



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.06.2018
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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Crl.O.P.(MD)No.13854 of 2013
and
M.P.(MD)Nos.1 & 2 of 2013

K.Krishnan

... Petitioner/Accused No.2

Vs.

1. The State represented through
The Inspector of Police,
C.C.I.W.C.I.D,
Sivagangai
(Crime No.3 of 2009)

... Respondents/Complainant

2. C.Palvativu

....Respondent/De-facto Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.62 of 2010 on the file of the Judicial Magistrate No.II, Sivagangai and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.D.Sadiq Raja

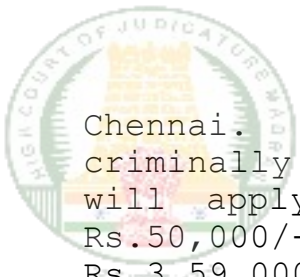
For R1 : Mr.A.Robinson, G.A.(Crl.side)

For Respondent No.2 : No appearance

ORDER

The petitioner is shown as second accused in C.C.No.62 of 2010 on the file of the Judicial Magistrate No.II, Sivagangai. He is facing prosecution for the offence punishable under Sections 120(b), 408, 465, 468, 471, 477(A) r/w 109 IPC. During the relevant point of time, the petitioner was working as Special Officer in Thirft & Credit Society Limited. The Secretary of the Society has been shown as the first accused. The allegation against the accused is that they cleared benamy loans. The petitioner herein allegedly conspired with the first accused in this regard and hence, a case in Crime No.3 of 2009 was registered by the Inspector of Police, C.C.I.W.C.I.D. The said Investigating Agency filed the final report and the same was taken on file in C.C.No.62 of 2010. To quash the said C.C.No.62 of 2010, this Criminal Original Petition has been filed.

2.The learned counsel appearing for the petitioner raised many contentions. He took this Court initially to the circular dated 11.12.1991 issued by the Registrar of the Co-Operative Society,



Chennai. It states that the Special Officers cannot be held criminally liable merely for lack of supervision. The said circular will apply only in those cases where the amount involved is Rs.50,000/- or less. In this case, the amount involved is Rs.3,59,000/-. Therefore, the said circular cannot be invoked.

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3.The learned counsel appearing for the petitioner also contended that the enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act was conducted against the petitioner and as far as this charge is concerned, the petitioner was exonerated. He drew the attention of this Court to paragraph no.16 of the order passed by this Court in Crl.O.P.(MD)No.9970 of 2014 on 09.09.2016 and the same is as under:

"16.Unlike in a criminal prosecution where the guilt of the accused should be proved beyond reasonable doubt, in a domestic enquiry, such strict proof is not required. A person can be held guilty in a domestic proceedings, even if materials may not pass the twin test, viz., relevancy and admissibility envisaged by the Indian Evidence Act. Bearing this principle in mind, if the Section 81 enquiry report and the domestic enquiry report are viewed, it is apparent that the petitioner has been given a clean chit and has been honourably exonerated. This Court cannot close its eyes and simply say that the petitioner should undergo the ordeal of criminal prosecution once again to prove his innocence."

4.Therefore, according to the learned counsel appearing for the petitioner, since the petitioner has been exonerated in the said enquiry conducted under Section 81, impugned prosecution should be quashed. This is also more so because, the First Information Report in this case is based on Section 81 enquiry report.

5.This Court is unable to agree with the aforesaid contentions.

6.The petitioner has filed a copy of the order dated 10.12.2009, issued by the Government in G.O.(D)No.363. It is true that as regards the charge of benamy loans, the petitioner has been exonerated. This Court wanted to find out the reason on which the said exoneration rests. The reason set out in the enquiry report is as under:

"As controversial statements surface in this case, one has to conclude that it is premature to frame charges against any individual until the wholesome episode is brought to light and the culprits identified. Though the Oral Inquiry Officer is convinced that irregularities had occurred in these loan accounts, ascribing the responsibility and onus on the Accused Officer for the occurrences does not conform to the standards of proof required in Disciplinary Proceedings. Duties and obligations must be first established before a person



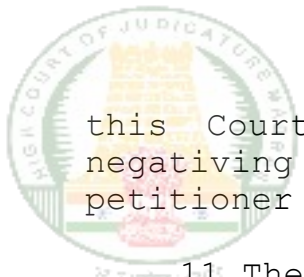
could be found guilty of wilful negligence, resulting in being charged therefor and found guilty in disciplinary proceedings. Negligence presupposes existence of specific duties and obligations and breach thereof. There is no clarity as to the specific duties and obligations cast upon the Accused Officer with regard to sanction of loans or at least proof to that effect has not been produced before the Oral Inquiry Officer. The very basis of the charges must be held to be lacking and the charge cannot stand the test of preponderance of probability. Therefore, the Oral Inquiry Officer hold that Charge No.1 as NOT PROVED."

7.It is seen that the Enquiry Officer has chosen to exonerate the petitioner as there was no clarity as to the specific duties and obligations cast upon the accused officer and the materials in that regard were not produced before the Enquiry Officer. On the other hand, in the case before this Court in CrI.O.P.(MD)No.9970 of 2014, the accused officer was honourably exonerated. That is clearly not the case here. Therefore, the fact that the petitioner was exonerated by the Enquiry Officer cannot advance his case in this quash proceeding. The clinching circumstance against the petitioner is that he had issued un-crossed cheques.

8.The learned Government Advocate (CrI.side) read the statement given by one M.Sakthivel under Section 161(3) Cr.P.C. The said Sakthivel was a member of the Society in question. He had categorically stated that the cheque bearing No.Q079827, dated 31.8.2001 for a sum of Rs.41,650/- was not actually encashed by him. He had specifically denied the signatures attributed to him on the back side of the said cheque.

9.This Court had a look at the certified copy of the said cheque, which was produced by the prosecution. The petitioner herein in his capacity as Special Officer had not only issued the said cheque but also attested the signatures attributed to the said Sakthivel on the back of the cheque. The cheque in question is an un-crossed cheque. The forensic opinion is that the signature attributed to the petitioner herein on the front side and back side of the cheque in question is that of the petitioner. As many as nine cheques had been issued by the petitioner herein. Along with the final report, the statements of N.Sakthivel, Meyyar and Angusamy have been enclosed. All these three persons have categorically stated that the signatures attributed to them on the reverse of the cheque are not theirs. Thus, there is prima facie evidence to prove that the petitioner has conspired with A1/Secretary.

10.If the petitioner had issued crossed cheques, then this Court would have quashed this proceedings. But it is seen that all the cheques in question issued by the petitioner are un-crossed cheques. Thus, there is prima facie material against the petitioner to make him liable to be proceeded against. It is made clear that



this Court has made this observation only for the purpose of negating his plea in this proceeding. The defence of the petitioner is left totally open.

11. The learned Trial Magistrate shall dispose the proceeding entirely un-influenced of any of these observations. The petitioner is aged about 68 years old. Therefore, the personal appearance of the petitioner shall not be insisted on all the occasions. The petitioner has to be present only at the time of examination under Section 313 Cr.P.C. and at the time of pronouncement of judgment. On all other occasions, the petitioner can be represented through his counsel.

12. With these observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Sivagangai.
2. The Inspector of Police,
C.C.I.W.C.I.D,
Sivagangai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.D.Sadiq Raja, Advocate, SR.No.67851

Cr1.O.P. (MD) No.13854 of 2013
12.06.2018

GNS
ES/SV MMS/SAR4/29/06/2018/4P/5C