IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13727 of 2010
and
M.P.No.1 of 2010

[Orders Reserved on 10.08.2018]

R.Gurusamy ... Petitioner /Sole Accused

Vs.

1.State by Inspector of Police,
Commercial Crime Investigation Wing (II)
Erode.

2.G.Gandhinathan
Deputy Registrar of Co-operative Societies,
Erode Circle,
Thiruvengadam Street,
Erode. ... Respondents/Defendant Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the criminal case in C.C.No.5 of 2010, on the file of the Judicial Magistrate No.IV at Coimbatore and quash the same.

For Petitioners : Mr.P.Muthukumarasamy

For Respondent-1 : Ms.V.Saretha Devi,
Govt.Advocate (crl.side)

For Respondent-2 : No Appearance

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.5 of 2010, on the file of the learned Judicial Magistrate No.IV at Coimbatore.

2. The brief facts leading to filing of the present Criminal Original Petition are as follows:-

(i) The petitioner was working as Ex-Secretary-cum-Chief Executive of A.A.186, Thindalmalai Primary Agricultural Co-operative Bank Limited, Sengodampalayam in Erode, which is registered and governed by the provisions of the Tamil Nadu Co-operative Societies Act and Rules. The petitioner was due to retire from the said Co-operative Bank on 28.02.2007. A disciplinary proceedings in Na.Ka.14237/2004 B-1, dated 25.04.2006 of the Common Cadre Authority was pending against the petitioner on the date of retirement for his illegal cancellation of loan documents and mortgage deed without clearing the loan. Therefore, considering the pendency of the disciplinary proceeding, the Joint Registrar of Co-operative Societies / Chairman, Erode, by letter dated 28.02.2007, instructed the Special Officer of the said Co-operative Bank, to relieve the petitioner on his superannuation without prejudice to the result of the disciplinary proceedings. As such, the terminal benefits of the petitioner has been deferred until further orders by the specific order dated 28.02.2007 by the Deputy Registrar. Under such circumstances, the petitioner, abusing his post as the Chief Executive of the said Co-operative Bank, in violation of the said order of the Deputy Registrar, had withdrawn the amount, without the knowledge or permission of the officers concerned.

(ii) The petitioner is having a Savings Bank Account No.85, at the Erode District Central Co-operative Bank, Bazaar Branch, Erode. The petitioner, by abusing his power, as Secretary of the said Co-operative Bank, drew a cheque bearing No.034197, dated 27.02.2007 for Rs.14,68,962/- from the said account as pay to "yourself" i.e., in favour of Central Bank, Bazaar Branch, and with that amount he purchased five 'Pay Orders' for a total amount of Rs.14,65,645/- in his own name from the Central Bank, Bazar Branch. All these activities were done a day before his retirement ie., on 27.02.2007. On 28.02.2007, the Special Officer, on coming to know of these illegal activities, had seized the five pay orders from the custody of the petitioner. But, the petitioner, even in the absence of 5 pay orders created false entries, as if the sum of Rs.14,65,645/- borne through the five pay order had been credited to his personal S.B.A/c.No.3384. Therefore, the petitioner had adjusted a total sum of Rs.7.62,211/- towards the loan dues from him and transferred the remaining amount of Rs.7,00,000/- to the Soorampatty Branch of the Co-operative Bank in the name of his wife.

(iii) The petitioner's illegal act of withdrawing the money without permission of the officers concerned, an inspection as contemplated under Sec.82 of the Tamil Nadu Co-operative Societies Act, was ordered in Na.Ka.No.1263/2008 (2) PACB, dated 16.05.2008. After conducting a detailed inspection, the inspection officer has filed his report, dated 03.12.2008. Based on the report, the Deputy Registrar of the Co-operative Societies has given a complaint to the 1st respondent against the petitioner. After investigation, the 1st respondent has filed a final report, which was taken on file as C.C.No.5 of 2010 on the file of the learned Judicial Magistrate No.IV, Erode.

