BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 13.02.2018
Judgment pronounced on: 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.OP(MD)Nos.20309 to 20320 of 2016
and
CRL.MP(MD)Nos.10247 & 10248/2016 in CRL.OP.(MD)No.20309/2016
and
CRL.MP(MD)Nos.10249 & 10250/2016 in CRL.OP.(MD)No.20310/2016
and
CRL.MP(MD)Nos.10251 & 10252/2016 in CRL.OP.(MD)No.20311/2016
and
CRL.MP(MD)Nos.10253 & 10254/2016 in CRL.OP.(MD)No.20312/2016
and
CRL.MP(MD)Nos.10255 & 10256/2016 in CRL.OP.(MD)No.20313/2016
and
CRL.MP(MD)Nos.10257 & 10258/2016 in CRL.OP.(MD)No.20314/2016
and
CRL.MP(MD)Nos.10260 & 10261/2016 in CRL.OP.(MD)No.20315/2016
and
CRL.MP(MD)Nos.10262 & 10263/2016 in CRL.OP.(MD)No.20316/2016
and
CRL.MP(MD)Nos.10264 & 10265/2016 in CRL.OP.(MD)No.20317/2016
and
CRL.MP(MD)Nos.10266 & 10267/2016 in CRL.OP.(MD)No.20318/2016
and
CRL.MP(MD)Nos.10268 & 10269/2016 in CRL.OP.(MD)No.20319/2016
and
CRL.MP(MD)Nos.10270 & 10271/2016 in CRL.OP.(MD)No.20320/2016

Anbalagan ... Petitioner Accused Nos.8,6,9,7,3,4,3,2,2,5,5 &5 in all the CRL.OPs

Vs.

1.State rep. By
The Inspector of Police,
C.C.I.W., CID.,
Thiruchirappalli,
In Crime No.1 of 2014.

2.K. Athmanathan
The Deputy Registrar of Co-operative Societies,
Musiri Range,
Musiri,
Thiruchirappalli District. ...Respondents in all the CRL.OPs

Common Prayer in CRL.OP.Nos.20309 to 20320/2016 :

Criminal Original Petitions are filed under Section 482 of Criminal Procedure Code to quash the charge sheet in C.C.Nos.98, 99,101,102,107,108,110,111,112,113,114 and 115 of 2016 on the file of the learned Judicial Magistrate, Musiri, Thiruchirappalli District, respectively.

For Petitioner : Mr.V.R.Venkatesan

For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side) for R1
Mr.M.Sridharan for R2 (in All Cases)

COMMON ORDER

These petitions have been filed by the accused u/s.482 Cr.P.C., to quash the proceedings against him in C.C.Nos.98 of 2016, 99, of 2016, 101 of 2016, 102 of 2016, 107 of 2016, 108 of 2016, 110 of 2016 to 115 of 2016 on the file of the Judicial Magistrate, Musiri, Tiruchirapalli District.

2. The brief facts of the case are as follows:

The petitioner was working as Special Officer of the Thulaiyanatham Primary Agricultural Cooperative Credit Society for the period from 14.10.2011 to 18.09.2013. The President of the said Society has sent a letter dated 21.10.2013 to the Deputy Registrar of Cooperative Societies, Musiri Range, stating that one S.Murugesan, Secretary of the said Society has sanctioned loans in the name of the depositors without their knowledge by creating forged documents, and thereby he has misappropriated the huge amount of the Society. Based on the said letter, the Deputy Registrar of Cooperative Societies, Musiri Range has constituted a committee for disbursing the amount to the depositors and also for taking necessary action against the persons concerned. It was also ordered for conducting enquiry u/s.81 of the Tamilnadu Cooperative Societies Act, 1983 (herein after referred to as 'the Act') by appointing the Sub-Registrar of Cooperative Societies, Musiri, as Enquiry Officer. Accordingly, the said Officer has conducted an enquiry u/s.81 of the Act and submitted a report on 02.05.2014 stating that the former Secretary M. Pandian, present Secretary S.Murugesan, Senior Clerk, K.V.Selvaraj, Society Clerk, K. Sivalingam have created documents as if loans were sanctioned to the depositors and misappropriated a sum of Rs.5,81,10,505/- and that the other accused persons including the petitioner herein have colluded and abetted the aforesaid persons to commit misappropriation. Based on the said report, the second respondent herein has sent a complaint to the Superintendent of Police, C.C.I.W., CID, and he in turn forwarded the same to the Inspector of Police C.C.I.W., CID, Thiruchirappalli. The Inspector of Police C.C.I.W, CID, Thiruchirappalli has registered a case in

