BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.11129 of 2011
and
M.P.(MD)No.2 of 2011

K.Pandi ... Petitioner/Accused No.5

Vs.

1.State Represented by,
Inspector of Police CCIW,
Ramanathapuram,
Ramanathapuram District,
Cr.No.7 of 2009

2.Guna sivam,
Assitant Secretary,
Co-operative Society,
Paramakudi. ... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records from the lower Court in C.C.No.113 of 2010 on the file of the learned Judicial Magistrate No.I, Ramanathapuram, Ramanathapuram District and to quash the same.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel for Mrs.S.Ragaventhre
For Respondent No.1: Mr.K.Anbarasan Government Advocate (Crl. Side)
For Respondent No.2: No Appearance

ORDER

The Petitioner filed this petition under Section 482 of Cr.P.C., to quash C.C.No.113 of 2010, pending on the file of the Judicial Magistrate Court No.I, Ramanathapuram, Ramanathapuram District, for the offences under Sections 120(b), 406, 420 r/w. 109 of I.P.C.

2. The case of the petitioner is that he was working as cashier in Paramakudi Town Co-operative Bank and entrusted with the work of processing the loan application. After processing the

loan application, he forward the same to A-6. Except processing the loan application, the petitioner has no independent power to grant loan and it is only the A-6, who was working as General Manager of the Bank, has power to supervise the day-to-day affairs of the Bank, process the loan applications and sanction the loan. The duty cast upon the petitioner is only to process the loan application and forward the same to A-6. While so, one R.Kamalam, who is arrayed as Accused No.1 in the aforesaid crime and also 'A' class member in the Society, borrowed for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards housing loan, on various dates, without disclosing the fact that a portion of property was already gifted in favour of her daughter, by executing a gift deed. Further, she had mentioned wrong Survey number in the Encumbrance Certificate application form and obtained the loan by pledging the property. The allegation against A5 and A6 is that they helped A1 to get loan for construction of house, however, A1 constructed the house in some other property, which was not pledged with the society. Thereafter, A-1 did not repay the loan amount. Hence, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was initiated against the accused and enquiry report has also been submitted. The enquiry report revealed serious irregularities and violations of office procedures in granting housing loans and the said report was forwarded to the Law Enforcing Agency. After completing investigation, the Law Enforcing Agency found that the petitioner and the General Manager were involved in the aforesaid crime. The petitioner without verifying the Encumbrance Certificate, has processed the loan application. After completion of investigation by the Law Enforcing Agency, a departmental enquiry was also initiated against the petitioner. Accordingly, the Special Officer has issued a show cause notice to the petitioner on 20.03.2010 and thereafter, the petitioner has given an explanation on 15.04.2010. On receipt of the petitioner's explanation, the departmental enquiry was also conducted on 23.09.2010 and 10.11.2010. After conducting departmental enquiry, the Enquiry Officer submitted a report on 27.11.2010. The Society also accepted the Enquiry Officer's report and passed a resolution in favour of the petitioner, discharging him from the departmental enquiry on 30.01.2011. Since the departmental enquiry ended in favour of the petitioner, the respondent cannot proceed with the criminal case for the very same set of allegation.

3. The learned Senior Counsel for the petitioner submitted that the establishment of the guilt in the criminal case is required to be proved by the Prosecuting Agency beyond reasonable doubt. The departmental enquiry against the petitioner has ended in his favour and on the same set of allegations, the respondent police cannot prosecute the criminal case against the petitioner. He further contended that for non-payment of loan by A-1, the Bank has taken action by way of public auction and the entire property was secured in the name of the Bank and the loan amount was also

collected by the Bank. Hence, there was no loss caused to the Bank and consequently proceeding the petitioner with criminal enquiry is unwarranted.

4. In support of his contention, the learned Senior Counsel relied upon the decision in the case of ***P.Jegadeesan v. The Inspector of Police, Commercial Crime Investigation Wing (CID), Tiruchirappalli***, reported in ***2015(1)L.W. Criminal 582***, wherein at Paragraph Nos.6 and 7, it has been held as follows:

