

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.38300 of 2004
and
WPMP. No.45829 of 2004

P.Anandham

..Petitioner

Vs.

1.The Registrar of Co-operative
Societies (Housing),
22, 4th Main Road,
Gandhi Nagar,
Adayar, Chennai 20.

2 The Deputy Registrar of
Co-operative Societies (Housing),
1/3107, Daniel Thomas Nagar,
Tanjore - 615 007.

3 The Inspector of Police,
Commercial Crime Investigation Wing,
(C.I.D), Thiruvarur Unit,
Crime No.1 of 2004
Thiruvarur District.

...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the First Information Report in Crime No.1 of 2004 dated 10.11.2004 pending on the file of the 3rd respondent is violative of the provisions of Section 81,161,162 and 164 of the Tamilnadu Co-operative Societies Act, 1983 and violation of entry 43 of list I, Entry 32 of list II and entry I of list III of the Constitution of India, as arbitrary, null and void and without jurisdiction, so far as the petitioner is concerned and pass further orders.

For Petitioner : Mr.N.Manokaran

For Respondent : Mrs.T.Girija

ORDER

The petitioner has filed this Writ Petition seeking to declare that the First Information Report in Crime No.1 of 2004 dated 10.11.2004 pending on the file of the 3rd respondent, is violative of the provisions of Section 81,161,162 and 164 of the Tamil Nadu Co-operative Societies Act, 1983 and violative of entry 43 of list I, Entry 32 of list II and entry I of list III of the Constitution of India, as arbitrary, null and void and without jurisdiction, so far as the petitioner is concerned.

2. Learned counsel for the petitioner submitted that while the petitioner was working as a Co-operative Sub Registrar (Housing), was directed to hold the additional post of Special Officer. He was subsequently promoted as Sub Registrar at Trichy. In the year 1999, the 2nd respondent initiated proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act and the enquiry officer without following the procedures properly conducted the enquiry and submitted his report. Without furnishing a copy of the said report, the 2nd respondent initiated surcharge proceedings under Section 87(1) of the Act. Subsequently, the enquiry was re-opened and again without providing an opportunity of hearing the enquiry was concluded and a revised report was filed on 30.04.2002. A copy of the report was not furnished to the petitioner. Based on the said report, the 1st respondent in his proceedings dated 18.08.2004, directed the 2nd respondent to initiate penal action against the petitioner and other persons. In spite of filing of the W.P. No.32495 of 2004 and the stay order granted by this Court, a case in Cr.No.1 of 2004 was registered by the 3rd respondent on 14.11.2004 for the alleged offence under Sec.408, 409, 467, 471, 477A r/w 120 B of IPC. The petitioner is the 2nd accused in the proceedings. Challenging the said proceedings the petitioner has filed this writ petition.

3. The learned counsel for the respondent would submit that as per the order of this Court in batch of cases, in W.P. No.20028 of 2001 etc., reported in 2004-2-LW-776, this case is liable to be dismissed.

4. Heard the submissions of the learned counsel for the parties and perused the material available on record.

5. In paragraph 59, of the order cited supra, it is held as follows :

“ I am therefore, convinced that the registration of the impugned FIR in Cr.No.9 of 2003 under the various provisions of the

Indian Penal Code cannot be found fault with, inasmuch as, the only impediment could be by virtue of Section 26 of the General Clauses Act 1897 or for that matter Section 20 of the Madras General Clauses Act where an act or omission constitutes an offence under two or more enactments, the offender should be liable to be prosecuted and punished under either or any of those enactments, but not liable to be punished twice for the same offence. Except to that extent of not punishing the accused person twice for the same offence, there is no prohibition for proceeding either under the provisions of the Indian Penal Code or the provisions of the Act. When the prosecution has chosen to register the crime under the provisions of the Indian Penal Code, there being no legal impediment in the said action of the State, I do not find any scope to quash the FIR for any of the grounds urged on behalf of the petitioners. Since my above said view has been based upon the decisions of the Hon'ble Supreme Court as well as the Division Bench ruling of the Bombay High Court, the judgment of this Court dated 8.1.2003 in Crl.O.P.No. 12756 of 2002 need not stand in the way of disposal of these Writ Petitions. I also do not find any other contrary decision cited at the bar on behalf of the petitioners to be in conflict with the view taken by me. In such circumstances, I do not find any merits in these Writ Petitions. These Writ Petitions, therefore, fail and the same are liable to be dismissed."

6. In view of the above said decision of this Court, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

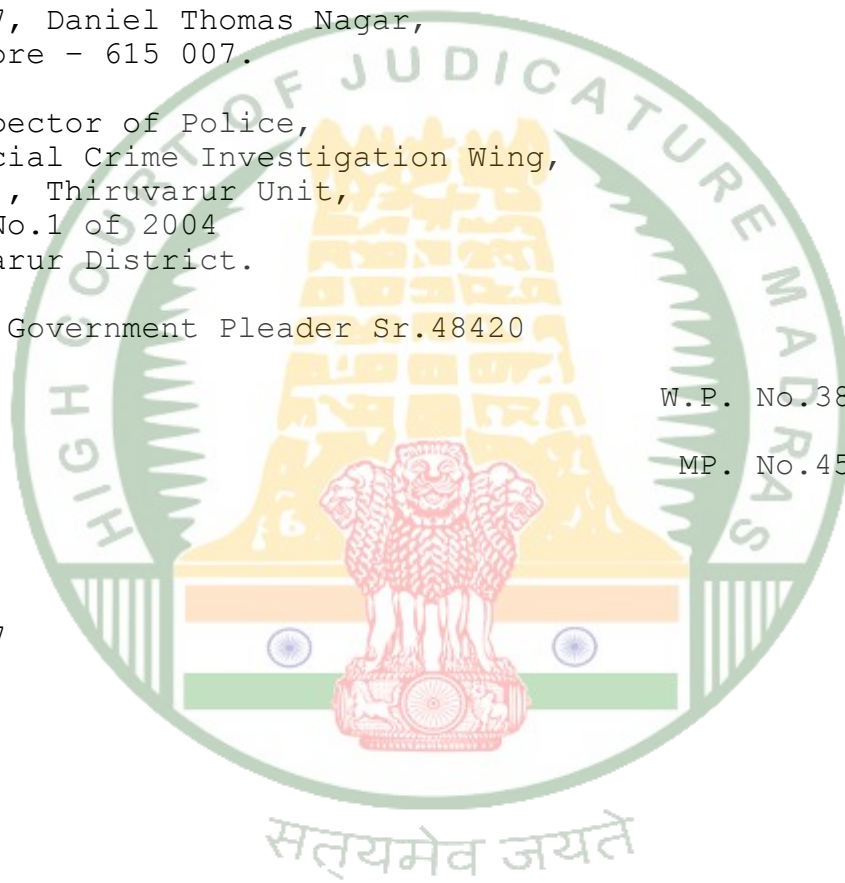
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To

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- + 1 cc to Government Pleader Sr.48420

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SSI (CO)
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