BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 25.09.2023

Pronounced on: 10 .11.2023

CORAM:

**THE HON'BLE MR.JUSTICE P. DHANABAL**

Crl. O.P. (MD).No.5803 of 2020
and Crl.M.P.(MD).Nos.3360 & 3359 of 2021

Mr.K.Mohan ...Petitioner

Vs.

1.State Represented by
The Deputy Superintendent of Police,
C.C.I.W.,CID,
Trichy,
Trichy District.

2.State Represented by Inspector of Police,
C.C.I.W., CID Police Station,
Trichy,
Trichy District.
(Crime No.1 of 2014)

3.Mr.K.Athmanathan,
Deputy Registrar Co-Operative Sociteies,
Musiri Range,
Musiri,
Trichy District. ...Respondents.

**Prayer:**Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Charge Sheet in C.C.No.99 of 2016 for the offence u/s.408, 409, 465, 467, 468, 471, 477 (A) and 120 (B) r/w Section 34 of IPC, pending before the Learned Judicial Magistrate, Musiri Trichy District and quash the same as illegal as against the petitioner alone.

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| For Petitioner | : | Mr.R.Anand<br>for Mr.J.Pandi Dorai |
| For Respondents | : | Mr.M.Sakthi Kumar<br>Government Advocate<br>(Crl.Side) |

**ORDER**

This Criminal Original Petition has been filed to call for the records pertaining to Charge Sheet in C.C.No.99 of 2016 for the offence u/s.408, 409, 465, 467, 468, 471, 477 (A) and 120 (B) r/w Section 34 of IPC, pending before the Learned Judicial Magistrate, Musiri, Trichy District and quash the same as against the Petitioner.

**2.**According to the Petitioner he was arrayed as 8th Accused in the above said case in C.C.No.99 of 2016 on the file of Learned Judicial Magistrate, Musiri, Trichy District.

**3.1.**The prosecution case is that the Petitioner was working as a

President of Thulaiyanatham Primary Agricultural Cooperative Credit Society from 09.05.2013. The Petitioner as the President of the Society has sent a letter dated 21.10.2013 to the Deputy Registrar of Cooperative Societies, Musiri Range stating that one S.Murugesan, Secretary of the said Society has sanctioned loans in the name of the depositors without their knowledge by creating forged documents and thereby he has misappropriated a huge amount from the society. Based on the said letter the Deputy Registrar of Cooperative Society, Musiri Range had constituted a committee for disbursing the amount to the depositors and also for taking necessary actions against the persons concerned and further enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 was also conducted by appointing the Sub-Registrar of Cooperative Societies, Musiri as Enquiry Officer. The said Officer has conducted an enquiry under Section 81 of the said Act and submitted a report on 02.05.2014 stating that the former Secretary M.Pandian, the present Secretary S.Murugesan, senior clerk, K.Sivalingam have created documents as if loans were sanctioned to the depositors and misappropriated a sum of Rs.5,81,10,505/- and that the other accused persons including the Petitioner herein have colluded and abetted the aforesaid persons to commit misappropriation. Based on that report, the Second Respondent has sent a complaint to the Superintendent of Police, C.C.I.W., CID and he in turn forwarded the same to the Inspector of Police C.C.I.W., CID, Thiruchirappalli/Respondent No.2. Thereafter the 1st Respondent has registered a case in Crime No.1 of 2014 under Sections 403, 406, 408, 409, 420, 468, 471, 477 – A and 120 (B) r/w. Section 34 of IPC, after investigation the 1st Respondent filed twelve charge-sheets. Based on the said charge-sheets the Learned Judicial Magistrate, Musiri has taken the cases on file.

**3.2.**The allegation of the Prosecution case is entirely false and the Petitioner did not commit any offence as alleged by the Respondents. The Enquiry Officer has not stated in his report any connivance or collusion by the Petitioners with others to cause loss to the society. The Investigation Officer also has not produced any materials to show that the Petitioners has colluded with the other accused persons and he has helped them for committing misappropriation of the Society's funds.

**3.3.** As per the Bye-Laws of the Society, the Secretary is the Chief Administrative Officer of the Society and as per the resolution dated 04.01.2012, it is the duty of the Secretary to sanction loans and the

Petitioner being a President cannot have direct control over the same. The Petitioner being the President was entrusted with the duty of supervision only. As per clause 8 of the Tamil Nadu Cooperative Manual and also the circulars issued by the Registrar of the Cooperative-Societies dated 08.08.1991 and 11.12.1991, no criminal action can be taken against the Officers who were appointed in supervisory posts.

