IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.RC.No.1002/2017 & Crl.MP.Nos.9489 & 9490/2017

Saraswathy .. Petitioner / Accused

Vs.

The State, rep. By
The Inspector of Police
CCIW/CID, Vellore. .. Respondent/ Complainant

Criminal Revision filed under section 397 and 401 of the Code of Criminal Procedure challenging the order dated 26.05.2017 passed in CMP.No.936/2017 in CC.No.453/2016 on the file of the Judicial Magistrate II, Vellore.

For Petitioner : Mr.Govind Chandrasekar
For Respondent : Mr.V.Arul, APP

ORDER

In case pending trial in CC.No.453/2016 on the file of Judicial Magistrate No.2, Vellore, 10 accused are facing trial for offences u/s.406, 408, 465, 471 and 477 read with 109 IPC.

2 The case arises out of Cr.No.23/2014 on the file of the respondent wherein, a charge sheet stands filed, informing that Vellore-Tiruvannamalai Milk Producers' Cooperative Union purchased milk from producers and caused sale thereof through different outlets through its nominated agents to the customers on the basis of their indents. Payments were to be made in advance. A1 to A3, employees of the Union and A4, an agent, used to collect amounts from the respective agents and remit the same into a Bank Account. The employees of the Union collected amounts from the agents, but failed to remit the same into the Bank Account on the next day. They forged Bank Challans, caused supply of milk unauthorisedly and caused wrongful loss to the Society. The allegation as against the petitioner / A8 is that, as an Accounts Assistant, it was her duty to verify papers received from A7, the Assistant General Manager. She has failed to do so and forwarded the papers with 'effacement slip' indicative that all was well, for approval to the Manager of the Union.

3 The petitioner has moved CMP.No.936/2017 in CC.No.453/2016 seeking discharge u/s.239 Cr.P.C., which came to be dismissed by Judicial Magistrate No.2, Vellore, under order dated 26.05.2017. Hence, this revision.

4 Heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.

5 In dismissing the petition in CMP.No.936/2017, Court below has reasoned that it was the duty of the petitioner/A8, a staff at the Accounts Section to compare the Challan and Bank Statements with the entries in the computer and that she had failed to do so. Such position finds support in the statements of L.Ws.2 and 3. Court below informed that the question of whether the petitioner has acted in collusion with the other accused, could be decided only at the trial, after examination of witnesses. The petitioner having been charged u/s.109 IPC would have to face the trial.

6 Learned counsel for the petitioner submitted that in an enquiry conducted in keeping section 81 of the Tamil Nadu Cooperative Societies Act, it was A1 to A4 whose activities were probed. However, Surcharge Proceedings came to be initiated against the petitioner also and challenging the same, petitioner has moved the Tribunal which even while holding that A1 was the only person responsible, thought it appropriate to impose a fine of Rs.100000/- on the petitioner for negligence. Learned counsel submits that such order of the Tribunal has been independently challenged.

7 Be that as it may, towards allowing this revision, this Court merely would refer to the judgment of the Apex Court in Kulwant Singh @ Kulbansh Singh V. State of Bihar reported in 2007 [15] SCC 670, wherein the Apex Court has observed in paragraph No.12 as follows:-

> "....
> 12 Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided

that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable. [see Joseph Kurian V. State of Kerala [1994 [6] SCC 535 : 1995 SCC [Cri] 20]."

That in Departmental proceedings, wherein the degree of proof is mere preponderance of probabilities as against proof beyond all reasonable doubt in criminal proceedings, the first accused alone was found responsible only strenthens the case of petitioner for discharge.

8 In the result, the criminal revision stands allowed and the order under challenge dated 26.05.2010 in CMP.No.936/2017 in CC.No.453/2016 on the file of the Judicial Magistrate No2, Vellore is hereby set aside and the petitioner shall stand discharged in the case. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

AP

To

1.The Judicial Magistrate No.2,
Vellore.

2.The Inspector of Police
CCIW/CID, Vellore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Govind Chandrasekar, Advocate sr.no.3036

Crl.RC.No.1002/2017

nr 20/02/2018