IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2820 of 2019 &
C.M.P.No.18029 of 2019

R.Krishnaraj ...Appellant/Writ 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,
Cuddalore Agricultural Producers
Co-operative Marketing Society,
Cuddalore District.

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

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order 05.08.2019 passed in W.P.No.10668 of 2019.

Prayer in W.P.No.10668 of 2019:

Writ Petition praying to issue a Writ of Certiorari Calling for the records in connection with the order passed by the first respondent bearing Ref.No.Na.Ka.283/2017 dated 04.03.2019 and consequently the proceedings viz Section 81 of the Enquiry Report of the 3rd respondent dated 01.04.2014 and quash the same.

For Appellant : Mr.Raja
For M/s.Kavi Veerappan

For Respondents: Mr.P.H.Arvind Pandian
Additional Advocate General
Assisted by Mrs.T.Girija

Government Advocate (Co-op.)

JUDGMENT

P.VELMURUGAN,J.

The unsuccessful writ petitioner is the appellant herein. This intra-court appeal is directed against the order dated 05.08.2019 passed in W.P.No.10668 of 2019, whereby, the learned Single Judge confirmed the order passed by the Revisional Authority / first respondent, and dismissed the Writ Petition.

2.The relevant background facts of the case are that:-
The appellant was working as Special Officer in the Co-operative Agricultural Marketing Society at Cuddalore between 07.07.2010 and 07.06.2012. While so, the Deputy Registrar of Co-operative Societies, Cuddalore, noticing large scale irregularities in disbursement of loans, had ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 [hereinafter referred to as "the Act"] on 24.09.2013 and after completion of enquiry, the Enquiry Officer submitted his report on 01.04.2014, holding that the appellant in connivance with the Accountant-K.Karunanithi had misappropriated the funds of the Society and recommended for criminal prosecution. The said recommendation of the Enquiry Officer to initiate criminal prosecution was challenged by the appellant 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 and the said Writ Petition was also dismissed by this Court on 28.04.2016. Aggrieved by the said order, the appellant had preferred Intra Court Appeal in W.A.No.1275 of 2016 and the Division Bench of this Court, disposed of the Writ Appeal on 20.10.2016, by directing the appellant to approach the Revisional Authority within a period of one month from the date of receipt of that order. Based on the directions given by the Division Bench of this Court, the appellant preferred Statutory Revision before the first respondent and the first respondent, after giving an opportunity, dismissed the Statutory Revision on 04.03.2019. The said dismissal order of the first respondent was challenged before this Court in W.P.No.10668 of 2019 and the learned Single Judge of this Court, after hearing the parties, had dismissed the Writ Petition on 05.08.2019. Challenging the said order passed by the learned Single Judge,

the appellant is before this Court by way of this intra Court Appeal.

3. The learned Counsel for the appellant has made the following contentions:-

(i) The Enquiry Officer while submitting his report under Section 81 of the Act has no power to recommend for criminal prosecution.

(ii) As per the Master Circular issued by the Registrar of Co-operative Societies, if the Enquiry Officer is of the opinion that the enquriy conducted by him reveals frauds, such as criminal misappropriation, criminal breach of trust, forgery, falsification of accounts etc., which are to be prosecuted under the IPC, he should submit a separate report for prosecution. As such, the Enquiry Officer only can recommend by submitting a report and no direction can be given in the report under Section 81 of the Act.

(iii) The Registrar of Co-operative Societies in his Circular in R.C.No.228696/90/CP.4., 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 and it may be dealt with through disciplinary proceedings, but that does not deserve criminal action. Further, the crop loans were disbursed on the recommendations of the Accountant-Karunanithi and the appellant, as a Special Officer, based on the recommendation of the Accountant-Karunanithi and verification, signed the cheques. Therefore, as per the Circular dated 11.12.1991, the Enquiry Officer, cannot recommend for criminal prosecution against the appellant for the misdeed done by the staff working under him.

(iv) The Accountant-Karunanithi was the person responsible for the alleged misappropriation and he has admitted the guilt and repaid the entire amount with interest to the Society and as such, there is no loss caused to the Society. Therefore, recommendation made by the third respondent / Enquiry Officer for initiation of criminal prosecution against the appellant was without any basis and futile exercise.

