IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2018

Pronounced on : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2953 of 2011
and
M.P.No.1 of 2011

Karthikeyan,
S/o.Sambanda Mudaliar. ... Petitioner/Accused No.3

Vs.

1.State represented by
The Inspector of Police,
C.C.I.W. C.I.D.,
Chennai, [Crime No.1/2009].

2.The Deputy Registrar of Co-op. Societies,
Ponneri Circle,
Ponneri, Tiruvallur District. ... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings as against the petitioner in C.C.No.7454 of 2010 pending on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015.

For Petitioner : Mr.S.Sairaman
For R1 : Ms.V.Saratha Devi, Government Advocate [Crl. Side]
For R2 : Not ready in notice

O R D E R

This Criminal Original Petition is filed to call for the records and quash the proceedings as against the petitioner in C.C.No.7454 of 2010 pending on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015.

2.The petitioner herein, who is an accused, A3 in C.C.No.7454 of 2010 pending trial on the file of XI Metropolitan

Magistrate, Saidapet Court, Chennai had filed the above quash petition. The case is that the Deputy Registrar of Co-operative Societies, Ponneri Circle, has lodged a complaint before the 1st respondent in the month of April 2010. The complaint has been preferred consequent to the enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act, 1983. The Enquiry Officer found certain lapses on the Saidapet Co-operative Primary Agricultural and Rural Bank. As far as the petitioner is concerned, he was employed as a Junior Engineer in Tamil Nadu Agricultural and Rural Development Bank, Kancheepuram Region, the Apex Bank, an autonomous body and the petitioner have no way connected with the affairs of the Member Bank namely Primary Society, Saidapet.

3.The case against him is that he has prepared a Project Report on 22-03-2001, whereas the quotation has been obtained from M/s. J.M. Engineering Works, Chennai on 23.03.2001. The Project Report was prepared even before obtaining the quotation from the loanee A1 in this case. Hence, the petitioner along with the other two accused, A1 the loanee, A2 is an appraiser and Project Appraiser, who was working in the Apex Bank, Kancheepuram Region have committed the offences under Sections 468, 471, 420 r/w 109 of the Indian Penal Code.

4.The 1st respondent Inspector of Police, CCIW CID have registered a case in Crime No.1 of 2009 had completed investigation and filed a final report listing 12 witnesses and documents.

5.The case of the prosecution is that one Subramani, A1 in this case, who was a member of the Primary Society, Saidapet, had applied for loan for his business and for purchase of automatic Modem gram roasferus with combined continuous process with cooling chamber for the loan he had submitted a document for New No.72, Old No.89, Thiruvenkata Nagar, Ambattur Village, Saidapet Taluk plot measuring 4,800 sq.ft. as collateral and had availed a loan of Rs.5 lakhs on 29-03-2001.

6.LW2, Guruburasundaram, Deputy Registrar of Co-Operative Societies, Ponneri Circle, on 08-06-2004 had conducted a surprise check and had found certain irregularities in the Society and based on which an 81 enquiry conducted by LW4, Selvaraj, who is the Field Officer of Co-operative Societies, Ponneri Circle. A detailed enquiry has been conducted by him and he had submitted his enquiry report on 18-02-2008. The Enquiry Officer's categorical finding is that the 1st accused had instigated and abetted A2, Appraiser of the Apex Society and A3, the petitioner herein, Junior Employment of the Apex Society in Commission of the above offence. The loan amount of Rs.5 lakhs and the interest of Rs.4,74,635/- as on the date, the society has been cheated by creating false documents and using the same as genuine and thereby, Society had suffered for which he had recommended for surcharge proceedings for recovery against the petitioner and others. On the complaint of LW1, the Deputy Registrar of Co-operative Societies, Ponneri Circle and based on the enquiry report, the prosecution has conducted an investigation and had filed the final report.

