



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.11.2019
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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CRL.O.P.(MD)No.19123 of 2016 and
CrI.M.P.(MD)Nos.9579 & 9580 of 2016

M.Murugan ... Petitioner/2nd Accused/3rd Party
Vs.

1. The State rep. by,
The Sub Inspector of Police,
CCIW-CID, Nagercoil,
Kanyakumari.
(Crime No.1 of 2016) ... Respondent/Complainant/ Complainant
2. Dr.T.N.Priyadharshini,
Deputy Registrar,
Cooperative Society,
Nagercoil,
Kanyakumari District. ... Respondent/Informant/ Informant

PRAYER : Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in C.C.No.5 of 2016 on the file of the Judicial Magistrate No.2, Tirunelveli and quash the same as against the petitioner.

For Petitioner : Mr.N.Dilip Kumar

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side).

O R D E R

The petitioner is facing trial in C.C.No.5 of 2016 on the file of the Judicial Magistrate No.II, Tirunelveli, for the offences under Sections 408, 471, 477(A) r/w 34 of I.P.C.

2. The defacto complainant in this case is the second respondent herein. The defacto complainant enquired into the affairs of Y-160 Vadasery Co-operative Stores Limited and found out that loss to the tune of Rs.1,40,780/- was caused during the period from 01.04.2013 to 30.04.2013. During the relevant time, Thiru.Murugan, the petitioner herein was the President of the said Co-operative Society. The second respondent herein lodged a complaint before CCIW-CID, Nagercoil, in this regard. Crime No.1 of 2016 was registered. It was investigated and final report was filed against



the petitioner herein and one Jeyanthi. The said Jeyanthi was the Manager of the society. She was shown as the first accused.

3. Even according to the prosecution, the petitioner is liable for having caused loss to the tune of Rs.6,190/-.

4. Heard the learned counsel on either side.

5. The case projected by the prosecution is that the petitioner had put his signatures in vouchers enabling the withdrawal of a certain sum of money. After the petitioner affixed his signature, the figures were altered and a higher sum was withdrawn from the Bank account. One of the witnesses, namely, Dhanesh, in his statement recorded under Section 161(3) of Cr.P.C. states that the petitioner ought to have verified the relevant records and if he had done so, the misappropriation by withdrawal of excess amount would have come to light. By not doing so, the petitioner herein had caused loss to the society.

6. It is admitted by the learned counsel on either side that in this regard, surcharge proceedings were initiated against the petitioner and that they are still pending. It appears that the petitioner had challenged the same and obtained an interim order also. Be that as it may, what is projected is negligence and a certain lack of supervision. This cannot be sufficient to attract any penal liability. It is not the case of the prosecution that the petitioner had misappropriated the said amount of Rs.6,190/-. The case of the prosecution is that on account of the inaction on the part of the petitioner, the said amount had been misappropriated by the first accused.

7. I am clearly of the view that the materials relied on by the prosecution are wholly insufficient to make out even a *prima facie* case against the petitioner herein. None of the ingredients of the offences with which he has been charged can be said to be present. The petitioner did not commit any breach of trust. He had not altered the relevant vouchers. Therefore, the materials relied on by the prosecution are sufficient only to prosecute the first accused Jeyanthi.

8. In this view of the matter, the impugned prosecution stands quashed as far as the petitioner is concerned. The criminal original petition stands allowed, on these terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar (CS)



1. The Judicial Magistrate No.2,
Tirunelveli.
2. The Sub Inspector of Police,
CCIW-CID, Nagercoil,
Kanyakumari.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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MK (18.02.2020) 3P 4C