

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM:

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

Crl.R.C.No.992 of 2016

and

Crl.M.P.Nos.7972 and 7993 of 2016

V.Moorthy
S/o.Veerapathiran

... Petitioner/Respondent/
Petitioner

vs.

Inspector of Police,
C.C.I.W / C.I.D Wing,
Krishnagiri.

... Respondent/Petitioner/
Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned Principal District Judge, Krishnagiri, passed in Crl.R.C.No.3 of 2015 on 11.01.2016. and confirm the order passed in Crl.M.P.No.1565 of 2013 in C.C.No.101 of 2009 on the file of District Munsif Judicial Magistrate, Denkanikottai.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.K.Madhan

Government Advocate (Crl.side)

O R D E R

Petitioner challenges the order of learned Principal District Judge, Krishnagiri, passed in Crl.R.C.No.3 of 2015 on 11.01.2016.

2. Petitioner and seven others have been arrayed as accused in C.C.No.101 of 2009 on the file of learned Judicial Magistrate cum District Munsif, Denkanikottai, for offences u/s.406, 408, 409, 471, 477-A r/w 120(B) IPC. Petitioner/A2 has filed a petition for discharge u/s.239 Cr.P.C. in Crl.M.P.No.1565 of 2013 in C.C.No.101 of 2009. Under order dated 28.10.2014, the learned Magistrate has allowed such petition. There against, respondent State has preferred a revision in Crl.R.C.No.3 of

2015 on the file of learned Principal District Judge, Krishnagiri. Such revision was allowed under order dated 11.01.2016 and the order of discharge has been set aside. Aggrieved, petitioner/accused has filed the present revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

4. In allowing the discharge petition, learned Judicial Magistrate cum District Munsif, Denkanikottai, has informed that the documents produced before Court informed that loan has been granted to A7 and A8 by petitioner/A2 and others on the basis of certificates issued by A5/Village Administrative Officer and the same has been repaid with interest. Prosecution has not established that such documents were not genuine. Even as per the prosecution case, petitioner/A2, as a Secretary, was authorised to disburse loan only to the extent of Rs.100/-. While so, the prosecution has not produced any document to establish how the petitioner/A2 committed the alleged offence along with others. Though one Muniyappan, officer, deposed that monies of Co-operative Society have been misappropriated by its members in connivance with a Village Administrative Officer, he has not mentioned the names of members and the quantum misappropriated. Further, the charge sheet did not inform on what dates the alleged offence has been committed. Learned Magistrate has reasoned that once an enquiry had been conducted u/s.81 of the Tamil Nadu Co-operative Societies Act and a report filed, a direction should have been issued to initiate action u/s.87 of the Act. While so, no reason has been informed why the matter was referred to police. Further, charge of commission of offences under Indian Penal Code have been levelled and the same reveal intent of prosecution to rope in the petitioner and others in the case rather than compensate the loss caused to the Society. On the above reasoning, learned Judicial Magistrate cum District Munsif, Denkanikottai, has held that petitioner was entitled to discharge.

5. In allowing the revision preferred by the State, learned Principal District Judge, Krishnagiri, has informed that learned Judicial Magistrate cum District Munsif, Denkanikottai, without taking into consideration the fact that the accused have disbursed loans to persons who do not possess/own lands, has erred in informing that even though enquiry has been conducted u/s.81 of the Tamil Nadu Co-operative Societies Act, no direction has been issued to take action u/s.87 thereof and charges of commission of penal offences was malafide. Learned Judicial Magistrate cum District Munsif, Denkanikottai, has further erred in discharging the petitioner on the reasoning that investigation was conducted in the case on the basis of the report filed u/s.81 of the Tamil Nadu Co-operative Societies Act and charge sheet filed pursuant thereto was unacceptable.

