

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P. No.17100 of 2017
and
Crl.M.P. Nos.10495 & 10496 of 2017

D.Sripathy ... Petitioner/Accused 3

Vs.

State by

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

..Respondent/Complainant

2.The Deputy Registrar (Dairying)
Vellore - Thiruvannamalai District Milk
Producing Co-operative Union,
Poigai, Vellore.

... Respondent/Defacto
Complainant

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

For Petitioner : Mrs.R.Hemalatha

For Respondents : Ms.V.Saratha Devi
Government Advocate (Crl. Side)

O R D E R

This criminal original petition has been filed to call for
the records in C.C.No.453 of 2016 on the file of the Judicial
Magistrate No.II, Vellore, and quash the same insofar as the
petitioner is concerned.

2.The petitioner herein has been arrayed as 3rd accused,
against whom, charges for the offences punishable under Sections
406, 408, 465, 471 and 477(A) r/w. 109 of the Indian Penal Code
have been implicated.

3.The case of the prosecution is that there was gross negligence on the part of the petitioner/3rd accused in performing his duties and therefore, he is liable for the offences.

4.This criminal original petition is liable to be allowed on a short ground that, when the accused Nos.5, 6, 7 and 9 had approached this Court in CrI.O.P.No.27616 of 2016 as against the same charge-sheet, the final report as against them came to be quashed. This Court, while quashing the proceedings, had taken note of the fact that mere dereliction of duty or gross negligence in performing the duty, by itself, will not constitute an offence, since there is no criminal intent. Reliance was also placed on the decisions of the Supreme Court in Kulwant Singh @ Kulbansh Singh v. State of Bihar [2007 (15) SCC 670]. The relevant portion of the order of this Court made in CrI.O.P.No.27616 of 2016 dated 23.07.2019 reads as follows :

"8. It will be useful to refer to the order passed by this Court in CrI.R.C.No.1002 of 2017, dated 11.01.2018 wherein this Court discharged A8 from the proceedings.

"5.In dismissing the petition in CMP.No.936/2017, Court below has reasoned that it was the duty of the petitioner/A8, a staff at the Accounts Section to compare the Challan and Bank statements with the entries in the computer and that she had failed to do so. Such position finds support in the statements of L.Ws.2 and 3. Court below informed that the question of whether the petitioner has acted in collusion with the other accused, could be decided only at the trial, after examination of witnesses. The petitioner having been charged under section 109 IPC would have to face the trial.

6.Learned counsel for the petitioner submitted that in an enquiry conducted in keeping section 81 of the Tamil Nadu Co-operative Societies Act, It was A1 to A4 whose activities were probed. However, surcharge proceedings came to be initiated against the petitioner also and challenging the same, petitioner has moved the Tribunal which even while holding that A1 was the only person responsible, though it appropriate to impose a fine of Rs.100000/- on the petitioner for negligence. Learned counsel submits that such order of the Tribunal has been independently challenged.

7. Be that as it may, towards allowing this revision, this Court merely would refer to the judgment of the apex court in Kulwant Singh@ Kulbansh Singh V. State of Bihar reported in 2007[15] SCC 670, wherein the Apex Court has observed in paragraph No.12 as follows:-

"....

12 Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable.[see Joseph Kurian V. State of Kerala [1994] 6 SCC 535; 1995 SCC [Cri] 20]."

That in departmental proceedings, wherein the degree of proof is mere preponderance of probabilities as against proof beyond all reasonable doubt in criminal proceedings, the first accused alone was found responsible only strengthens the case of petitioner for discharge.

8. In the result the criminal revision stands allowed and the order under challenge dated 26.05.2010 in CMP.No.936/2017 in CC.No.453/2016 on the file of the Judicial Magistrate No.II, Vellore is hereby set aside

and the petitioner shall stand discharged in the case. Consequently, the connected miscellaneous petitions are closed."

The above findings given for A8 will also equally apply to the petitioners herein. The petitioners have been roped in as an accused only on the ground of abetment. In order to constitute an offence of abetment, mere failure to prevent a commission of an offence will not amount to an offence of abetment. There are no materials to show the direct involvement of the petitioners and at the best the petitioners can only be held liable for their dereliction of duty. This Court is not able to find even a strong suspicion as against the petitioners and there are no materials to sustain the same.

9. It is now a well settled law that a mere dereliction of duty or gross negligence in performing the duty by itself will not constitute an offence and it is important that there should be an element of criminal intent and the same is totally absent in the present case. The reasoning given by this Court to discharge A8 from this case, will equally apply to the petitioners also. The continuation of the proceedings as against the petitioners will amount to an abuse of process of Court.

10. In the result, the proceedings in CC.No.453 of 2016 on the file of Judicial Magistrate No.II, Vellore is hereby quashed insofar as the petitioners are concerned. Accordingly, this Criminal Original Petition is allowed and there will be a direction to the Court below to continue the proceedings insofar as other accused persons are concerned and complete the proceedings within a period of four months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

5. In view of the fact that the charge-sheet as against A5, A6, A7 and A9 have been quashed by this Court and their offences as reflected in the charge-sheet are similar to that of the petitioner herein, this criminal original petition is liable to be allowed. It would be pertinent to mention here that the surcharge proceedings initiated as against the petitioner herein under the Tamil Nadu Co-operative Societies Act also came to be quashed by the Tribunal in C.T.A.No.14 of 2015 by an order dated 26.04.2017.

6.In the light of the above observations, the proceedings in C.C.No.453 of 2016 on the file of the Judicial Magistrate No.II, Vellore, Vellore District, insofar as it relates to the petitioner herein/3rd accused, stands quashed. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

mkn

To

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

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

3.The Deputy Registrar (Dairying)
Vellore - Thiruvannamalai District Milk
Producing Co-operative Union,
Poigai, Vellore.

4.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.C. Prakasam, Advocate sr 82187(22/11/2019)

CrI.O.P. No.17100 of 2017

PVS(CO)
SP(25/10/2019)