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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.02.2018

DELIVERED ON :14.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)Nos.1874 to 1876 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013 [in all the Crl.O.Ps.]

R.Palanichamy ... Petitioner in all the Crl.O.Ps.

Vs.

1. The State Through,
The Inspector of Police,
CCIW, Virudhunagar.
2. Tmt.V.Saraswathi,
Deputy Registrar of Co-operative Societies,
Srivilliputhur,
Virudhunagar District. ... Respondents in all the Crl.O.Ps.

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the final report submitted by first respondent under Section 173 Cr.P.C. in Cr.No.1 of 2008 and the connected records in consequential proceedings of the case in C.C.Nos.131, 132 and 133 of 2009 on the file of the Judicial Magistrate Court No.II, Virudhunagar respectively and quash the same in respect of this petitioner, as unsustainable in law.

For Petitioner	:	Mr.M.Saravanan
(in all the Crl.O.Ps.)		
For R1	:	Mr.A.Robinson
(in the Crl.O.Ps.)		Government Advocate
		(Criminal side)
For R2	:	No Appearance
(in the Crl.O.Ps.)		

COMMON ORDER

The petitioner herein is the fourth accused in C.C.No.131 of 2009 on the file of the Judicial Magistrate Court No.II, Virudhunagar. In the same Court, in C.C.Nos.132 and 133 of 2009, he was arrayed as third accused.



2.The abovesaid three cases were registered against the petitioner by the Inspector of Police, CCIW, Virudhunagar, who is the first respondent in all the three petitions. After completing investigation, they filed charge sheets for the offences punishable under Sections 406, 408, 409, 465, 467, 468, 419, 420 and 477-A r/w. 120(b) IPC. Now, pending trial, the petitioner filed the present petitions under Section 482 Cr.P.C., to quash the abovesaid charge sheets pertaining to the abovesaid cases by stating that the same are unsustainable in law. Admittedly, the petitioner was working as a Secretary in R.A. 418, Rajapalayam Private Aided Schools Teachers and Staff Employees Co-operative Thrift and Credit Society Ltd. [hereinafter called as 'the Society']. The said Society was governed under the provisions of Tamil Nadu Co-operative Societies Act, 1983 [hereinafter called as 'the Act'].

3.As per Section 84 of the Act, the Secretary or the Chief Executive, i.e., the Principal Paid Officer is responsible for the credit and up-to-date maintenance of accounts and books. The said Section reads as follows:-

''84.Maintenance of accounts and books by registered Society.- The chief executive that is, the principal paid officer of every registered society by whatsoever designation he is called, or the president of that society, if there is no such chief executive in that society, shall be bound to keep and maintain such accounts and books relating to that society in such manner as may be prescribed. He shall be responsible for the correct and up to date maintenance of such accounts and books and for producing them when called for in connection with audit under Section 80 or inquiry under Section 81 or inspection or investigation under Section 82 or Inspection of books under Section 83.''

4.Further, according to Rule 27(4) of the Tamil Nadu Co-operative Societies Rules, 1988 [hereinafter called as 'the Rules'], the Secretary is provided with the power to admit the members. The said Rule reads as follows:-

''27.Form of application for, and manner of, admission as a member.-

(4) The Secretary of where there is no Secretary, the Chief Executive or where there is no Secretary or Chief Executive, the President shall place or cause to be placed all applications for membership before the board or the general body, where there is no board for its decision and arrange to communicate the



decision of the board or the general body, as the case may be, granting or refusing to grant admission to the applicant within a period of sixty days from the date of receipt of the Application in the office of the Society.''

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5. In the above circumstances, after completing Section 81 enquiry, based on the report given by the Enquiry Officer, the second respondent lodged a complaint before the first respondent and after completing investigation, final reports have been filed including the petitioner as an accused for the abovesaid offences mentioned in Paragraph No.2.

