BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD).No.7558 of 2016
and
Crl.M.P.(MD).No.3823 of 2016

C.Shenbagamoorthy ... Petitioner/Accused No.11

-vs-

1.State represented by
The Special Sub-Inspector of Police,
Commercial Crime Investigation Wing
(CCIW), Tirunelveli District.
(Crime No.2/2015) ... Respondent No.1/Complainant

2.Rep by it's
The Secretary
District Central Co-operative Bank
Tirunelveli,
Tirunelveli District-7. ... Respondent No.2/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Civil Procedure, to call for the records pursuant to the First Information Report in Cr.No.2/2015 pending on the file of the first respondent and quash the same in as against the petitioner/accused No.11.

For Petitioner : Mrs.Lakshmi Gopinathan
For R1 : Mrs.S.Prabha
Government Advocate (Crl.side)

O R D E R

This criminal original petition has been filed, seeking a direction to quash the First Information Report in Cr.No.2/2015 pending on the file of the first respondent.

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

3.The offence relating to this case had occurred in the Tirunelveli District Central Cooperative Bank, where a sum of Rs.6,43,664/- has been defaulted, in connection with which, an enquiry under Section 81 of the Cooperative Societies Act was conducted and the Enquiry Officer has fixed the liability on 12 persons, of which, the present petitioner is the 12th person. In the FIR, the present petitioner has been arrayed as A11.

4. It is seen that the petitioner is not an employee in the Cooperative Society, but is a Chartered Accountant and his Firm, viz., M/s.Shenbagamoorthy and Company was engaged by the Tirunelveli District Central Cooperative Society, as statutory auditor from 21.01.2011. When the bank handed over the account books to the petitioner's firm, by letter dated 02.05.2011, it is clearly stated as follows:

> "24.One fraud at our Pettai Branch has been reported and investigation going on. Details of fraud involving misappropriation of funds Rs.10.55 lacs is enclosed. Since investigation is going on all the records pertaining to the branch is under custody of the investigation officer."

5. From the above averments, it prima facie appears that this petitioner cannot be mulcted with criminal liability, inasmuch as he comes into the picture only as a statutory auditor to audit the accounts of the bank and even in the letter dated 02.05.2011 given by the bank, they have stated that the entire records are with the investigating officer.

6. The learned Government Advocate (Crl. Side) submitted that the police have recorded statement of 19 persons and investigation is almost completed. At this stage, if this Court admits the case and stays the FIR, it will enure to the advantage of the other accused. Hence, this petition is closed with a direction to the respondent police to bear in mind the fact that the petitioner was a statutory auditor and even according to the bank records, he came into picture only after 21.01.2011, but whereas, the said offences were committed prior to that. During the course of investigation, if it is found that there are no other materials as against the petitioner, it is needless to say that his name should be dropped in the final report. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

RR
To

1.The Special Sub-Inspector of Police,
Commercial Crime Investigation Wing
(CCIW)
Tirunelveli District.

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

+1CC to Mr.Lakshmi Gopinathan Advocate Sr.No.25329

GJM/17.05.2016-3p-4C

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