



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.02.2019
PRONOUNCED ON : 30.08.2019

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

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CrI.O.P. (MD) Nos.1184 to 1189 of 2019
and
CrI.M.P. (MD) Nos.554 to 565 of 2019

- | | |
|----------------|--|
| 1.Balasundaram | ... 1 st Petitioner in CrI.OP (MD) No.1184/2019 |
| | ... 1 st Petitioner in CrI.OP (MD) No.1187/2019 |
| | ... 1 st Petitioner in CrI.OP (MD) No.1189/2019 |
| 2.Kailasam | ... 2 nd Petitioner in CrI.OP (MD) No.1184/2019 |
| | ... 2 nd Petitioner in CrI.OP (MD) No.1185/2019 |
| | ... Sole Petitioner in CrI.OP (MD) No.1186/2019 |
| | ... 1 st Petitioner in CrI.OP (MD) No.1187/2019 |
| | ... Sole Petitioner in CrI.OP (MD) No.1188/2019 |
| | ... 2 nd Petitioner in CrI.OP (MD) No.1189/2019 |
| 3.Arul | ... 3 rd Petitioner in CrI.OP (MD) No.1184/2019 |
| | ... 2 nd Petitioner in CrI.OP (MD) No.1185/2019 |
| 4.Nagarathinam | ... 4 th Petitioner in CrI.OP (MD) No.1184/2019 |
| | ... 4 th Petitioner in CrI.OP (MD) No.1189/2019 |
| 5.Shanmugavelu | ... 1 st Petitioner in CrI.OP (MD) No.1185/2019 |
| | ... 2 nd Petitioner in CrI.OP (MD) No.1189/2019 |

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Ramanathapuram.

2.Murugesan
Deputy Registrar of Co-operative Societies
Ramanathapuram Circle
Ramanathapuram.

.. Respondents in all CrI.OPs

Common Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in C.C.No.473/2007, C.C.No.474/2007, C.C.No.475/2007, C.C.No.478/2007, C.C.No.476/07 and C.C.No.477/07 respectively on the file of the learned Judicial Magisterial No.I, Ramanathapuram and quash the charge sheet and consequential further proceedings as against the petitioners.

For Petitioners : Mr.Shanmugaraja Sethupathy
in all 6 OPs.,



For R-1

: Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (criminal side)
in all 6 Ops.,

COMMON ORDER

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These petitions are filed to quash the final report, now taken cognizance of in certain criminal cases the details which would be provided in the subsequent paragraph.

2. The offence alleged pertains to defalcation of funds of District Central Co-operative Bank, Thiruvadanai Branch, Ramanathapuram District. The defalcation is said to have taken place between 1989 and 1992. The *modus operandi* adopted involves either to give a false credit to certain accounts, or falsely increase in amount remitted in certain other accounts. For this purpose, seven accounts of the branch were picked up, for which book of accounts were fabricated and falsified, and wrong credits were made. Later, this money was withdrawn. In these circumstances, an enquiry was ordered under Sec.81 of the Tamil Co-operative Societies Act, and in the enquiry report, it is stated that a total sum of Rs.5,22,554/- was detected to have been defalcated in all the seven accounts. Based on the enquiry report, the Joint Registrar of the Co-operative Societies, Ramanathapuram, had preferred a complaint, based on which a case in Crime No.6/2003 was registered. Subsequently, separate charges sheets were laid against each of the account and cognizance was taken in separate cases.