7.The contention of the learned counsel appearing for the petitioner is that in the enquiry report there are several other persons names were included, but the respondent had registered a case against the petitioner. Hence, the case is a motivated one. Further, the petitioner submitted that the loan application was received by the staff of the Primary society and it has been scrutinized by the Secretary, Assistant Secretary, Land Valuation Officer, Supervisor and other staffs of the bank. They are not made as an accused. On the other hand, the petitioner, who is from the Apex society has been arrayed as accused.

8.It is further submitted that the loss has been caused by pledging fake sale deed by A1, which has to be ascertained by Primary Society and its staff. The petitioner is only a Junior Engineer, a technical man and his role is only to study only the feasibility of the project. He admits that inadvertently the date of the project report has been pre-dated wrongly. Further, he submits that the alleged occurrence has been taken place in the year 2001 and the complaint has been lodged in the year 2009. The petitioner since had already retired in the year 2003 and there is no surcharge proceeding against the petitioner and the deletion of the names of the other persons in the case is without any basis. Further, he was relying upon a circular of registrar of Co-Operative Societies dated 23-03-1977 and hence prayed for quashing the above case.

9.The petitioner had relied upon two citations of this Hon'ble Court reported in 2001-1 Law Weekly Crl.140 GANGADHARAN VS. THE STATE and 2011 (2) MLJ (Crl.)608 G. SELVAKUMAR VS. STATE and the facts and circumstances of both the cases relied upon are on a different context and will not further the case of the petitioner.

10.The respondents had filed a counter in which they have detailed about the accused, who are all involved in the irregularities on the funds of the society and also placing reliance on the 81 enquiry report. Further, it states that on completion of investigation in Cr.No.1 of 2009 six final reports have been filed for each instance against the loanees and others in CC..Nos.7449 to 7454 of 2010. The case pertaining to the petitioner is C.C.No.7454 of 2010. Further, it is the categorical role of the petitioner is that a project report has been submitted based on which the loan was further processed is dated 22-03-2001, but the quotation from M/s.J.M.Engineering works is dated 23-03-2001. Further, it had also come to light during investigation that there is no such machine called automatic Modem gram roasferus with combined continuous process with cooling chamber, for a non-existing machinery. The loan has been recommended and the project has been approved by the petitioner. Thus, the petitioner to cheat the bank colluded with other accused fabricated documents, only in order for his personal benefits and gains.

11.The respondent further submits that investigation is conducted in a free, fair and impartial manner in accordance with law all the mandatory provisions have been complied with and prayed to dismiss the quash petition.

12.On perusal of the materials, it is found that the petitioner being a Project Officer and who had approved the project based on which the loan was sanctioned to the loanee ought to have diligently scrutinized documents applied his mind on the documents submitted along with the loan application. He should have taken proper care in doing so. Further, there are witnesses to say that the petitioner ought to have inspected the place, where the business has to be commenced and the machinery has to be placed. The preparations made to the same ought to have been verified. As per the Societies Act, a detailed enquiry has been conducted, which have been further based on which investigation has been carried out by the respondent, which had categorically come to a conclusion complicity and the role played by the petitioner. The petitioner having given the responsibility of appraising the project report have not conducted the project enquiry as per the procedure established.

13.On the contrary, he had given approval on 22-03-2001, when the invoice itself is dated 23-03-2001 and further, it is found that there is no such machinery as stated in the proforma invoice. The 81 Enquiry Officer had recommended for surcharge proceedings taking into account the role played by the petitioner in commission of the above offences.

14.Hence, this Court on the above factual and legal matrix comes to a conclusion that the quash petition of the petitioner is not maintainable and in the result the quash petition is dismissed. The trial Court is directed to give priority in disposing of the above case, within a reasonable time since the case has been pending from the year 2010.

15.Accordingly, the Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

ah

To

1.The XI Metropolitan Magistrate,
Saidapet, Chennai - 600 015.

2.The Inspector of Police,
C.C.I.W. C.I.D.,
Chennai,
[Crime No.1/2009].

3.The Deputy Registrar of Co-op.
Societies,
Ponneri Circle,
Ponneri,
Tiruvallur District.

4.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.2953 of 2011

SVI(CO)
GN(23/07/2018)