Cr.No.1 of 2014 under Sections 403, 406, 408, 409,420, 468, 471, 477-A and 120(B) r/w.34 of IPC and submitted the papers to the Deputy Superintendent of Police, C.C.I.W, CID, Thiruchirappalli for investigation. The Deputy Superintendent of Police, C.C.I.W, CID, Thiruchirappalli has investigated the matter and filed twelve charge sheets. Based on the said charge sheets, the learned Judicial Magistrate, Musiri, has taken the aforesaid cases on file and issued summons to the accused. After receipt of the summons, the petitioner herein has filed these petitions to quash the proceedings against him in the aforesaid cases.

3. Heard V.R.Venkatesan, learned counsel for the petitioner and Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate (Criminal Side) for the first respondent and Mr.M.Sridharan for second respondent.

4. The learned counsel for the petitioner has submitted that the Enquiry Officer has not stated in his report, any connivance or collusion by the petitioner with others to cause loss to the Society. He further submitted that the Investigating Officer also has not produced any material to show that the petitioner has colluded with the other accused persons and he has helped them for committing misappropriation of the Society's funds. He further submitted that as per the Bye-laws of the Society, the Secretary is the Chief Administrative Officer of the Society and as per the resolution dated 04.01.2012, it is the duty of the Secretary to sanction loans and the petitioner being a Special Officer cannot have direct control over the same. He further submitted that since the petitioner being the Special Officer, he was entrusted with the duty of supervision only. He further submitted that during the relevant period, he was appointed as Special Officer for 14 Societies and as such, it is not possible to check each and every transactions of the aforesaid Societies. He further submitted that as per Clause 8 of the Tamil Nadu Cooperative Manual and also the circulars issued by the Registrar of the Cooperative-Societies dated 08.08.1991 and 11.12.1991, no criminal action can be taken against the Officers who were appointed in supervisory posts. He further submitted that the second respondent has lodged a complaint, based on the enquiry report submitted under Section 81 of the Act, but in the said enquiry report, no where it is stated that the petitioner herein has involved in the misappropriation of the Society's funds either directly or in directly. The only allegation against the petitioner is that he failed to supervise the work of the employees of the concerned Society and for that, he cannot be prosecuted before the criminal court. At the most, disciplinary proceedings can be initiated against him for the alleged dereliction of duty. He further submitted that based on the enquiry report submitted u/s.81 of the Act, the surcharge proceedings were initiated and the same were set aside by this court in CRP.(MD).Nos.947 & 948/2010 dated 06.04.2017 and that being so, for the same charges, criminal proceedings cannot be initiated. He further submitted that disciplinary proceedings also initiated against the petitioner by

issuing charge memo and the petitioner has filed a Writ Petition in WP.(MD)No.13818 of 2017 challenging the said charge memo and the same is pending and therefore, he prayed to quash the proceedings against him in the aforesaid cases.

5. In support of his contentions, he has relied upon the following decisions.:

1. S.Gunasekaran Vs. State rep. by Inspector of Police [2008] 1 Crimes (HC) 681.

2. R.Udaiyar Vs. The State of Tamilnadu rep. by the Inspector of Police C.C.I.W., CID, (Sivagangai) Crl.O.P(MD)No.9639 of 2006 of Madurai Bench of this Court dated 12.08.2009.

3.P.Jegadeesan Vs. The Inspector of Police Commercial Crime Investigation Wing, Trichy and another Crl.O.P(MD)Nos. 18221 and 18222 of 2013 of Madurai Bench of this Court dated 21.02.2014

4.N.Baskaran Vs. State rep. by the Inspector of Police C.C.I.W., Trichy and another Crl.O.P(MD)No.16336 of 2016, Madurai Bench of this Court dated 06.10.2016.