**3.4.** The 2nd Respondent has lodged a complaint based on the Enquiry Report submitted under Section 81 of the said Act in the said Enquiry Report, nowhere it is stated that the Petitioner herein involved in the misappropriation of the Society Funds either directly or indirectly. The only allegation against the Accused/Petitioner is that he failed to supervise the work of the employees of the concerned Society and for that he cannot be prosecuted before the criminal court. At most, disciplinary proceedings can be initiated against him for the alleged dereliction of duty. Further based on the Enquiry Report under Section 81 of the Act, the surcharge proceedings were initiated and the same was set aside by the Learned Principal District Judge, Trichy in C.M.A (CS).No.24/2017 dated 12.02.2019. While so, for the same charges, criminal proceedings cannot be initiated. Therefore, the pending charge-sheet against the Petitioner is liable to be quashed.

**4.1.**The 1st Respondent has filed counter stating that the Petitioner/ Accused was elected as the President of the R-963 Thulaiyanatham Primary Agricultural Co-operative Society by the executive member through their resolution No.3 dated 09.05.2013. As per by law, the President of the Society is responsible to safeguard and protect the Society fund, supervise all the transactions and verify that the transactions are genuine and inspect the accounts, maintain the records and ledgers of the Society. During his tenure till 19.09.2013, the Petitioner/Accused had criminal conspiracy with other accused with the criminal intention of committing criminal misappropriation of the Society fund by forging the records.

**4.2.** The Deputy Registrar of Co-Operative society of Musiri had given written complaint and based on that complaint an FIR has been registered and this Petitioner/Accused was cited as Accused No.10 in the FIR. The 1st Respondent investigated the case and filed a final report as against the Petitioner and the trial Court had taken cognizance in CC.No.99

of 2016. The Petitioner/Accused in pursuance of the conspiracy created forged documents and records as if 145 members of the society had applied for loan for a sum of Rs.1,36,10,000.00/- and the same has been sanctioned in the name of the the said 145 members and misappropriated without crediting in their accounts.

**4.3.**Further there is no relevance in respect of CRL.O.P. (MD).Nos. 20309 to 20320 of 2016. Since the case of the Petitioner is standing in a different footing, therefore, the above said case laws are not applicable to the present facts of the case. During the relevant period the Petitioner/Accused had been discharging as President of the Society and he is responsible for misappropriated public fund.

**4.4.**The Clause 8 of the Tamil Nadu Co-operative Manual is only applicable to the Departmental Officers who are working in foreign service in Co-operative organization as Chief Officers, holding additional charge of the post of Special Officers in more than one Co-Operative Societies and functioning as such. In this case, the Petitioner is not a departmental officer but he is an elected President elected by the executive committee. Hence, the Petitioner cannot take shelter under the Clause 8 of the said manual and the same is not applicable to the case on hand. Since he is the elected President of the Society and since the offence against the Petitioner is a conspiracy, it cannot be expected to be proved by direct evidences in all cases and it has to be inferred through the circumstances, therefore, this petition is liable to be dismissed.

**5.**The Learned Counsel appearing for the Petitioner/Accused would contend that this Petitioner was elected as President of the Society and he only made a complaint with regard to the misappropriation of funds but unfortunately this Petitioner name is also included in the proceedings under Section 81 enquiry and thereafter the surcharge proceedings under Section 87 was also issued as against this Petitioner and the same was set aside by the Learned Principal District Judge, Trichy in C.M.A (CS).No.24/2017 dated 12.02.2019. Thereafter, a complaint was given as against the accused including the name of the Petitioner and an FIR is also registered without any proper enquiry. Thereafter the First Respondent without conducting proper investigation filed charge-sheet against this Petitioner alleging that this Petitioner also conspired with the other accused. There is no any material to substantiate the alleged hatching of the conspiracy by the Petitioner with the other accused. There is no prior meeting of minds to constitute the offence of conspiracy without any materials, the 1st Respondent has filed charge-sheet as against this Petitioner. This Petitioner being the President of the Society had no role in respect of dealing with loan applications and his duty is to supervise and mere non-supervision of the acts of the other staff and functioning of the Society will not amount to criminal offence, already in a case of the similar nature placed person, the case was quashed by this Court in Crl.OP.Nos.20309 to 20320 as against one Anbazhagan who was serving as the Special Officer, therefore, this case is also covered by the aforesaid judgment. Hence the pending case against the Petitioner is liable to be quashed.