3. The learned counsel appearing for the petitioner would submit that as per Sub-section (4) of Section 82 of the Tamil Nadu Co-operative Societies Act, the inspection should be completed within a period of three months and in any event, not exceeding a further period of three months extension granted by next higher authority to the Inspection Officer. In the instant case, admittedly, the inspection was ordered by the Deputy Registrar on 16.05.2008 and the inspection report was submitted on 01.12.2008, ie., beyond the maximum prescribed period of six months and hence, the entire inspection report made in utter violation of the statutory provisions would amount to ex-facie illegal, void and non-est in law, in the light of the settled principal of law that order without jurisdiction is a nullity and that a void order cannot form any valid basis besides rendering all subsequent proceedings thereon as invalid.

4. Adding further, the learned counsel would submit that the petitioner was holding the post of Secretary at the relevatn time, which is a Chief Executive Post of the said Bank and the officer cadre. Whereas, the FIR has been registered for the offence under Section 408 IPC., which talks of criminal breach of trust committed by clerk or servant and not the Chief Executive or Officer of the establishment. Therefore, the case in Crime No.2 of 2009 culminated into case in C.C.No.5 of 2010, for the alleged commission of offence under Sections 408 and 477-A IPC., is wholly without jurisdiction, contrary to the Rule of Law, as such amounts to sheet abuse of process of law and hence, the same is liable to be quashed.

5. The learned Government Advocate (crl.side) appearing for the 1st respondent would submit that the petitioner was working as Ex-Secretary-cum-Chief Executive of A.A.186, Thindalmalai Primary Agricultural Co-operative Bank Limited, Sengodampalayam in Erode, which is registered and governed by the provisions of the Tamil Nadu Co-operative Societies Act and Rules. The petitioner was due to retire from the said Co-operative Bank on 28.02.2007. A disciplinary proceedings was pending against the petitioner on the date of retirement. Therefore, the Joint Registrar of Co-operative Societies / Chairman, Erode, by letter dated 28.02.2007, instructed the Special Officer of the said Co-operative Bank, to relieve the petitioner on his superannuation without prejudice to the result of the disciplinary proceedings. As such, the terminal benefits of the petitioner has been

deferred by the Deputy Registrar. Under such circumstances, the petitioner, abusing his post as the Chief Executive of the said Co-operative Bank, in violation of the said order of the Deputy Registrar, had withdrawn the amount, without the knowledge or permission of the officers concerned. Based on the complaint, an investigation was conducted and a case in Crime No.2 of 2009 was registered against the petitioner and final report was filed, which was taken on file as C.C.No.5 of 2010, which is pending on the file of the learned Judicial Magistrate No.IV, Coimbatore. In the meanwhile, the petitioner has moved this Court and obtained an order of interim stay and in view of the interim order granted by this Court, the entire proceedings is stalled. Therefore, prayed for dismissal of the Criminal Original Petition.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the records and the categorical findings of the Enquiry Officer under Section 82 of the Tamil Nadu Co-operative Societies Act, would clearly show that the funds of the Society had been misused by the petitioner, abusing his post as the Chief Executive of the said Co-operative Bank, in violation of the specific order of the Deputy Registrar. Further, there are sufficient oral and documentary evidence found against the petitioner. The points raised by the petitioner are to be agitated only during trial. In view of the same, this Court is not inclined to grant the relief, as prayed for by the petitioner.

8. In the result, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate No.IV
Coimbatore.

2.Do Thro Chief Judicial Magistrate,
Coimbatore.

3.The Inspector of Police,
Commercial Crime Investigation Wing (II)
Erode.

4.The Public Prosecutor,
Madras High Court,
Madras

+1cc to Mr.P.Muthukumarasamy, Advocate, S.R.No. 1159

Crl.O.P.No.13727 of 2010

VG II(CO)
GN(18/02/2019)