6. The learned Government Advocate (Crl.Side) has submitted that the petitioner while serving as special officer of the Society, conspired with other accused persons and in pursuance of the said conspiracy abetted the other accused persons for embezzlement of the Society's funds to the tune of Rs.3,41,61,636/- by creating loans in the names of the depositors without their knowledge. He further submitted that the petitioner ought to have exercised his power to prevent misuse of funds by the other accused persons, but he abetted the other accused persons in committing the misappropriation of the Society's funds. He further submitted that the amount involved in all the three proceedings and the witnesses examined are not one and the same. The evidence collected by the first respondent during investigation is much broader than the evidence shown in the surcharge proceedings and hence, the decision rendered in the Civil Revision Petition can in no way helpful for deciding these petitions. He further submitted that Clause 8 of the Tamil Nadu Co-operation Manual and the circular issued by the Registrar of the Co-operative Societies are giving protection to the Special Officers, etc., from criminal prosecution being initiated against them for dereliction of duty and not for committing misdeeds in collusion with the other accused by wilful omission or commission and wantonly shut their eyes to the irregularities committed in the society for obvious reasons. He further submitted that the Enquiry Officer in his report submitted under Section 81 of the Act as well as in his statement recorded under Section 161(3) of Cr.P.C., has mentioned

about the petitioner's wilful involvement in the embezzlement of the Society's fund. He further submitted that the conspiracy cannot be proved by direct evidence and has to be inferred from the circumstances since it is hatching in secrets. He further submitted that there are enough materials to proceed against the petitioner and therefore, he prayed to dismiss the above petitions.

7. The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Crl.Side).

8. Admittedly, during the period from 14.10.2011 to 08.05.2013, the petitioner was posted for 14 Societies including Thulaiyanatham Primary Agricultural Co-operative Credit Society. After expiry of his term of office, an enquiry was ordered under Section 81 of the Act. Accordingly enquiry was conducted and Enquiry Officer has submitted his report. In the said enquiry, it was found that one M.Pandian, Former Secretary, S.Murugesan, Present Secretary, K.V.Selvaraj, Senior Clerk and K.Sivalingam, Clerk of the Society were directly involved in the misappropriation of the funds of the Society to the tune of Rs.5,81,10,505/- by creating false documents as if loans were given to the depositors based on the fixed deposit receipts. Only finding against the petitioner herein is that he abetted the aforesaid accused persons for committing offence as he has not effectively supervised them. Based on the said report, the respondent herein has lodged a complaint before the Superintendent of Police, C.C.W.I., CID, Chennai - 40 on 02.05.2014. Based on the said complaint, a case was registered by the Inspector of Police, C.C.I.W., CID, Trichy in Crime No.1 of 2014. Thereafter the investigation was done by the Deputy Superintendent of Police, C.C.I.W., CID , Trichy and filed twelve charge sheets against the said Pandian and others wherein the petitioner herein has been shown as one of the accused. It was alleged that the accused Nos.1 and 2 have misappropriated the funds of the Society with the active connivance of the petitioner herein and others and hence he is liable to be punished under Sections 408, 109, 468, 477(A) and 120 (B) r/w 34 I.P.C.

9. The Oficer who conducted the enquiry u/s.81 of the Act has stated in the statement recorded under Section 161 (3 Cr.P.C.) that as per the Bye-laws of the Society, it is the duty of the Secretary to sanction the loan. After sanctioning the loan, he has to submit the records before the Board and in the absence of the Board before the Special Officer. Nowhere he has stated that the Secretaries (accused Nos. 1 and 2) have submitted the loan proceedings for perusal of the petitioner herein. He has stated that the petitioner has made inspections on various dates and during such inspections if he had verified the accounts, the malpractices done by the other accused persons would have been come to his knowledge. He further stated that the petitioner has wilfully failed to take

any steps to prevent such malpractices. From the aforesaid statement it is clear that the allegation against the petitioner is that if he had verified the accounts, the malpractice committed by the ther accused persons would have been come to his knowledge. It is not his case that the petitioner had verified the accounts and found that the other accused persons comitted malpractices, but he did not take any action against them. The statement of the Enquiry Officer would suggest that the petitioner has failed to discharge his duties properly and such failure may amount to dereliction of duty.

