

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.S.RAMESH**

Crl.O.P.Nos.23371 to 23374 of 2017
and
Crl.M.P.Nos.13601 to 13608 of 2017

M.Murugan

... Petitioner in all the Crl.O.Ps

Vs.

State rep. by
The Inspector of Police,
C.C.I.W./C.I.D.,
Vellore.

... Respondent in all the Crl.O.Ps

Common Prayer: Petitions filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in C.C.No.23, 26, 27 & 28 of 2010 on the file of the learned Judicial Magistrate No.II, Vellore, Vellore District respectively and to quash the same.

For Petitioner : Mr.S.Sairaman
in all the Crl.O.Ps

For Respondent : Mr.V.Arul, APP
in all the Crl.O.Ps

COMMON ORDER

These petitions have been filed by the petitioner challenging the proceedings in C.C.No.23, 26, 27 & 28 of 2010 respectively on the file of the learned Judicial Magistrate No.II, Vellore, Vellore District.

2.The case of the prosecution is that the petitioner herein, along with the other accused is responsible for having misappropriated the money by abetting the secretary and other staffs of the society and thereby caused loss to the society. The petitioner has been implicated as A4 in all the cases for having allegedly committed the offences under Sections 120(B)(i), 408 r/w.Section 35 of the IPC.

3.Heard Mr.S.Sairaman, learned counsel for the petitioner and Mr.V.Arul, learned Additional Public Prosecutor appearing on behalf of the respondent.

4.The learned counsel for the petitioner submitted that when the petitioner was holding the post of Special Officer, Chettiappanur

Primary Agricultural Co-operative Societies, Thirupattur during the period 2003-2005, he was officiating the post of Office Superintendent in the office of the Deputy Registrar of Co-operative Societies, Thirupattur and also holding additional charge of six Co-operative institutions as Special Officer. The FIR came to be registered for criminal conspiracy, criminal breach of trust and for abetment against secretary and two other staff members of the society. The petitioner's name did not find place in the FIR. During the course of enquiry, there was no recommendation for prosecuting the petitioner and only a departmental proceedings were initiated and even the said proceedings were dropped on 17.04.2008. As such, the petitioner was not involved in any offence as alleged by the prosecution. Furthermore, surcharge proceedings were also initiated against certain other persons based on the report under Section 81 of the Tamil Nadu Co-operative Societies Act and even in the surcharge proceedings, the petitioner's name did not find place. As such, the entire proceedings is vitiated and is liable to be quashed.

5.The learned Additional Public Prosecutor on the other hand submitted that there were sufficient materials to implicate the

petitioner for the offence, and if at all the petitioner is aggrieved, it is always open to him to establish his innocence during the course of trial and that quashing the proceedings at this stage, is not warranted.

6.I have given careful consideration to the submissions made by the respective counsels.

7.It is not in dispute that the petitioner's name did not initially find place in the FIR. The departmental proceedings initiated also came to be dropped by the Joint Registrar of Co-operative Society, Vellore on 17.04.2008. Likewise, the surcharge proceedings initiated on the basis of the report under Section 81 of the Tamil Nadu Co-operative Societies Act also did not implicate the petitioner herein. Apart from the departmental proceedings, there is no recommendation to initiate criminal prosecution against this petitioner. It is in this background that the present petition has been filed seeking to quash the charge sheet laid against the petitioner.

8. On a perusal of the report of the enquiry officer in the departmental proceedings, it is seen that the criminal charges laid in the present case is based on identical facts and cause of action in the departmental proceedings initiated against the petitioner and others, came to be dropped as against this petitioner. While that being so, once the petitioner is exonerated in the departmental proceedings on an identical charge, allowing of the criminal proceedings on the same set of allegations would amount to an abuse of process of law. It is further seen that there are no prima-facie materials to implicate the petitioner for the alleged offences in view of the fact that the FIR, report under Section 81 and the enquiry report of the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act does not implicate the petitioner at all. In the absence of such incriminating materials, it would be patently impossible for the prosecution to establish the guilt as against this petitioner is concerned.