6. Now, admittedly, on going through the entire allegations made against the petitioner, revealed that believing the certificate issued by Late.M.Gurunathan, who is the Secretary in Annai Indira Gandhi Memorial Middle School, Madathupatti Street, Rajapalayam, one M.G.Mari Muthu, S/o.M.Gurunathan and one G.Rajammal, who are all having the position of Secretary in the abovesaid School, the petitioner herein without verifying the genuineness of the said Certificate, placed the same before the Special Officer for sanctioning the loan and thereby, the Special Officer also sanctioned a loan in favour the Accused Nos.1 and 2 in all the three cases. Now, Section 81 enquiry report reveals that the petitioner made conspiracy with the teachers, who submitted a false certificate and helping them to get loan and thereby, caused loss to the tune of Rs.6,50,000/- to the said Society.

7. The learned counsel, who filed these Criminal Original Petitions submitted that the petitioner herein being the Secretary of the Society, believing the Certificate issued by the responsible person, made Certificate for granting loan. The Certificates, now in dispute are all came to the Society along with some other Certificates, which are all had same nature. In the above situation, it is not an easy job to find out which Certificate is genuine and which Certificate is bogus. Actually, the fault is only with the Secretary of the School, who only issued the Certificate stating that the persons are not having eligibility for getting loan. He further added that almost the petitioner had committed the mistake to the level of negligent, for which, already departmental action was initiated and therefore, laying final report against this petitioner is a clear abuse of process of law.

8. Now, considering the arguments advanced by the learned counsel appearing for the petitioner, it is true that the case of the prosecution is, the Secretary of the concerned School issued so many Certificates, in which, they mentioned the name and other particulars of teachers, who are all working in the said School.



So, the Certificate for availing loan is issued only by a responsible person in their locality. Only believing the authentication given by the Secretary of the said School concerned, the petitioner acted as mentioned in the charge sheets. On going through the entire reading of the final report reveals that except to place the Certificate before the Special Officer, the petitioner has not committed any mistake for supporting the teachers, who availed loan without having any eligibility. Furthermore, there is no evidence to show that the petitioner is getting unlawful entitlement by way of giving loan to the teachers concerned and also that the petitioner is having guilty of willful negligence or wantonness.

9. At this juncture, it is relevant to refer the judgment of a Division Bench of this Court in **S. Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and others** reported in **2002 (3) LW 185**, wherein it has been held as follows:

'12. In the present case it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the assets of the society. Nowhere a finding has been rendered either by the first respondent or by the third respondent in their proceedings that the petitioner is guilty of wilful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the society.'

10. So, applying the above observation of our Division Bench of this Court to the present cases on hand also, since there is no evidence is available to see that the petitioner is having deliberate willful negligence. Hence, this Court cannot come to the conclusion that the petitioner had committed the offences as stated in the final reports.

11. Furthermore, it is an admitted fact that departmental enquiry has already been initiated against this petitioner for the wrong committed as above, for which, it is useful to refer the decision of this Court in **P. Jegadeesan Vs. The Inspector of Police, Commercial Crime Investigation Wing (CID), Tiruchirappalli and another** [Crl.O.P.(MD) Nos. 18221 and 18222 of 2013, dated 02.12.2014], wherein this Court has held as follows:

<https://hcservices.ecourts.gov.in/hcservices>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.

12. Therefore, in these cases also, it is very clear since the departmental action has already been initiated under Section 87 of the Act, considering the role alleged to be played by the petitioner in the occurrence, putting him under the criminal liability, is nothing but abuse of process of law. In this context, it is relevant to refer the judgment of our Hon'ble Supreme Court in **Madhavrao Jiwaji Rao Scindia Vs. Sambhajirao Chandrojirao Angre** reported in **1988 (1) SCC 692**, wherein it has been held as follows:

'The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.'

13. The above proposition also leads to a conclusion that no useful purpose likely to be served by allowing the criminal prosecution to continue as against the petitioner in the abovesaid three cases. Therefore, this Court is not having any hesitation to allow the Criminal Original Petitions. Accordingly, these Criminal Original Petitions are allowed and the proceedings pending against the petitioner in C.C.Nos.131 to 133 of 2009 on the file of the Judicial Magistrate Court No.II, Virudhunagar,



shall stand quashed.
petitions are closed.

Consequently, connected miscellaneous

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar.
3. The Inspector of Police,
CCIW, Virudhunagar.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.M.Saravanan , Advocate in SR No. 48455

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AE/SV MMS/SAR4/23.02.2018/6P/6C

common order in
Crl.O.P. (MD) Nos.1874 to 1876 of 2013
14.02.2018