learned counsel for the petitioner submitted that Section 2(c)(ix) of the Prevention of Corruption Act says that if a registered co-operative society is a body owned or controlled by the Government or a Government Company, then only the Secretary of the Society will fall within the meaning of a public servant. In the present case, the Society is neither controlled nor owned by the Government, and therefore, the Secretary of the Society in this case, cannot be construed as a public servant.

10. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

11. The main submission of the learned counsel for the petitioner is that the Inspector of Police, V and AC, Salem, has no authority to assist the Zonal Deputy Tahsildar, in-charge of Inspection Cell Officer while inspecting the Co-operative Society, and hence, the case registered against the petitioner on the basis of the inspection report is against the settled canons of law and therefore, the surprise check is not legally sustainable and on this ground, the petitioner is entitled to discharge. He further submitted that since the petitioner was a Secretary of the said Society, which is not controlled or owned by the Government, he cannot be construed as a public servant.

12. On a perusal of the records, I find that already a Government Order in G.O.Ms.No.3392, Public (Inspection-I) Department, dated 25.10.1975 has been passed, by which, the District Inspection Cells have been created by the Government, and as per the Guidelines issued, vide Memorandum No.225/75-14,

Public (Inspection) Department, dated 25.10.1975, the Inspection Cells so created, functioned and through the above referred Memorandum, the Inspection Cell Officer was authorised to conduct surprise checks in the Co-operative Societies and other offices in which corruption is alleged to exist. As per the above guidelines, the Inspection Cell Officer conducted surprise check in liaison with the Inspector of Police, V and AC, Salem. In this case, the Deputy Tahsildar, in-charge of Inspection Cell Officer, Salem District, conducted the inspection and found the misappropriation of funds committed by the petitioner.

13. Learned counsel for the petitioner also submitted that the petitioner will not come within the purview of the definition of "public servant" under Section 2(c)(ix) of the Prevention of Corruption Act, as no 'public duty' as enunciated under Section 2(b) of the Prevention of Corruption Act, is involved in this case. In this regard, it is worthwhile to quote the above Sections as follows:

> Section 2: Definitions:-- In this Act, unless the context otherwise requires,---
> ....
> (b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest.
>
> Explanation: In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (I of 1956)"
> (c) "public servant" means ---
> .....
> (ix) any person who is the president, secretary or other officer-bearer or a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (I of 1956)".

14. On a careful reading of the above extracted Sections 2 (b) and 2(c)(ix) of the Prevention of Corruption Act, the submission of the learned counsel for the petitioner/accused that the petitioner is not performing public duties as he is a not public servant, cannot be accepted and the said submission will not serve as a ground for discharge.

15. Therefore, no sufficient ground has been made out by the petitioner/accused to discharge him from the case. Hence, there is no infirmity in the impugned order passed by the trial Court. Accordingly, the Crl.R.C. is dismissed. The Miscellaneous Petition is closed.
cs

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Special Judge,
The Special Court for Trial of Cases
under Prevention of Corruption Act,
Salem.

2. The Inspector of Police,
Vigilance and Anti-Corruption,
Salem. (Crime No.3/AC/2009)

3. The Public Prosecutor, High Court, Madras.

4. The Section Officer, Criminal Section, High Court, Madras.

+ 1 cc to Public Prosecutor, SR 44743

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