4. The learned Additional Advocate General for the respondents would submit that noticing certain irregularities in granting loans to the members of the Society, an enquiry was ordered. The Enquiry Officer, after enquiry, found that the appellant, in connivance with the Accountant-Karunanithi, misappropriated the funds of the Society and thereby ordered for criminal prosecution. Challenging the order of the Enquiry Report, the appellant without filing a Statutory Appeal, had

filed Writ Petition in W.P.No.21776 of 2014 and the same was dismissed. Against which, Writ Appeal in W.A.No.1276 of 2016 filed by the appellant was also dismissed with an observation that the appellant can seek his remedy by way of Statutory Appeal/Revision. Subsequently, the appellant has filed a Statutory Revision before the first respondent against the order of the third respondent/Enquiry Officer for initiation of criminal proceedings, which was also dismissed by the first respondent. Challenging the said order, the appellant has filed a Writ Petition and the learned Single Judge also found that there is no irregularity in the order passed by the first respondent while deciding the Statutory Revision. Hence, there is no merit in the Appeal and the Writ Appeal is liable to be dismissed.

5. We have considered the arguments advanced by the learned Counsel for the appellant and the learned Additional Advocate General for the respondents.

6. From a careful reading of the Enquiry Report of the Enquiry Officer under Section 81 of the Act, it could be seen that during the enquiry, the Enquiry Officer called for materials and recorded the evidence of the witnesses and the staff, who were working in the Society at the relevant point of time. From the materials, the Enquiry Officer found that the appellant, in connivance with the Accountant-Karunanithi, committed irregularities while granting grain loans and thereby, misappropriated the funds of the Society. Therefore, the Enquiry officer has given the finding that the appellant and the Accountant-Karunanithi have jointly committed the irregularities. The witnesses have also clearly deposed that the appellant without following the procedures, sanctioned the loans and also issued the cheques, even without obtaining paddy bags as collateral security for the loans to be sanctioned. After finding that the appellant misappropriated the funds of the Society in connivance with the Accountant-Karunanithi, the Enquiry Officer recommended for criminal prosecution.

7. The first limb of argument of the learned counsel for the appellant is that the Enquiry Officer while submitting his report under Section 81 of the Act has no power to recommend for criminal prosecution. However, the Master Circular issued by the Registrar of Co-operative Societies to all the parties concerned regarding the procedures to be followed while conducting enquiry under Section 81 and 82 of the Act, the Enquiry Officer is empowered for recommendation of criminal prosecution. At this juncture, it is apposite to refer 19.6 of the Master Circular, which reads as infra:-

" 19.6. Report for prosecution:-

If the E.O. is of the opinion that prima-facie the inquiry reveals frauds such as criminal misappropriation, criminal breach of trust, forgery, falsification of accounts, etc., which are offences under the IPC and require launching of prosecution he should submit a separate report for prosecution. This report for prosecution should invariably contain all the information as required in the Annexure-1."

Admittedly, in the case on hand, the Enquiry Officer found that the appellant in connivance with the Accountant-Karunanithi committed irregularities, while granting grain loans and thereby, misappropriated the funds of the Society. Therefore, as per the Master Circular, the Enquiry Officer has power to recommend for criminal prosecution.

8. Then, the second of limb of argument of the learned counsel is that as per Clause 19.6 of the Master Circular, the Enquiry Officer can only recommend by submitting a separate report and no direction can be given in the report under Section 81 of the Act. It is to be noted that under Clause 19.6, it is stated that, report for prosecution should invariably contain all the information as required in the Annexure-1. Annexure-1 of the Master Circular prescribes [Report on misappropriation], certain formats have to be followed while recommending criminal prosecution, i.e., 1) preliminary, 2) the delinquents, 3) the items of fraud, 4) the legal offences, 5) investigation, 6) Mens rea, 7) evidence. The Enquiry Officer, after going through the entire materials on record and evidence, came to the conclusion that the appellant in connivance with the Accountant-Karunanithi committed irregularities and recommended for criminal prosecution. Mere non-compliance of the format will not vitiate the entire proceedings. It is well settled that even a procedural lapse or irregularity which is not statutory or substantive nature ipso facto cannot make the enquiry proceedings vitiated on the ground alone unless the appellant successfully pleads causing of prejudice because of that procedural lapse. In this case, the appellant has not pleaded and proved that in what way he is prejudiced. As rightly held by the learned Single Judge, it is for the Investigating Agency to decide whether the complaint, if any, certain materials for investigation and possible to prosecute in the Court of law'. Therefore, the contention of the learned Counsel is untenable.

9. The third limb of argument of the learned Counsel is that the Special Officers were protected by the Circular of the Registrar of Co-operative Societies, dated 11.12.1991. Now, let this Court analyze the true intent behind issuance of the circular in R.C. No. 228696/90/CP1, dated 11.12.1991 by the

Registrar of Co-operative Societies, Chennai, the relevant portion of which reads as 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."