**6.** Mr.M.Sakthi Kumar, learned Government Advocate appearing for the Respondent would contend that the Registrar of Co-Operative Society had lodged a complaint before the 1st Respondent and he investigated the case and filed 12 charge-sheets as against the accused persons. This Petitioner involved in C.C.Nos.99, 100, 103, 107, 109, 111 and 112 of 2016. The total amount involved in these charge sheets is a sum of Rs.

5,81,10,505/-. This petition deals with CC.No.99 and this Petitioner/Accused conspired with the other Accused and thereby committed misappropriation of public funds. Therefore, the Petitioner has to face the Trial. The Petitioner is not a Department Official and he is elected President and thereby the Tamil Nadu Cooperative Societies Act, 1983 manual is not applicable to the Petitioner. However, already the case against the other persons were quashed who are the officers of the society but this petitioner was acting as President of the Society and thereby the said order will not applicable to this petition. The Petitioner being the President of the Society ought to have supervised the activities of the Society and he failed to discharge his duties and also he conspired with the other Accused and committed offence, therefore, the Petitioner has to face the Trial and the Petition is liable to be dismissed.

**7.**This Court has heard both sides and perused all the available materials on record.

**8.**It is an admitted fact that the Petitioner is the President of the Society and his duty is to supervise the Society activities. This Petitioner is not directly involved in the alleged occurrence and the Secretaries and other staff of the Society have misappropriated the funds of the Society. There is no allegation as against this Petitioner that he directly involved in the occurrence and he also has not signed in any documents. This Petitioner being the President of the Society ought to have supervised the activities of the society and he failed to discharge his duty as President. In order to attract the criminal offence, there should be some *mens-rea* and intention with regard to the commission of the offence. There are no materials available to show that this Petitioner conspired with other accused and only in the charge-sheet it is stated that this Petitioner conspired with the other accused but no materials available to substantiate the same. Already this Court also quashed the charge-sheet as against the other persons who were supervising the functioning of bank-account and activities. This Petitioner also has not directly involved in the alleged misappropriation of funds and thereby the judgments rendered by this Court in respect to other departmental officials can also be extended to this similarly placed person with regard to the nature of duty.

**9.** The Learned Counsel appearing for the Petitioner has produced the judgments in Crl.O.P (MD) Nos.8482 to 8494 of 2018 in ***M.Soundararajn and Anr Vs. The Deputy Superintendent of Police Commercial Crime Investigation Wing and Ors.*** Wherein this Court after referring to the decision in ***S.Gunasekaran Vs. State represented by Inspector of Police (supra),*** has observed in paragraph Nos.5 and 6 as follows:-

> *"5.It is further submitted that in similar facts, this court in 2008 (1) Crimes 681 (Mad.) (S.Gunasekaran Vs. State rep. By Inspector of Police) quashed the charge laid against the Special Officer categorically stating that criminal prosecution cannot be initiated for lapse/negligence in supervisory 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-today 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.This Court is of the 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 Cooperative 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 ingredient of the offences alleged against him.*
>
> *This Court is of the considered opinion that the judgment cited supra squarely applies to the case on hand. In such view of*

*the matter, this petition is allowed and the entire proceedings in C.C.No.124 of 2013 on the file of the Judicial Magistrate No.III, Trichy, is quashed as against the petitioner alone. Consequently, connected Miscellaneous petition is closed.*

*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."*

**10.** Further relied the judgment in Crl.O.P.(MD).Nos.20309 to 20320 of 2016, on the files of this Court, wherein this Court held in para 20 to 25:-

"20. With regard to the abetment of a thing, this Court in R.Gangatharan Vs. The State etc., and Ora. has observed as follows:-

"According to Section 107 I.P.C. A person abets the doing of a thing, who intentionally aids, by any act or illegal omission, the doing of that thing, will attract Clause No.3 intentional aiding and active complicity is the gist of the offence of abetment. If the act of the petitioner comes within Clause 3 of Section 107 IPC, then only it can be said that there is material to proceed further in the case. Petitioner is working as an Extension Officer and he has been deputed to check the jewel items on a particular date viz., 15.12.1988. It is not the case that the petitioner was also working along with the other accused involved in the case and therefore, it can be presumed that there must be conspiracy. The only allegation is that he had actually failed to physically verify some of the items of jewellery. This would only indicate the carelessness and negligence on his part and apart from that material, there is nothing to infer that he has got any mens rea to commit the offence. The statements recorded during the investigation and other

> materials did not indicate that there was any intentional aiding or abetting on the part of the petitioner. Furthermore, the enquiry conducted under the Co-operative Societies Act, gave a finding only in respect of the other accused. Under the circumstances, I am of the vies that there is no prima facie material to proceed further against the petitioner and even assuming that the entire averments are taken into consideration, there is remote possibility of the case ending in conviction against the petitioner and in my view, it is only an exercise in futility and as such, the proceedings has to be quashed."

