IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2019

PRONOUNCED ON : 05.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.10668 of 2019 and
W.M.P.Nos.11135 & 11136 of 2019

R.Krishnaraj ... Petitioner

Vs

1.The Joint Registrar,
Co-operative Societies,
Cuddalore Region,
Cuddalore District.

2.The Deputy Registrar,
Co-operative Societies,
Cuddalore Region,
Cuddalore District.

3.The Co-operative Sub Registrar/
Enquiry Officer,
The Cuddalore Agricultural Producers
Co-operative Marketing Society,
Cuddalore District.

4.The Inspector of Police,
Commercial Crime Investigation Wing,
Cuddalore Region,
Cuddalore District. ... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of certiorari calling for the records in connection with the order passed by the first respondent, Joint Registrar, Cuddalore bearing Ref.No.Na.Ka.283/2017 dated 04.03.2019 and consequently the proceedings viz., Section 81 of the Enquiry Report of the third respondent dated 01.04.2014 and quash the same.

For Petitioner :Mr.M.Kavi Veerapan

For Respondents 1 to 3 :Mr.L.P.Shanmugasundaram
Special Government Pleader

For 4th Respondent :Mr.N.Inbanathan,
Additional Government Pleader

ORDER

The petitioner was Special Officer in the Co-operative Agricultural Marketing Society at Cuddalore between 07/07/2010 and 07/06/2012. Noticing large scale irregularities in disbursement of loans, the Deputy Registrar Co-operative Societies, Cuddalore, ordered enquiry on 24/09/2013. The enquiry officer who conducted enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "the Act") submitted his report on 01/04/2014 wherein, he has observed that the Special Officer (the petitioner herein) in connivance with the Accountant (K.Karunanithi) had done the following irregularities:-

(i) The petitioner and Accountant (K.Karunanithi) had illegally advanced produce loans to 18 persons without deposit of the produce (paddy) in the notified godown and the uncrossed cheques to the tune of Rs.36 lakhs were issued jointly by this petitioner and Karunanithi (Accountant).

ii) The loans repaid against the produce loans were not credited into the society account. The Accountant - Karunanith did not keep the accounts updated. The petitioner being the Supervisory Authority had failed in his duty and facilitated misappropriation of the the loan amount repaid by the members. Thereby caused loss to the society to a tune of Rs. 42.70 lakhs.

ii) Vouchers were fabricated as if paddy was procured in the name of persons non-existing. Then, sale bills were prepared as if the paddy so procured were sold in credit to paddy dealers and individuals. Those sale proceeds were shown as un-recovered dues for more than three years. Thereby a sum of Rs 48,29 lakhs were appropriated.

2.The Enquiry Officer after finding that in total a sum of Rs.1,26,99,000/- was misappropriated by the petitioner and Karunanithi, has concluded that, the sum so misappropriated has been repaid later by Karunanithi along with interest. However, the criminal intend and knowledge to misappropriate the money of the society is primafacie made out, hence, recommended for criminal prosecution.

3.The said recommendation of the Enquiry Officer to initiate criminal prosecution was challenged by the petitioner in W.P.No.21776 of 2014 on the ground that under Section 81 of the Act, the Enquiry Officer has no power to recommend for criminal prosecution. As a Supervisory Authority for more than 7 societies, the Special Officer/the petitioner herein cannot be held criminally liable for the misdeeds of the Accountant of a society under his supervision.

4.The Registrar of Cooperative Societies, in his proceedings dated 11/12/1991 has instructed that though the special officers in charge of a society may have overall control, they cannot be held to be criminally liable for all the irregularities committed by the staff working under them. It may be dealt with disciplinary proceedings but does not deserve criminal action. Further, crop loans were disbursed on the recommendation of the Accountant and the petitioner herein as Special Officer, based on the recommendation of the Accountant and verification, signed the cheques. The said writ petition was dismissed on 28/04/2016 with the following observations:-

> “6.It has to be pointed out that in the said case, the challenge was to the final report filed by the respondent therein, based on the report of the Deputy Registrar/Investigating Officer, which was submitted after a detailed enquiry/investigation. But however, in the instant case, the matter has not travelled to such a position, in the light of the fact that the proceedings are only in the state of a report. Therefore, as pointed out earlier, the present writ petition is premature. It is needless to state that when the report reaches the third respondent, the third respondent should not be solely guided by the report of the second respondent, but as an Investigating Officer, he should investigate, whether any criminal offence has been committed. While doing so, he should also bear in mind the circular dated 11.12.1991 issued by the Registrar of Co-operative Societies.”

5.Aggrieved by this order, the petitioner has preferred intra court appeal and the Hon'ble Division Bench vide order dated 20/10/2016 in W.A.1275 of 2016 has held as below:-

> "10. In our considered view, the contention of the learned Senior counsel appearing for the appellant that the appellant has nothing to do with the affairs of the society and he is only the Special Officer and he was unnecessarily implicated in the criminal proceedings, and that the appellant had no connivance for commission of the offence much less no way connected with the misappropriation, is bereft of any merit.
>
> 11. The fact remains that the appellant was very much entrusted with the supervisory work as regards the functioning of the society. However, the contention of the appellant that the misappropriation alleged would not come under his nose much less also came to the light of the society and on enquiry, the Enquiry Officer found that Mr.K.Karunanidhi was holding entire responsibility for the irregularity and subsequently, the said K.Karunanidhi has also paid Rs.1 crore 26 lakhs to the society. As such, the issue to be considered in this Writ Appeal is that whether there is any connivance of the appellant in his personal capacity arise at all and whether he is totally innocent. These are ultimately to be considered before the Revisional Authority and in the writ jurisdiction, this court cannot conduct any roving enquiry in this regard.

