BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

THE HONOURABLE **MR. JUSTICE K.KALYANASUNDARAM**

Crl.O.P.(MD).No.9971 of 2014
and
M.P.(MD).No.1 of 2014

R.Pasupathy .. Petitioner/A2

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing(CID),
Tiruchirappalli.
(Crime No.04 of 2010) .. Respondent/complainant

2.The Deputy Registrar of Co-operative Societies,
Tiruchirappalli Circle,
Tiruchirappalli. .. Respondent/defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.6 of 2011 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli and quash the charge sheet and consequential further proceedings as against the petitioner.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 : Mr.K.Anbarasan
Government Advocate (Criminal side)

ORDER

It is an application to quash the C.C.No.6 of 2011 pending on the file of the learned Judicial Magistrate No.II, Tiruchirappalli.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the records.

3. It is seen from the records that on a complaint given by the second respondent, the first respondent police has registered a case in Crime No.4 of 2010 for the offences under Sections 409 and 477(A) of I.P.C., against the accused persons, which was taken on file of the learned Judicial Magistrate No.II, Tiruchirappalli as C.C.No.6 of 2011. The allegation against the petitioner is that he spent Rs.6,120/- without having proof of documents for the expenses and he has also failed to maintain proper documents in support of the expenses spent by him.

4.Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner would submit that the petitioner was working as Co-operative Sub-Registrar in the office of the Deputy Registrar of Cooperative Societies, Tiruchirappalli, as regular work and he was also directed to work as a Special Officer in about fifteen Co-operative Societies as Additional Charge and he is not responsible to the day to day affairs of the society. It is further contended that merely because he was the Special Officer at the relevant period, he cannot be held responsible for the offence committed by the Manager and he prays for the allowing this petition.

5. To support his submission, he made reliance on the order made by this Court in Crl.O.P.(MD).No.20094 of 2014, dated 20.01.2015, wherein in paragraph No.4, it has been held as follows:

> " 4. Learned counsel for petitioner would submit that the petitioner has accorded sanction of loans on the basis of documents put up for his perusal and then having no occasion to suspect such documents were forged or fabricated. He would rely on a circular, dated 11.12.1991 issued by the Registrar of Co-operative Societies, Chennai and submit that though as a Special Officer in charge of the Society, the petitioner may have over all control but cannot be held liable merely because he is in additional charge for a particular period. The relevant portion of the circular is extracted in Crl.OP.No.5745 of 1999 dated 10.01.2001 and usefully may be reproduced.
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> > "6. Moreover, as per the circular dated 11.12.1991 issued by the Registrar of Co-operative Societies, Chennai, it is clear that though the officers incharge may have overall control, they cannot held to be criminally liable merely because they failed to check and scrutinize the accounts for a particular period and that in those cases, no complaint should be filed against those officers with the police. The relevant portion of the circular is this:-
> >
> > "Taking Criminal action against the departmental officers holding chief Executive or Administrative and the supervisory posts in the co-operatives who are involved vigorously has also been examined. The departmental officers, working on Foreign service terms in co-operative organizations may not have the chance to scrutinize each and every transactions of the society. Though they may have an over all control, they cannot be hold criminally liable for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinize the accounts etc., or

> exercise 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 on negligence and this may be dealt with though 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 complaint filed with the Police”

6. The learned counsel for the petitioner would further relied on another order made by this Court in Crl.O.P.No.1834 of 2005 dated 06.11.2007, in paragraph Nos.7,8 and 9, it has been held as follows:

> “7.From the said counter, it is seen that the petitioner who was the Special Officer of the Bank during the relevant period has failed to verify the accounts and find out the malpractices committed by the accused 1 to 10. This statement of the respondent, in my considered opinion, would go to establish that the petitioner has not committed any offence since there are no other materials to link the accused with the commission of the crime by the accused 1 to 10. In the counter, the respondent has also relied on a portion of the report submitted by the Enquiry Officer under Seciton 81 of the Act at page 392 in para 2 of the report wherein the Enquiry Officer has stated that the petitioner has acted negligently.
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> 8.The learned Government Advocate (crl. Side) would submit that as per a resolution passed in the society the petitioner was responsible for the day-to-day affairs of the society and to supervise the records and the transactions of the society. The learned Government Advocate (crl. Side) would further submit that as per the materials available on record it is clear that he has failed to discharge his duties properly and the said acts of the accused would amount to offences as enumerated in the charge-sheet.
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> 9.In my considered opinion, such a negligence may create only a civil liability and there cannot be any vicarious liability in the criminal law. Even to initiate proceedings against the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, the sine quo non is wilful negligence resulting in loss to the society and not a mere negligence. When that be so, a mere negligence to look into the records properly, in my considered opinion, would not satisfy any of the ingredients of the offences alleged against him.”

7. The learned Government Advocate (Criminal Side) raised his

objection and placing reliance on the counter of the respondent police that the petitioner was found liable for the misappropriation and irregularities occurred in the said Society and prayed for dismissal of this petition.

8. In my considered opinion, the cases cited supra, relied on by the learned counsel for the petitioner is squarely applicable to this case. Hence, by considering the rival submissions of both sides, this Court is of the view that in circumstance where there is no material directly to implicate the petitioner in this case, it would be inappropriate to proceed against him. Hence, this Criminal Original Petition is allowed and the proceedings in Crime No.4 of 2010 and the consequential proceedings in C.C.No.6 of 2011 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, is quashed, in so far as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Tiruchirapalli.

2.The Inspector of Police,
Commercial Crime Investigation Wing(CID),
Tiruchirappalli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.D.Shanmugaraja Sethupathi, Advocate in SR.No.63585

pjl
CSL/KM/SAR-I/26.10.2016 :4P/5C

Crl.O.P(MD)No.9971 of 2014
26.10.2016