> *"6.It is not in dispute that there was a large scale of misappropriation in the Co-operative Society, for which, several persons have been identified as accused and one such person is the petitioner, who is A3 in the Calendar Case, pending before the Judicial Magistrate, Musiri. It is not a private dispute between the two persons, which ultimately lands up before the Judicial Magistrate. A serious offence has been committed in the Cooperative Society for which, the Deputy Registrar, who is an officer from the Government, had been appointed under Section 81 of the Tamil Nadu Co-opeartive Societies Act, to go into the irregularities and he has given a finding that the petitioner was over all incharge but, he cannot be blamed. That apart, in the departmental enquiry against the petitioner, the petitioner has come out with clean hands and hence, the contention of the learned Government Advocate that the findings of the departmental proceedings may not have a baring on the charges farmed against the petitioner in the criminal case will have no baring. It is otherwise, in case, a person for the department to proceed against an employee or an officer departmentally. If an employee is acquitted of the charges in the departmental proceedings, more so, in this case, the proceedings under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, have been decided in favour of the petitioner, the Co-operative Society, being a wing of the Government, cannot be allowed to contend that the findings of the departmental proceedings will not have a baring in the criminal case, which is pending before the Judicial Magistrate,Musiri.*
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> *7.From the narration of the events, more particularly, from report of the Deputy Registrar, under Section 81 it is clear that the provision of Section 477(a) and 409 of I.P.C., is not attracted, as there is no iota of evidence under 81 report that there was criminal breach of trust on the part of the petitioner and there was a fraud committed by him, who helped the other accused to commit the called falsification of accounts, fabrication documents, misappropriation of funds. The Supreme Court, in a decision in* ***P.S.R. Vs. State of Bihar*** *reported in*

(1996 (9) SCC). *The relevant portion is extracted hereunder:*

> *"17.At the outset, we may point out that the learned counsel for the respondent could but accept the position that the standard of p required to establish the guilt in a criminal is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in present case, the charge in the departmental proceedings and in the criminal proceedings one and the same. He did not dispute the find rendered in the departmental proceedings the ultimate result of it. On these premise we proceed further then there is no difficulty in accepting the case of the appellant. If the charge which is identical cold not established in a departmental proceedings in view of the admitted discrepancies in reports submitted by the valuers one word what is there further to proceed agasint the appellant in criminal proceedings."*

5. The learned Government Advocate (Criminal Side) submitted that during the period of offence, the petitioner was posted as a Loan Section Clerk and he was entrusted with the duties to process loans and liabilities by the Managing Director of the said Bank. The petitioner was entrusted to enter the loan applications received by him in separate registers, entering serial numbers, taking further actions in the loan applications, collecting the relevant documents from the loan members, collecting engineer's certificate, engineers estimate, municipality plan approval, photos of the loan members, encumbrance certificate from the Sub-Registrar Office, getting legal opinion from the Bank Advocate, verifying encumbrances, preparing hypothecation deed, verifying eligible loan relating to the mortgage property and placing those details before the Manager (Loan). However, the petitioner without verifying those details, forwarded the loan application to the Loan Sanctioning Officer and the loan was also sanctioned.

6. Considering the submission made by the learned Government Advocate (Crl. Side) for the respondent, on appreciation of the material evidence, it is no doubt true that the petitioner was entrusted with the work for processing the loan application with due care and caution. In fact, for the very same allegation, an enquiry under Section 81 of the Act was conducted and the outcome of the enquiry was sent in the form of a report. In the report under Section 81 of the Act, no allegation was made against the petitioner, however, the law enforcing agency, after conducting enquiry, came to conclusion that the petitioner has not properly processed the loan application without considering the encumbrance made in the property and forwarded the loan application to the

Loan Sanctioning authority, in order to sanction the loan.

7. The role of the petitioner is limited to scrutinising and processing the loan application. Even assuming that the petitioner did not properly scrutinise the loan application, it is for the loan sanctioning authority to satisfy himself with regard to the correctness of the application seeking loan and the capability of the borrower to repay the loan. The loan sanctioning authority also has to satisfy himself that in the event of failure to repay the loan amount, the properties mortgaged with the Bank are sufficient to recover the loan amount. In the present case, the Bank has admittedly taken possession of the secured asset and realised the loan amount from the borrower. Further, in the report submitted pursuant to the conclusion of enquiry under Section 81 of the Act, the petitioner was given a clean chit. In such circumstances, the criminal proceedings initiated against the petitioner for the same set of facts are not warranted.

8. In view of the abovesaid discussions and the decision cited supra, this Court is of the view that the prosecution launched against the petitioner in C.C. No.113 of 2010 deserves to be quashed and accordingly, it is quashed. The Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

mrn
To

1.The Inspector of Police CCIW,
Ramanathapuram,Ramanathapuram District

2.The the Judicial Magistrate No.I,
Ramanathapuram, Ramanathapuram District.

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

+1 cc to MR.S.RAGAVENTHRAN, Advocate SR.No.90377

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