> 12. On such fact finding, the very Authority provided under the statute while going into the allegations of misappropriation or connivance , shall also safeguard the interest of the appellant. All the contentions are left open to the appellant to raise it before the appropriate statutory authority within one month from

the date of receipt of a copy of this order. Thereafter, it is for the statutory authority to issue due notice to the other side and consider the issue in detail and pass appropriate orders in accordance with law."

6.In the above said circumstances, the statutory appeal preferred by the petitioner before the first respondent has been considered and dismissed on 04/03/2019. The said order is under challenge in this writ petition.

7.The perusal of the affidavit filed in support of this writ petition and on hearing the submission of the learned counsel for the petitioner, this court finds that there is no new ground raised by the petitioner except reiterating the same reasons raised by him in the earlier round of litigation.

8.The learned counsel for the petitioner would state that the Accountant was the person responsible for the alleged misappropriation and he has admitted the guilt and repaid the entire amount with interest to the Society. Being a temporary misappropriation, the society has not lost anything monetarily. While so, besides lack of authority with the Enquiry Officer to recommend criminal prosecution, the limitation to take cognisance of the complaint for misappropriation has also expired. The Appellate Authority/first respondent has failed to consider these aspects and dismissed the revision petition filed by the petitioner.

9.No doubt, the plain reading of Section 81 of the Act does not expressly say that the Enquiry Officer may recommend criminal prosecution. But then, the Registrar of the Co-operative Societies has issued a Master Circular to all the parties concerned regarding the procedures to be followed while conducting enquiry under sections 81 and 82 of the Act. In this circular, Clauses 19.3 and 19.4 read as below:-

"19.3 : Depending upon his findings, the E.O may have to give separate reports on the following:-

(i)Report for prosecution

(ii)Report for surcharge under Section 87

(iii)Report for taking disciplinary

action against the erring staff

(iv) Report for disqualification or removal under section 36

(v) Report for suspension of paid officer or servant under Section 76

(vi) Report for winding up of the society under Section 137.

(vii) Report for superssion of the Board u/s 88 of the Act.

19.4 In such cases, the enquiry report should be prepared separately or in separate portions, in the report in a self contained manner i.e, in such a manner that the irregularities warranting particular action are clearly brought out in those parts without mingling with the facts relating to other aspects. Such parts of enquiry/report should be self contained to enable the officers to pursue action thereon without reference to other parts of the report. This will also enable the communication of the relevant part of the enquiry report to the person/persons concerned without disclosing the other portions of the enquiry report which may contain materials not connected to the particular portion / aspect and which may some times contain also misdemeanor of other persons and the action suggested therefor."

10.In view of the fact that the act does not bar the Enquiry Officer recommending criminal prosecution and in the light of the circular, the Enquiry Officer under Section 81 of the Act, is well enpowered to recommend criminal prosecution. The plea of the petitioner that the Enquiry officer lack power to recommend criminal prosecution is not sustainable.

11.The learned counsel for the petitioner would further state that, the enquiry report is not in the manner the Circular prescribes. Then again this contention is also untenable, because, it is not the format but the content is relevant. Non compliance of format will not vitiate the proceedings. It is for the Investigating Agency to decide 'whether the complaint, if any, contain materials for investigation and possible to prosecute in the Court of law'. The Registrar in his proceedings dated 11/12/1991 has not given a blanket immunity to Officers involved in criminal act. He has only emphaised that Departmental Officers who are not directly involved in the fraud or misappropriations need not be included as delinquents in a routine manner, in the inquiry reports or complaints filed with the police.

12.In this case, on facts, the Enquiry Officer has recorded statements of staff and observed that the loans were granted on the recommendation of the petitioner. He has not ensured, 'whether the paddy were deposited in the authorised godown for the loans advanced'. The accounts were not updated for a long period and as Supervisory Officer, the petitioner had knowingly allowed this lapse. Since primafacie material to launch criminal complaint, were available, the Enquiry Officer has recommended for it.

13.The first respondent has also gone at length to consider the evidence before him and has confirmed the findings of the Enquiry Officer by assigning reasons. There is no illegality or infirmity in his finding to interfere. As pointed out by the learned Single Judge of this Court, in the earlier round of litigation, the Police is not going to act solely by the report. It is for the Investigation Officer to consider about the evidence available and facts likely to be collected if the criminal case to be registered and investigated. At that time, the Investigating Officer will take note of the repayment and limitation. These aspects are left to the wisdom of the 4th respondent. As far as the challenge against the order passed by the Enquiry Officer as confirmed by the Appellate Authority in the revision is concerned, it is held to be devoid of merits.

14.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

jbm

To

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Cuddalore District.

+1cc to Mr.M.Kavi Veerapan, Advocate SR.No.66820

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.66869

W.P.No.10668 of 2019

MG(CO)
GMY(06/08/2019)