

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.Nos.1230 and 1231 of 2016

&

Crl.M.P.Nos.11120,11121,11122 and 11123 of 2016

D.Babu .. Petitioner in both cases

vs.

State
Rep by Inspector of Police
C.C.I.W
Cuddalore

.. Respondents in both cases

Criminal Revisions filed under Sections 397 and 401 Cr.P.C. praying to set aside the order of learned Judicial Magistrate II, Panruti, passed in Crl.M.P.Nos.5366 and 5367 of 20015 in C.C.Nos.114 and 115 of 2016 on 07.06.2016.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.R.Ravichandran,
Govt.Advocate(Crl.side)

O R D E R

These revisions arises against the order passed in Crl.M.P.Nos.5366 and 5367 of 20015 in C.C.Nos.114 and 115 of 2016 on 07.06.2016 by the learned Judicial Magistrate II, Panruti.

2. Petitioner/accused was charged of offences u/s. 403,408,471,477A r/w 109 of IPC in case pending trial in C.C.Nos.114 and 115 of 2016. In the related departmental enquiry it was held that the petitioner did not commit any offence as petitioner was only a supervisory field officer not directly involved in the offence. In departmental enquiry u/s. 87 of the T.N.Societies Act it was concluded that the petitioner did not cause any loss to the society. On the strength of such findings, petitioner filed applications for discharge in Crl.M.P.Nos.5366 and 5367 of 2015 in C.C.Nos.114 and 115 of 2015 on the file of

learned Judicial Magistrate II, Panruti. Against dismissal thereof, present revisions stand filed.

3. This Court finds that on the very same set of charges an enquiry u/s. 81 of the Tamilnadu Co-operative Societies Act, 1912 was held resulting in the enquiry officer recommending surcharge proceedings u/s. 87 of the said Act and departmental action. He had also recommended criminal action. This petitioner has not been named in the FIR and in the Sec. 87 surcharge proceedings it specifically was found that no loss had been caused to the society owing to the acts of the petitioner. Disciplinary proceedings conducted u/s. Section 17 (B) regards the lapses on the part of petitioner resulted in the finding that such charges were not proved.

4. Learned counsel for petitioner submits that the petitioner as a field officer only supervises the affairs of the society and has not been placed in charge of receipt of money. Petitioner stands charged on the sole allegation made by one Jayachandar s/o Rangasamy, Deputy Registrar to the effect that this petitioner/field officer, one Jaganathan/writer and Senthil/President had joined hands and usurped funds and hence he had in his proceedings Na.Ka.983/2014 dated 24.12.2014 preferred a complaint to the Superintendent of Police, CCI Wing. It is seen that the petitioner has not been named in the FIR. Further the very same official/Deputy Registrar has been the person in charge of Sec.87 surcharge proceedings. He had concluded that the petitioner was not directly involved with the affairs of the society and that as a mere supervising authority, he could not be held liable.

5. Heard learned Government Advocate (Cr.side) on the above submissions.

6. Both the criminal prosecution and the departmental enquiry stem from the very same set of facts. When the petitioner was given a clean chit in the surcharge proceedings conducted by the department, the very same witnesses were sought to be examined against him in the criminal proceedings. Identical charge levelled against the petitioner when not proved in the departmental proceedings, hardly can lead to conviction in criminal proceedings, the degree of proof in the former being 'preponderance of probability while that in Criminal proceedings was beyond all reasonable doubt'. Decision of the Honourable Apex Court in P.S. Rajya vs. State of Bihar (1996 (9) SCC 1) is applicable to the facts of the present case.

Accordingly, the Criminal revision petitions shall stand allowed. The order of learned Judicial Magistrate II, Panruti, passed in CrI.M.P.Nos.5366 and 5367 of 20015 in C.C.Nos.114 and

115 of 2016 on 07.06.2016, shall stand set aside.
Petitioner/accused shall stand discharged of all
charges.Connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CCC)

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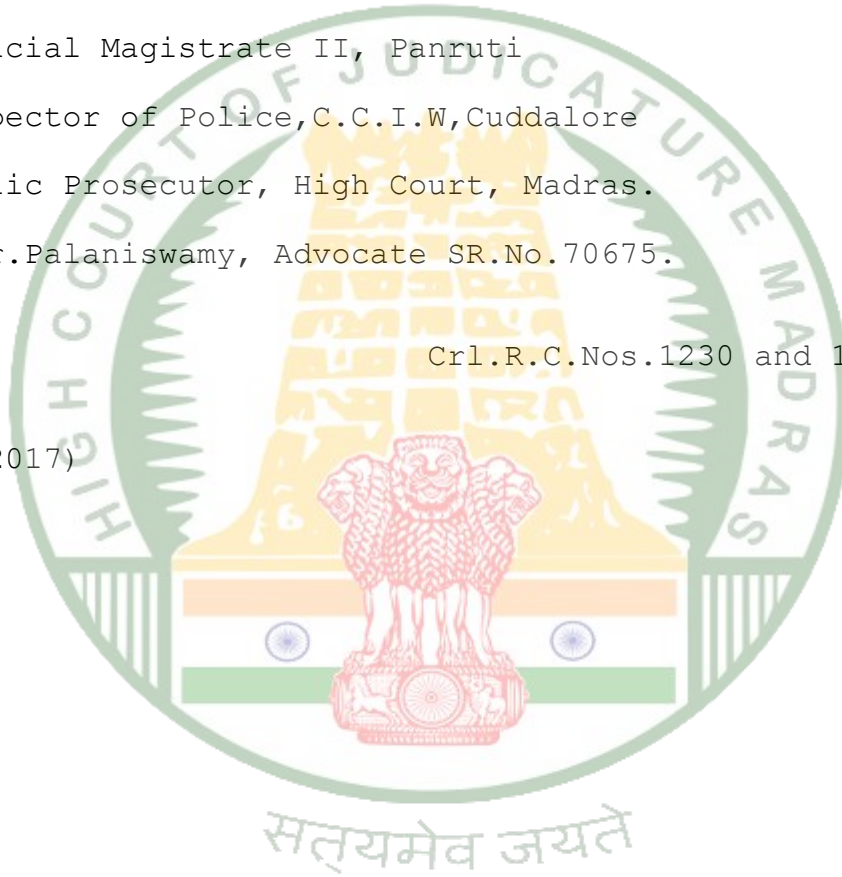
Sub Assistant Registrar

To

- 1.The Judicial Magistrate II, Panruti
 - 2.The Inspector of Police,C.C.I.W,Cuddalore
 - 3.The Public Prosecutor, High Court, Madras.
- +1cc to Mr.Palaniswamy, Advocate SR.No.70675.

Cr1.R.C.Nos.1230 and 1231 of 2016

NRP (CO)
GN(07/02/2017)



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