IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.OP No.13330 of 2017
and
Crl.M.P.No.8629 of 2017

P.Parimaladevan .. Petitioner

Vs.

State by
The Inspector of Police,
CCIW CID, Vellore,
Vellore District.
(Crime No.23 of 2014) .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records concerned in C.C.No.453 of 2016 on the file of the learned Judicial Magistrate-II, Vellore, Vellore District and to quash the same insofar as the petitioner is concerned.

For Petitioner :Mr.C.Prakasam

For Respondent :Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

The petitioner herein has been arrayed as the second accused in the charges framed against him in C.C.No.453 of 2016 on the file of the learned Judicial Magistrate-II, Vellore, Vellore District. Challenging the same, the present petition has been filed.

2. Heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.C.Iyyapparaj, learned Additional Government Pleader appearing on behalf of the respondent.

3. The short ground that arises for consideration in the present petition is during the course of the appeal filed by the petitioner herein against the surcharge proceedings dated 10.06.2015 under Section 156(6) of the Tamil Nadu Co-operative Societies Act, 1983, the Tribunal had passed orders on 26.04.2017 in CTA.No.14 of 2015, in which it has been specifically found that during the time of occurrence, the petitioner herein was engaged in the leave vacancy of the first accused.

4. On 27.02.2015, the first accused/Rajamurthy had confessed that he was totally responsible for the monetary loss and that he alone was the cashier during the relevant point of time. The statement of the first accused was that he would recover the amount and hold himself fully responsible for the loss. Based on these specific findings, the surcharge proceedings as against the petitioner herein came to be set aside by the Tribunal. It is also submitted by the learned counsel for the petitioner that pursuant to the orders of the Tribunal, the entire monetary loss was also recovered from the first accused by the society. This Court had already taken a view that whenever the delinquent is exonerated from the surcharge proceedings, the criminal proceedings pending against him can be quashed.

5. In the case of T.Elengo vs. State represented by the Inspector of Police, Commercial Crime Investigation Wing-CID, Cuddalore and another [Crl.O.P.Nos.1734 to 1737 and 19846 of 2017, dated 15.11.2017], this Court has held that an employee in a Supervisory capacity cannot be held responsible for criminal action. Relevant portion of the order reads as follows:

> '7.The main ground on which the petitioner is implicated is that he had not properly supervised and administered the entire collection and therefore, he is liable for the criminal offences. It is not in dispute that the amounts alleged to have been misappropriated were collected from the depositors by the first accused and the same was remitted to the society even before the FIR was filed. It is further not in dispute that the period of misappropriation as per the investigation is between 1998 and 2008, during which period the petitioner herein was in-charge as a Supervisor of the society between 10.10.2002 and 31.10.2004. Even during the relevant period, the petitioner was also working as Special Officer of 8 societies and was the supervising Co-operative Sub Registrar of 7 other societies. Insofar as the Nevyali Co-operaitve Housing Society is concernd, the petitioner was employed as a Supervisor during the relevant period and deputed as in-charge of the Society as additional charge. On a perusal of the FIR and charge sheet, it is seen that the basic ingredients for the alleged

offences are conspicuously absent. Apart from that I am unable to comprehend as to how any loss could have occurred to the Society, in view of the fact ath the first accused had remitted the entire amount to the society even before the FIR came to be registered. At the most, the petitioner can be implicated for negligence and as such, it cannot be said that the petitioner had conspired for the purpose of misappropriating the money or that he had the mens-rea to commit any of the other offences.

8......

9.The same proposition has been taken by another judgment in G.Selvakumar v. State through Inspector of Police, C.C.I.W.CID, Tirunelveli reported in 2011 (2) MLJ (Crl.) 608. Following is the extract of the said proposition:-

> 7.It is a settled proportion of law that to constitute an offence, two basic elements are required, 1.'actus reus' and 2.'mens rea'. In the aforesaid decision of the Hon'ble Supreme Court, it is made clear that misbehaviour or misconduct leads to disciplinary proceedings, which would not be sufficient to be construed as guilty mind or 'mens rea' to initiate a criminal proceeding. It is an admitted fact that the petitioner herein was working in a supervising capacity as Field Manager of Central Co-operative Bank, hence, in the absence of conspiracy or any factor relating to conspiracy between the petitioner and the accused A1 to A3, who subsequently, paid the amount, it cannot be decided that there were mens rea to initiate criminal proceeding against the petitioner/A8, apart from the findings of the departmental proceeding.

10.In the light of the aforesaid judgments and by correlating the case of the second respondent that there was lapses on the part of the petitioner in his capacity as a supervisor, I am constrained to hold that there could be no conspiracy between the petitioner and the other accused or mens-rea to commit the offences.'

6. Likewise, this Court, in a batch of cases, in the case of Anbalagan vs. State represented by the Inspector of Police, C.C.I.W., CID., Thiruchirappalli and another, [Crl.O.P.(MD)Nos.20309 to 20320 of 2016 and 20309 to 20320 of 2016, dated 20.07.2018] held so in the following manner:

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

Prosecution against the Departmental Officers:-

''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.........

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.'

7. The aforesaid decisions are self explanatory and the same principle has been reiterated in various other decisions of this Court as well. As such, the over all legal position is that when an employee of the Society is found liable for Supervisory lapse, the same will not constitute any criminal action against him. Likewise, if such an employee has been exonerated in the proceedings under Section 87 of the said Act, it has to necessarily be implied that he had neither misappropriated nor fraudulently retained the money or other property, nor is guilty of breach of trust or willful negligence. The offences for which the petitioner has now been charged with, are in effect, the very same overt acts for which

he has been exonerated in the enquiry under Section 87 of the said Act.

8. In view of the orders of the Tribunal passed in CTA.No.14 of 2015 dated 26.04.2017 as well as the aforesaid decision of this Court, I am of the view that the petitioner is entitled to succeed. Consequently, the proceedings in C.C.No.453 of 2016 on the file of the learned Judicial Magistrate-II, Vellore, Vellore District stands quashed insofar as the petitioner is concerned and the Criminal Original Petition stands disposed of. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Vellore, Vellore District.

2.The Inspector of Police,
CCIW CID, Vellore,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.C.Prakasam,Advocate Sr.No. 92092

AKM/14.02.2020/8P- 5C /

Crl.OP No.13330 of 2017
and
Crl.M.P.No.8629 of 2017