In the above Circular, the Registrar has not at all stated that no criminal action can be initiated against the Departmental Officers, who are all committed criminal offence like fraud or misappropriations and only has stated that for the criminal irregularities committed by the staff under the Departmental Officers, they can be dealt with through disciplinary proceedings but not the Officers holding chief executive or administrative and other supervisory post in the societies, though they may have an overall control. The Enquiry Officer has observed in his report that the appellant in connivance with Accountant-Karunanithi had done the following irregularities:-

> (i) The appellant 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-Karunanithi 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 unrecovered dues for more than three years. Thereby a sum of Rs 48,29 lakhs were appropriated.

Admittedly, in the case on hand, during enquiry, the Accountant-Karunanithi has given a statement that he did not know about the person who made entries in the record relating to purchase of paddy and they were introduced by the appellant and as per the instruction of the appellant, cheques were prepared, as if paddy was purchased and they were disbursed to them. Further, it is stated that no signatures of the joint members obtained, when they were admitted in the Society. Paddy bags are not accepted as collateral security, but as per the resolution, loan was sanctioned, cheques were issued in favour of joint members and signatures were forged and encashed through bank. During the enquriy, the appellant has stated that he forgot to obtain signature of the joint members and according to him, the secretary is looking after admission of members and as a Special Officer, he did not look after them. The Enquiry Officer, after recording the statement of the staff, has rendered a finding that loans were disbursed without obtaining paddy bags as collateral security and fabricated records were created for misappropriation of the amount. Further, the appellant in connivance with the Accountant has misappropriated the fund of the Society and therefore, recommended for criminal prosecution, which was also upheld by the Revisional Authority.

10. The Revisional Authority held that, it is the duty of the Special Officer to verify as to whether the sufficient paddy bags were accepted as collateral security and even without verification, he has done such acts. Further, when the appellant was working as Special Officer of the Society, he ought to have obtained the yearly market position of the Society prior for granting loan against paddy bags, but he did not follow such procedure. Further, he did not collect records from the joint members to prove that they are residing within the jurisdiction of the Society, but no such records were received, no resolutions were passed and no rental agreements were entered when paddy bags were kept in the godowns other than the Society and there is no record that the persons who availed loans have godown facility. Since there were prima facie materials available to initiate criminal prosecution against the appellant, the Enquiry Officer has recommended for criminal prosecution, which was also confirmed by the Revisional Authority. Therefore, the Circular of the Registrar of Co-operative Societies, dated 11.12.1991, is not strictly applicable to the present case on hand and hence,

the Circular will not be helpful to the case of the appellant, since, in this case on hand, there is a prima facie materials to show that the appellant himself has committed misappropriation. At the same time, it is appropriate to mention here that the Circular dated 11.12.1991, will protect the right of the innocent officers, who have not involved with the irregularities but not the Officers who have alleged to have committed fraud or misappropriation.

11. Yet another limb of argument of the learned Counsel is that the Accountant-Karunanithi had remitted the entire amount and as such, recommendation made by the first respondent for initiation of criminal prosecution against the appellant was without any basis and it would lead to futile exercise. It is to be noted that once the Enquiry Officer has found that the appellant is responsible for the alleged misappropriation committed during his tenure as Special Officer in connivance with the Accountant-Karunanithi, which was also confirmed by the Revisional Authority, mere repayment of the entire amount, will not absolve the criminal liability against the appellant. If such a scenario is accepted, it would lead to encourage the persons who are dishonestly misappropriate the public money. Therefore, the contention of the learned Counsel is unsustainable under law.

12. The learned Single Judge, while deciding the Writ Petition, had gone through the entire materials and also the finding rendered by the Enquiry Officer under Section 81 of the Act as well as the Revisional Authority, and given reason for dismissal of the Writ Petition. On a careful reading of the entire materials and the order of the Enquiry Officer and the order of the first respondent/Revisional Authority and the order of the learned Single Judge, we do not find any merit in the writ appeal.

13. In fine, the Writ Appeal fails and accordingly, it is dismissed. When the Writ Appeal came up for hereing, this Court has granted an order of status quo on 10.09.2019. In view of the dismissal of Writ appeal, the fourth respondent is directed to proceed with the investigation in the case in Crime No.5 of 2019 further in accordance with law. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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,
Cuddalore Agricultural Producers
Co-operative Marketing Society,
Cuddalore District.

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

+1cc to Mr.M.Kaviveerappan, Advocate Sr.32357
+1cc to the Special Government Pleader Sr.32651

W.A.No.2820 of 2019

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