10. It is to be pointed out that based on the enquiry report submitted under Section 81 of the Act, surcharge proceedings were initiated against the petitioner herein. Challenging the same, the petitioner has filed an appeal in C.M.A(CS) Nos.12 and 13 of 2015 on the file of the learned Principal District Judge, Thiruchirappalli. The learned Principal District Judge by the judgment and decree dated 07.04.2016 has dismissed the said appeals. Aggrieved by the same, the petitioner herein has filed C.R.P(MD)Nos.947 and 948 of 2016 before the Madurai Bench of this Court. The Hon'ble Ms.Justice V.M.Velumani, by the common order dated 06.04.2017 has allowed the said appeals and set-aside the surcharge proceedings initiated against the petitioner herein.

11. It is also to be pointed out that after these Crl.O.Ps., have been reserved for orders, the learned counsel for the petitioner has produced a copy of the order passed by the Madurai Bench of this Court in W.P.(MD)No.13818 of 2017. A perusal of the said order shows that based on the Enquiry Report submitted under Section 81 of the Act, the Deputy Registrar of Co-operative Societies, Musiri, has initiated disciplinary proceedings by issuing a charge memo dated 23.06.2014 in Na.Ka.No.3314/2012/Sa.Pa. The Hon'ble Mr.Justice G.R.Swaminathan by the order dated 01.03.2018 has quashed the said charge memo. So, now the only proceedings pending against the petitioner herein is the aforesaid criminal proceedings.

12. Clause 8 of the Tamil Nadu Co-operative Manual deals with the prosecution against the Departmental Officers which reads thus:

<u>Prosecution against the Departmental Officers:-</u>

> ''Departmental Officers are working on foreign service in Co-operative organisation as Chief Executive Officers or otherwise and at times in additions to their regular government post, they are also holding additional charge of the post of Special Officers in more than one co-operative society and functioning as such. They are holding supervisory posts also over such institution. The Act or the Bylaw of the society do not differentiate a regular or additonal charge Chief Executive Officer /

Special Officer and both are the same in the eyes of law. These officers either in a regular capacity and more so in the additional capacity or in a supervisory capacity may not have the chance to scruitinise each and every transactions of the society. They would have failed to check and scruitinise the accounts and or excercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under IPC committed by the staff. Failure of such nature ie., failure to discharge their duties properly or negligence, or omissions, unless the inquiry, inspection or investigation officer finds it prima facie, that such officers with malafide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offences by the subordinate staff, will not fasten criminal liability on such officers. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence the departmental officers who are not directly involved in the frauds or misappropriations need not be included as deliquents, in a routine manner, in the inquiry reports or complaints filed with the police."

From the aforesaid provision, it is clear that if the officers who have been posted to supervise the societies failed to discharge their duty properly such officers will not fasten criminal liability unless prima facie shows that such officers with malafide criminal intention committed criminal breach of trust or criminal misappropriation or aided and abetted such criminal offences by the supporting staff.

13. In the circular issued by the Registrar of Co-operative Societies, Chennai in R.C.No.228696/19/CP1 dated 11.12.1991 also, the same thing reiterated. For proper appreciation, the relevant portions of the said letter are extracted here under:

"3. Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the Cooperatives who are involved vicariously has also been examined. The departmental officers, working have no chance to scrutinize each and every transactions of the society. Though they may have an overall control, they cannot be held criminally liable, for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinize the accounts etc., or exercise effective control over subordinate staff such failure may not deserve criminal action. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence it is informed that the departmental officers who are not directly involved in the frauds or misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police."

14. In S.Gunasekaran Vs. State represented by the Inspector of Police (supra), this Court has quashed the Criminal proceedings against the Special Officer stating that the Criminal prosecution cannot be initiated for lapse / negligence in supervising work, which is extracted below:-

"8. The learned Government Advocate (Crl.Side) would submit that as per a resolution passed in the society the petitioner was responsible for the day-to-day affairs of the society and to supervise the records and the transactions of the society. The learned Government Advocate (Crl.side) would further submit that as per the materials available on record it is clear that he has failed to discharge his duties properly and the said acts of the accused would amount to offences as enumerated in the charge sheet.

9. In my considered opinion, such a negligence may create only a civil liability and there cannot be any vicarious liability in the criminal law. Even to initiate proceedings against the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, the sine quo non is wilful negligence resulting in loss to the society and not a mere negligence. When that be so, a mere negligence to look into the records properly, in my considered opinion, would not satisfy any of the ingredients of the offences alleged against him."