3. The petitioners herein were working in various capacities, from Manager of the said Co-operative Bank to Clerk cum cashier. They are arrayed in each of the cases which now concerns this Court. The details are provided in the table below :

Name of the Accused / petitioner s in all Crl.OPs	<i>Criminal Original Petitions & Related C.C.Nos. Pending before the Judicial Magistrate No.I, Ramanathapuram</i>					
	1184/201 9	1185/2019	1186/201 9	1187/201 9	1188/201 9	1189/20 19
	CC.473/0 7	CC.474/07	CC.475/0 7	CC.478/0 7	CC.476/0 7	CC.477/ 07
Balasundar am	A5	-	-	A3	-	A4
Kailasam	A6	A11	A7	A4	A6	A5
Arul	A7	A9	-	-	-	-
Nagarathin am	A9	-	-	-	-	A7
Shanmugave lu	-	A8	-	-	-	A6



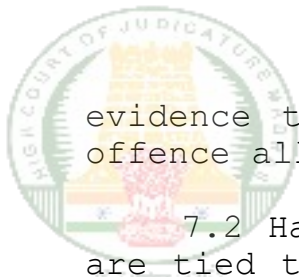
The petitioners face charges for offences under Section 120(b) r/w. 465, 467, 468, 471, 408, 477(A) r/w.109 IPC.

4. The learned counsel for the petitioners submitted that the entire defalcation of amounts was done by one Ganesan, a sub-staff of the Bank by falsifying the accounts of various account holders. None of the petitioners are involved in any of the defalcation. It is in this regard, a surcharge proceedings was initiated under Sec.87 of the Tamil Nadu Cooperative Societies Act. The petitioners along with other accused persons in each of the cases were found liable for the amounts defalcated in the respective accounts. This surcharge proceedings was challenged by Balasundaram, Kailasam and Pal Pandian in CMA(CS) No.8/2003 before the Principal District Court, Ramanathapuram. The District Court Vide its order dated 28/.10/2003, allowed the appeal. In his order, the learned District Judge has categorically held that based on the enquiry report, only Ganesan was found to be the kingpin of the entire defalcation. Since this finding has become final, it necessarily follows that present petitioners cannot be charged for commission of any offence.

5. Of the three, who had approached the District Court, Ramanathapuram in CMA(CS) No.8/2003, Balasundaram and Kailasam are petitioners herein. In fact, Kailasam is arrayed as an accused in all the six cases now under consideration, while Balasundaram is arrayed as an accused in three of the cases. (For details, the table above may be referred to)

6. The learned Government Advocate (CrI.Side) would submit that the District Court has primarily set aside the surcharge proceedings on the ground of limitation, and its finding that only a certain Ganesan was solely responsible for defalcation, is provided by it as an alternative reason. This apart, the basis for the decision of the learned District Judge is only the order passed in surcharge proceedings, and not any other material. In these criminal cases, the enquiry report under Sec.81 of the Act, is the basis and not the surcharge proceedings under Sec.87.

7.1 On carefully weighing the rival submission, this Court finds the submissions made on behalf of the respondent-State are far more convincing. The surcharge proceedings are initiated to fasten liability with a view to realise the amount due to the Co-operative Society. Though penal in nature, still it does not treat the acts of omission that led to loss to the Co-operative Society as a criminal offence. This angle has different dimension and that requires to be investigated. Here enquiry report indicates a few acts of omission on the part of the petitioners herein. But whether it will form an offence under Sec.120(b) IPC or Sec.109 IPC. is a matter for trial. An order of the Appellate Tribunal setting aside an order passed in the surcharge proceedings is too weak a piece of



evidence to conclude on the possibility of the commission of the offence alleged.

7.2 Having stated thus, it must be stated that the petitioners are tied to the criminal cases against them for well over a decade now. It is a shame on the system that the cases are not moving in any direction. It is a Constitutional imperative that trial of these cases is expedited and concluded within a stipulated time.

8. In conclusion, this Court does not find any merit in these applications and the same are dismissed. The trial Court is now requested to complete the entire process of trial within six months giving these cases a top priority. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Judicial Magisterial No.I, Ramanathapuram.
- 2.The Inspector of Police,
Commercial Crime Investigation Wing,
Ramanathapuram.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CrI.O.P. [MD]Nos.1184 to 1189 of 2019
and
CrI.M.P. (MD)Nos.554 to 565 of 2019
30.08.2019

CS(01.10.2019) 4P 4C