

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.31875 of 2012

S.Sankar

.. Petitioner

Vs.

The State Rep. by  
The Sub Inspector of Police,  
CCIW CID,  
Chennai - 600 040.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in .C.No.80 of 2013 on the file of the learned Judicial Magistrate, Ambatture, Chennai and quash the same. [Prayer amended as per the order of this Court in MP.No.1/14 dt 30/4/14]

For Petitioner :Mr.K.L.Sekar  
For Respondent :Mr.C.Emalias  
Addl. Public Prosecutor

O R D E R

The petitioner has come forward with this petition to call for the records in .C.No.80 of 2013 on the file of the learned Judicial Magistrate, Ambattur, Chennai and quash the same.

2. The accused in C.C.No.80 of 2013 on the file of the Judicial Magistrate, Ambattur has come forward with this application to quash the proceedings stating that the petitioner is working as a Senior Sales Manager in Thirumulaivoyal Fair Price Shop and on 26.2.2011, he was transferred and he handed over the charge to one Purushothaman and he also filed a copy of handing over and taken over statement. But in that document, it has been stated that some gunny bags have been damaged. So, proceedings under section 81 of Tamilnadu Co-operative Societies Act has been initiated against the petitioner and an enquiry has been conducted in which the Surcharge Proceedings has also been initiated simultaneously. On the basis of the complaint of the Registrar of Societies, a case has been registered and after

investigation, charge sheet has also been filed and taken cognizance in C.C.No.80 of 2013.

3. The learned counsel for the petitioner would submit that without notice to the petitioner, the surcharge proceedings has been conducted and hence he filed Writ Petition No.25698 of 2011. In the Writ Petition, this Court by an Order dated 31.10.2012 has set aside the enquiry report and directed to conduct fresh enquiry and file a report. Subsequently, fresh enquiry has been conducted and in the report, it has been stated that this petitioner has nothing to do with the loss caused to the Fair Price Shop. In that report, it was specifically stated that neither the disciplinary proceedings nor criminal proceedings is warranted against the petitioner. But the respondent has not withdrawn the case and continuing the case.

4. Resisting the same, the learned Additional Public Prosecutor would submit that after the disposal of the Writ Petition No.25698 of 2011, they were not aware of the fact that subsequently fresh enquiry conducted under section 81 of Tamilnadu Co-operative Societies Act. However, he prayed for dismissal.

5. Considering the rival submissions and on perusal of typed set of papers, it is admitted that 26.02.2011, the petitioner who is a Senior Salesman at Thirumulaivoyal Fair Price Shop was transferred and the charge was handed over to one Purushothaman. But, in the handing over report, it has been stated that some gunny bags have been damaged and thereby caused loss to the society. Hence Section 81 Surcharge Proceedings has been initiated and the petitioner appeared for the enquiry. On the basis of the complaint given by the Registrar of Societies, both Surcharge and Criminal proceedings were initiated, in which charge sheet has also been filed.

6. It is pertinent to note that the Surcharge Proceedings has been questioned by this petitioner in W.P.No.25698 of 2011, in which the enquiry report has been set aside and a fresh enquiry has been ordered. It is also pertinent to note that in the fresh enquiry conducted under section 81 of Co-operative Societies Act, it was held that the petitioner is not responsible for the loss and so neither the disciplinary proceedings nor criminal proceedings is insisted. In such circumstances, once the earlier proceedings, the surcharge proceedings under section 81 has been set aside on the basis of which the complaint has been given and once, it has been set aside, the entire proceedings in C.C.80 of 2013 against the petitioner is liable to be quashed.

7. Hence this petition is allowed and the criminal proceedings against the petitioner in C.C.No.80 of 2013 is hereby quashed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

vrc

To

1. The Judicial Magistrate,  
Ambattur.
  2. The Sub Inspector of Police,  
CCIW CID,  
Chennai - 600 040.
  3. The Public Prosecutor  
High Court, Chennai.
- +1 cc to Mr.K.L.Sekar Advocate sr.6589

Crl.O.P.No.31875 of 2012

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