

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.Nos.131, 132 and 133 of 2017
and
Crl.M.P.Nos.1436, to 1444 of 2017

P.Paramasivam
S/o.Perumal

...Petitioner in Crl.R.C.No.131/2017

M.Kulandaivel
S/o.Muthu Gounder

... Petitioner in Crl.R.C.No.132/2017

S.Rajappan
S/o.Sentrayan

... Petitioner in Crl.R.C.No.133/2017

Vs.

The State represented by
Inspector of Police,
CCIW-CID, Salem District.
revisions

... Respondent in all

Criminal Revision Cases filed under Section 397 and 401 Cr.P.C. against the order of learned Principal Sessions Judge, Salem, passed in CRP No.57 of 2015 dated 18.10.2016 reversing the order of learned Judicial Magistrate I, Salem, passed in CMP No.6890 of 2013 in C.C.No.239 of 2013 dated 10.03.2015.

For Petitioner : Mr.N.Kolandaivelu

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [Crl.side]

COMMON ORDER

These revisions arise against the order of learned Principal Sessions Judge, Salem, passed in CRP No.57 of 2015 on 18.10.2016 reversing the order of learned Judicial Magistrate I, Salem, passed in CMP No.6890 of 2013 in C.C.No.239 of 2013 on 10.03.2015.

2. Petitioners face prosecution for offences u/s.120-B, 408 and 409 IPC in C.C.No.239 of 2013 on the file of learned Judicial Magistrate I, Salem. Prosecution case is that the Sl.No.S.1565 Palace Nagar Co-operative House Building Society commenced a scheme in 1999 called 'Palace Nagar Multi Storied Scheme'. It purchased 68012 sq.ft. of land in Salem City. It completed construction of 119 residential flats, 52 shops and 12 office premises. It had borrowed Rs.13,50,00,000/- from HUDCO as also additional funds from other Co-operative Societies and individuals in the form of deposits. It was required to effect repayment to HUDCO through Tamil Nadu Housing Board in equal installments in a sum of Rs.8,34,000/- for 54 months from 01.03.2001 and in a sum of Rs.8,33,000/- thereafter for a period of 108 months. Though a sum of Rs.11,50,56,206/- was collected by the Society, Rs.1,85,12,060/- was expended towards payment to HUDCO and administration expense while of a sum of Rs.7,98,81,280/- paid to HUDCO, a major chunk of Rs.7,82,13,279/- was adjusted towards interest with the result that as on 12.03.2013 huge arrears of Rs.54,66,32,000/- were due to HUDCO. The first accused was the Secretary while the fourth accused was the Special Officer, who in March'2001 had been entrusted with the properties and monies of the Society and whose duty it was to maintain true and proper accounts. They having been upon a duty to effect repayments of the loan in keeping with conditions thereof, entered into a conspiracy and instead of effecting repayments of the loan from monies collected from the members otherwise spent the same. The subsequent Secretary/A2 and Project Manager/A3 as also subsequent Special Officers A4 to A14 upto July 2009 agreed to join the conspiracy and indulged in wrong doings. Hence, the charge of offence u/s.120-B IPC. A1 to A3 were also charged with offence u/s.408 IPC while A4 to A14 were charged with offence u/s.409 IPC. Petitioners/A7, A10 and A5 moved discharge petition which was allowed by learned Judicial Magistrate I, Salem, under orders in CMP No.6890 of 2013 in C.C.No.239 of 2013 dated 10.03.2015. There against, respondent preferred C.R.P.No.57 of 2015 on the file of learned Principal Sessions Judge, Salem. Court below, under orders dated 18.10.2016, was pleased to allow the revision setting aside the order of discharge and directed remand of the matter to the Judicial Magistrate for fresh consideration. Hence, these revisions.

3. Heard learned counsel for petitioners and learned Government Advocate [Crl.side] as also perused materials on record.

4. This Court finds itself in agreement with the Court below when it informs that learned Judicial Magistrate misdirected himself in considering the charge against petitioners merely with reference to the provisions of the Tamil

Nadu Co-operative Societies Act. Even so, this Court would proceed to consider the plea of petitioners for discharge in the light of the decision of the Supreme Court in P.S.Rajya v. State of Bihar (1996) 9 Supreme Court Cases 1. In such decision, it was explained that the degree of proof in departmental proceedings was lower, being merely preponderance of probability whereas that required in criminal proceedings was much higher, being beyond all reasonable doubt and thus, when the degree of proof required in departmental proceedings itself was not met, there would be no occasion to sustain a criminal prosecution. This Court is aware that subsequent judgments have explained and informed that the principle enunciated in P.S.Rajya is not one of universal application.

5. Petitioners are arrayed as accused 7, 10 and 5 respectively. Seventh accused was the Special Officer of the Society from 03.02.2003 to 16.02.2003 and 20.12.2003 to 08.03.2004. Tenth accused held such capacity between 10.10.2005 and 25.12.2005 while the fifth accused functioned as Special Officer between 14.12.2003 and 16.05.2004. Each of them was, during the relevant periods, also in charge of several other societies. The irregularities in the functioning of the Society attracted an enquiry u/s.81 of the Tamil Nadu Co-operative Societies Act and the enquiry report dated 30.05.2011 reveals that while A5 was informed to have caused loss in a sum of Rs.3,55,473/-, A7 and A10 did not even attract enquiry. Under orders in Na.Ka.No.1378/2012/E dated 31.12.2013, surcharge proceedings against A5 had been dropped on finding that he had caused no loss. Despite such position and upon complaint of purchasers of houses and shops, respondent has informed commission of offences by petitioners herein u/s.120-B, 408 and 409 IPC.

6. A perusal of the counter filed by respondent reveals that petitioners are sought to be implicated on the basis of Section 161(3) Cr.P.C. statement of a Special Officer by name Sivaprakasam, LW-10. Such statement merely informs the various persons who functioned as Special Officers between 29.05.1999 and 09.08.2007, the number of houses and shops allotted and sold during such period, the various receipts of the society, repayments made thereby, that the society incurred liability to the tune of Rs.54,66,32,000/- and such position arose owing to the wrongful conduct of the Secretaries, Project Manager and Special Officers. It does not inform any particulars of wrong doings of any one or more of them. Wrong doings alleged against petitioners are of the period 2003 to 2005. LW-10 has functioned as Special Officer from 2012 and can have no personal knowledge of the offending transactions. The statement of LW-10 does not carry forward the prosecution case and the possibility of finding of conviction on the basis thereof absolutely is bleak.

In the attendant circumstances of the case, this Court is of the view that the principle enunciated in P.S.Rajya squarely applies.

These Criminal Revision Cases shall stand allowed. The order of learned Principal Sessions Judge, Salem, passed in CRP No.57 of 2015 on 18.10.2016 reversing the order of learned Judicial Magistrate I, Salem, passed in CMP No.6890 of 2013 in C.C.No.239 of 2013 on 10.03.2015, shall stand set aside. Petitioners shall stand discharged in the case in C.C.No.239 of 2013 on the file of learned Judicial Magistrate I, Salem. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Principal Sessions Judge,
Salem.
2. The Judicial Magistrate I,
Salem.
3. The Inspector of Police,
CCIW-CID, Salem District.
4. The Public Prosecutor,
High Court, Madras.

CrI.R.C.Nos.131, 132 and 133 of 2017

GMR(CO)
CS/25/10/17

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