9. The learned counsel for the petitioner further submitted that when one of the co-accused namely, P.Chellam, who was also implicated with identical overt acts is that of the petitioner, had approached this Court seeking for his discharge, this Court by an

order dated 08.04.2013 passed in CrI.R.C.No.1268 of 2010 had allowed the revision petition and discharged the co-accused. The order discharging the co-accused was based on similar grounds raised by the petitioner in the present petition. The relevant portion of the said order reads as follows:

"10.It is not in dispute that in the enquiry report, no allegation was put against the petitioner and further even in the First Information Report, the name of the petitioner was not mentioned. Further, no surcharge proceedings were taken against the petitioner and he was also discharged in the departmental proceedings. Therefore, petitioner is liable to be discharged from the charge levelled against him. Further, the defacto complainant's 161 statement has not disclosed about the involvement of the accused as conspirator and no offence has been made out.

11.In such view of the facts, the above Criminal Revision Case is allowed and the petitioner is discharged from the proceeding initiated in C.C.No.24 of 2010, on the file of the learned Judicial Magistrate No.II, Vellore. Consequently, connected Miscellaneous Petition is closed."

10. In these circumstances, I am unable to comprehend as to how the trial Court can reach a logical conclusion by holding the petitioner guilty. In the absence of any incriminating materials to suggest that the petitioner could have committed any of the alleged offences, it can only be concluded that the petitioner herein is entitled to succeed.

11. In the result, the proceedings in C.C.No.23, 26, 27 & 28 of 2010 respectively on the file of the learned Judicial Magistrate No.II, Vellore, Vellore District are quashed, insofar it related to the petitioner herein/A4. Consequently, the Criminal Original Petitions stand allowed. Connected Miscellaneous Petitioners are closed. The trial Court shall proceed against the other accused and complete the trial as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

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21.12.2017

Speaking / Non-Speaking

Index:Yes/No

Internet: Yes/No

Note: Issue order copy on 19.02.2018

DP

To

1.The Judicial Magistrate No.II,
Vellore, Vellore District.

2.The Inspector of Police,
C.C.I.W./C.I.D.,
Vellore.

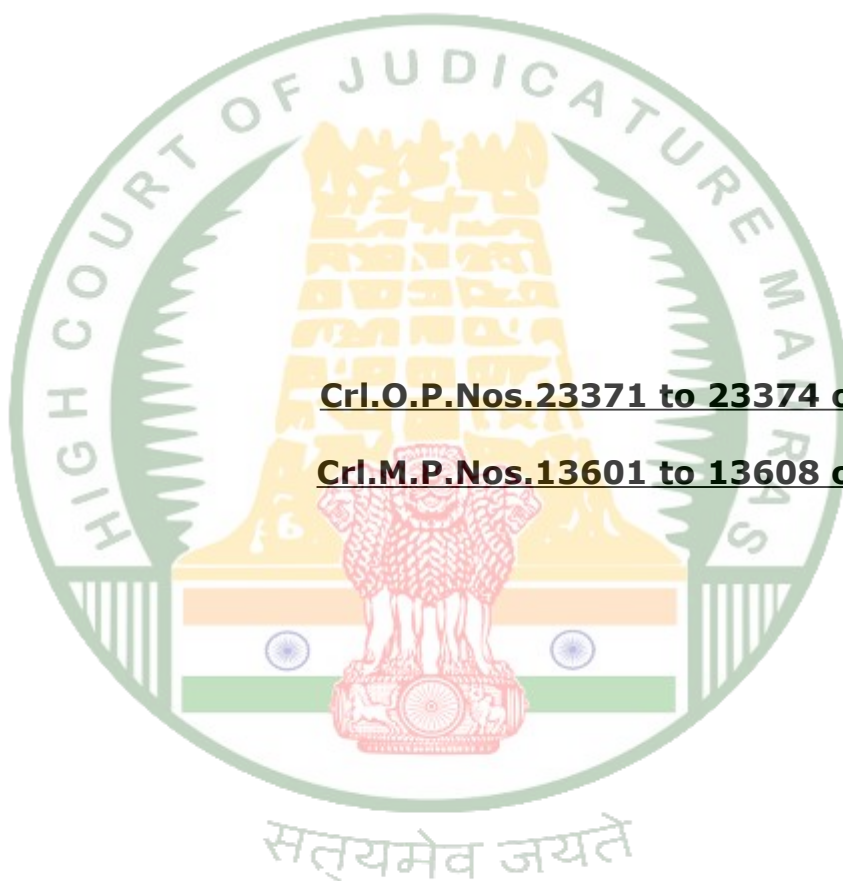
3.The Public Prosecutor,
Madras High Court.



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M.S.RAMESH.J,

DP



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