Learned Judicial Magistrate cum District Munsif, Denkanikottai, has failed to see that 161 (3) Cr.P.C. statements are sufficient to initially frame charges against the accused. At the stage of considering a petition for discharge all that the Court is concerned with is existence or otherwise of a prima facie case. In the instant case, a prima facie case does exist against petitioner and the Court below erroneously has discharged the petitioner/accused. On the above reasoning, learned Principal District Judge, Krishnagiri, allowed the revision preferred by the State.

6. In ordering the discharge of the petitioner, the learned Judicial Magistrate cum District Munsif Denkanikottai found that the petitioner/A2, as the secretary of the society had authority to grant loans only to the extent of Rs.100/- and prosecution has failed to establish through documentary evidence its allegations of his having joined hands with the other accused in committing offences. The Co-operative Extension Officer had stated that expenses beyond Rs.10/- could not be incurred without the permission of the special officer. In his report he had stated that through obtaining possession certificates beyond actual land holdings 'Rs.....' (left in blank) had been embezzled. His report did not inform how the A1/President, this petitioner/Secretary and the Branch Manager/A6 joined hands with Village Administrative Officer- A5 in wrong doing. That the report did not specify the actual amount embezzled and merely read 'Rs.....' gave room for suspicion. In such report, each head of loss is said to have been occasioned owing to the negligence on the part of A1, A2 and A6. However, the charge sheet in the case did not allege any specific commission of offence by A1, A2 and A5 nor did it specify in what manner and with whom they had wrongly conducted themselves. Learned Judicial Magistrate cum District Munsif, noted that A1, A2 and A6 were not Government servants. On the basis of certificate issued by VAO- A5 due resolutions for grant of loan to A7 and A8 were passed and the same together with interest had been repaid as evidenced by receipts produced. Prosecution had not shown such receipts to be false. Learned Judicial Magistrate cum District Munsif, found unacceptable submission made on behalf of prosecution that documents produced by the Investigating Officer after filing of the charge sheet and which informed wrong doings over a period beyond one year may be looked into. Learned Judicial Magistrate cum District Munsif found that mere assertion of negligent conduct over a period of a year could not by itself lead to the inference of criminal conduct. Learned Judicial Magistrate cum District Munsif noted the peculiarity of the Enquiry officer u/s. 81 of the Tamil Nadu Co-operative Societies Act recommending prosecution and not seeking the conduct of surcharge proceedings u/s. 87 of such Act. Learned Judicial Magistrate cum District Munsif further noted that the

161(3) statements were made believe and had been drawn up in keeping with the Sec.81 proceedings. The order of the learned Judicial Magistrate cum District Munsif Denkanikottai directing discharge is supported by good reasoning and in such circumstances, Court below ought not to have interfered therewith. It is seen that under two transactions excess loan has been granted to A7 and A8. It is submitted that such sums granted in excess have been recovered with interest thereon. No surcharge proceedings u/s.87 of the Tamil Nadu Co-operative Societies Act has been initiated and apparently because cause therefor did not arise.

The Criminal Revision Case shall stand allowed. The order of learned Principal District Judge, Krishnagiri, passed in CrI.R.C.No.3 of 2015 on 11.01.2016 shall stand set aside. The order of Judicial Magistrate cum District Munsif, Denkanikottai, passed in CrI.M.P.No.1565 of 2013 in C.C.No.101 of 2009 on 28.10.2014 shall stand confirmed. Petitioner/A2 shall stand discharged of all charges. Connected miscellaneous petitions are closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

- 1.The Principal District Judge,
Krishnagiri.
 - 2.The Inspector of Police,
C.C.I.W / C.I.D Wing,
Krishnagiri.
 - 3.The District Munsif -cum- Judicial Magistrate
Denkanikottai.
 - 4.The Public Prosecutor,
High Court, Chennai.
- +1 CC to Mr. M.S.Palaniswamy Advocate SR.NO.58733

CrI.R.C.No.992 of 2016

RJ(CO)
VC (17/11/2017)