15. In N.Baskaran Vs. The State rep. by Inspector of Police, C.C.I.W., CID, Trichy (supra), after referring to the decision in S.Gunasekaran Vs. State represented by Inspector of Police (supra), has observed in paragraph Nos. 5 and 6 as follows:

''5. It is further submitted that in similar facts, this court in 2008 (1) Crimes 681 (Mad.) (S.Gunasekaran Vs. State rep. By Inspector of police), quashed the charge laid against the Special Officer categorically stating that criminal prosecution cannot be initiated for lapse/negligence in supervisory work, which is extracted below:-

"8. The learned Government Advocate (Crl.Side) would submit that as per a resolution passed in the society the petitioner was responsible for the day-to-day affairs of the society and to supervise the records and the transactions of the society. The learned Government Advocate (Crl.Side) would further submit that as per the materials available on record it is clear that he has failed to discharge his duties properly and the said acts of the accused would amount to offences as enumerated in the charge-sheet.

9. In my considered opinion, such a negligence may create only a civil liability and there cannot be any vicarious liability in the criminal law. Even to initiate proceedings against the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, the sine quo non is wilful negligence resulting in loss to the society and not a mere negligence. When that be so, a mere negligence to look into the records properly, in my considered opinion, would not satisfy any of the ingredient of the offences alleged against him."

6. I am of the opinion that the judgment cited supra squarely applies to the case on hand. In such view of the matter, this petition is allowed and the entire proceedings in C.C.No.124 of 2013 on the file of the Judicial Magistrate No.III, Trichy, is quashed as against the petitioner alone. Consequently, connected Miscellaneous petition is closed."

16. From the aforesaid decisions, it is clear that negligence may create only the civil liability and there cannot be any vicarious liability in the criminal law. Further, mere negligence to look into the records properly would not satisfy any of the ingredient of the offences alleged against the petitioner herein.

17. In R.Udaiyar Vs. The State of Tamilnadu (supra), in paragraph No. 10, this court has observed as follows:

"10. In the enquiry under section 81 of the said Act, the Petitioner has been exonerated. In the disciplinary proceedings also he has been exonerated. The charges in the criminal proceedings and in the departmental proceeding are one and the same. When the Petitioner has been exonerated from the charges levelled against him as not proved in the departmental proceedings, allowing the criminal proceedings for the same charges to continue, would amount to abuse of process of law. Therefore in my considered view, it is a fit case to exercise the powers under section 482 of Cr.P.C."

18. P.Jegadeesan Vs. Inspector of Police (supra), this Court relying upon the decision of the Hon'ble Supreme Court in P.S.Rajya Vs. State of Bihar reported in (1996 (9) SCC 1) has observed as follows:-

> "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 Sections 477 (a) and 409 of IPC., 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 that there was a fraud committed by him, which helped the other accused to commit the so called falsification of accounts, fabrication of documents, misapporopriation of funds etc. The Supreme Court, in a decision in P.S.Rajya Vs.State of Bihar reported in (1996 (9) SCC 1). The relevant portion is extracted hereunder:
>
> "17. At the outset, we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings."
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> 8. From the above it is clear that the ultimate result of the departmental proceedings has to be accepted, there is no need to proceed further against the accused in the criminal proceedings. Hence, I am of the considered view that the findings of the departmental enquiry may not be admissible cannot be correct and I find much force in the contention of the learned counsel for the petitioner and I allow the criminal Original Petition, as prayed for. This order does not preclude the Judicial Magistrate, Musiri from proceeding with other accused in accordance

with law as they are not parties before this court. Consequently, connected miscellaneous petition is closed."

19. From the abovesaid decisions, it is clear that when the charges in the criminal proceedings and in the departmental proceedings are one and the same, and if the accused has been exonerated from the charges levelled against him, there is no need to proceed further against the accused in the criminal proceedings. In this case, as already stated that the charge memo issued in the departmental proceedings has been quashed by this court in W.P.(MD) No.13818 of 2017. In view of the aforesaid decisions, the criminal proceedings against the petitioner herein has to be quashed.

20. With regard to the abetment of a thing, this Court in R.Gangatharan Vs. The State etc., and Ors. has observed as follows:-

> " According to Section 107 I.P.C. A person abets the doing of a thing, who intentionally aids, by any act or illegal omission, the doing of that thing, will attract Clause No.3 intentional aiding and active complicity is the gist of the offence of abetment. If the act of the petitioner comes within Clause 3 of Section 107 IPC, then only it can be said that there is material to proceed further in the case. Petitioner is working as an Extension Officer and he has been deputed to check the jewel items on a particular date viz., 15.12.1988. It is not the case that the petitioner was also working along with the other accused involved in the case and therefore, it can be presumed that there must be conspiracy. The only allegation is that he had actually failed to physically verify some of the items of jewellery. This would only indicate the carelessness and negligence on his part and apart from that material, there is nothing to infer that he has got any mens rea to commit the offence. The statements recorded during the investigation and other materials did not indicate that there was any intentional aiding or abetting on the part of the petitioner. Furthermore, the enquiry conducted under the Co-operative Societies Act, gave a finding only in respect of the other accused. Under the circumstances, I am of the vies that there is no prima facie material to proceed further against the petitioner and even assuming that the entire averments are taken into consideration, there is remote possibility of the case ending in conviction against the petitioner and in my view, it is only an exercise in futility and as such, the proceedings has to be quashed."

21. In this case also, it is not the case of the prosecution that the petitioner was also working along with the other accused involved in the case and hence, it has to be presumed that there must be conspiracy. The only allegation against the petitioner is that he had failed to verify the accounts. So, the aforesaid decision will squarely apply to the facts of this case.

22. In Jethsur Surangbhai Vs. State of Gurjarat, AIR 1984 SC 151, the Hon’ble Supreme Court has observed as follows:

> ''12. In a case of serious charges of defalcation of properties of a society mens rea cannot be excluded. Unless the prosecution proves that there was a close cohesion and collusion between all the accused persons which formed the subject matter of conspiracy, it would be difficult to prove the charges. Once the charge of conspiracy fails, the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the alleged acts or omissions. In absence of such direct evidence, the mere fact that the accused appellant happened to be the Chairman of the Managing Committee of the society would not make him criminally liable in a vicarious sense. It is not possible to accept somewhat broad statement of law that even the negligence on the part of the appellant Chairman would be a positive proof of his intention to commit the offence. On facts and in the circumstances of the case, the case against the appellant cannot be said to have been proved beyond reasonable doubt or at least it cannot be said that two views were not reasonably possible. Thus he was wrongly convicted by the High court.”

23. In this case also, the prosecution has not produced any material to show that there was a close cohesion and collusion between all the accused persons which formed the subject matter of conspiracy. So, in view of the aforesaid decision, it is clear that the criminal proceedings cannot be initiated against the petitioner for his failure to discharge his duty properly. Such a negligence may create only a civil liability. In this case as already stated that the surcharge proceedings were set aside by this court. The charge memo issued in the disciplinary proceedings also quashed by this court. Therefore, for the same charges criminal proceedings cannot be initiated.

24. As observed by the Hon'ble Supreme Court in Jethsur Surangbhai Vs. State of Gurjarat (supra), in a case of serious charges of defalcation of properties of a Society mens rea cannot be

excluded. In respect of the offences under Sections 408 and 409 of IPC., one of the essential ingredients is that there must be a dishonest misappropriation of property. "Dishonestly" is defined under Section 24 of IPC., which reads as follows:

> ''24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. In this case, it is not the case of the prosecution that the petitioner herein got any wrongful gain. Therefore, it cannot be said that the petitioner has dishonestly aided the other accused persons for committing misappropriation of the Society's funds. So the petitioner cannot be prosecuted for the aforesaid offences.

26. For the aforesaid reasons, this Court is inclined to allow these petitions. Accordingly, these petitions are allowed and the proceedings against the petitioner herein in C.C.Nos.98, 99,101,102,107,108,110,111,112,113,114 and 115 of 2016 on the file of the learned Judicial Magistrate, Musiri, are quashed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Judicial Magistrate,
Musiri,
Thiruchirappalli District.

2.The Chief Judicial Magistrate,
Trichy.

3.The Inspector Of Police,
C.C.I.W.,CID.,
Trichirappalli.

4.The Additional Public Prosecutor,
Madurai Bench Of Madras High Court,
Madurai.

+2CC to Mr.V.R.Venkatesan Advocate in SR.Nos.74279.

Judgment in

CRL.OP(MD)Nos.20309 to 20320 of 2016 &
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in CRL.OP.(MD)No.20320/2016

20.07.2018

GV
DS/SKN-RSK/SAR-4 :26.07.2018:14P/7C