21. In this case also, it is not the case of the prosecution that the petitioner was also working along with the other accused involved in the case and hence, it has to be presumed that there must be conspiracy. The only allegation against the petitioner is that he had failed to verify the accounts. So, the aforesaid decision will squarely apply to the facts of this case."

22. In Jethsur Surangbhai Vs. State of Gurjarat, AIR 1984 SC 151, the Hon'ble Supreme Court has observed as follows:

> 12. In a case of serious charges of defalcation of properties of a society mens rea cannot be excluded. Unless the prosecution proves that there was a close cohesion and collusion between all the accused persons which formed the subject matter of conspiracy, it would be difficult to prove the charges. Once the charge of conspiracy fails, the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the alleged acts or omissions. In absence of such direct evidence, the mere fact that the accused appellant happened to be the Chairman of the Managing Committee of the society would not make him criminally liable in a vicarious sense. It is not possible to accept somewhat broad statement of law that even the negligence on the part of the appellant Chairman would be a positive proof of his intention to commit the offence. On facts and in the circumstances of

> the case, the case against the appellant cannot be said to have been proved beyond reasonable doubt or at least it cannot be said that two views were not reasonably possible. Thus he was wrongly convicted by the High court."

23. In this case also, the prosecution has not produced any material to show that there was a close cohesion and collusion between all the accused persons which formed the subject matter of conspiracy. So, in view of the aforesaid decision, it is clear that the criminal proceedings cannot be initiated against the petitioner for his failure to discharge his duty properly. Such a negligence may create only a civil liability. In this case as already stated that the surcharge proceedings were set aside by this court. The charge memo issued in the disciplinary proceedings also quashed by this court. Therefore, for the same charges criminal proceedings cannot be initiated.

24. As observed by the Hon'ble Supreme Court in Jethsur Surangbhai vs. State of Gurjarat (Supra), in a case of serious charges of defalcation of properties of a Society mens rea cannot be excluded. In respect of the offences under Sections 408 and 409 of IPC., one of the essential ingredients is that there must be a dishonest misappropriation of property. "Dishonestly" is defined under Section 24 of IPC., which reads as follows:

> 24. "Dishonestly".-Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. In this case, it is not the case of the prosecution that the petitioner herein got any wrongful gain. Therefore, it cannot be said that the petitioner has dishonestly aided the other accused persons for committing misappropriation of the Society's funds. So the petitioner cannot be prosecuted for the aforesaid offences."

**11.**On careful perusal of the aforesaid judgments they revealed that already this Court has quashed the proceedings as against one Anbazhagan holding that the prosecution has not produced any material to show that there was close cohesion and collusion between all the Accused/Persons which form the subject matter of conspiracy and further it is clear that the criminal proceedings cannot be initiated against the Petitioner for his failure to discharge his duty properly. Such negligence may create a civil liability and already surcharge proceedings were set aside by the Court under the above said circumstances, the criminal proceedings cannot be initiated as against the persons who had not dishonestly aided and the other persons committed misappropriation. In the case on hand also the Petitioner being the President of Society not involved in this case directly and no *prima-facie* material available to constitute the offence of conspiracy and there is no allegation that this Petitioner has got unlawful gain. Therefore, this CRL.OP is liable to be allowed.

**12.**In view of the above said discussion, the charge-sheet proceedings in CC No.99 of 2016 is liable to be quashed as against this Petitioner and this Petition is allowed and the C.C.No.99 of 2016, on the file of Judicial Magistrate, Musiri, is quashed as against this petitioner. Consequently, Connected Miscellaneous Petitions are closed.

10.11.2023

Index : Yes/No.
Speaking : Yes/No.
NCC : Yes/No.
Nst

Copy to:

1.The Learned Judicial Magistrate,
Musiri
Trichy District.

2.The Deputy Superintendent of Police,
C.C.I.W.,CID,
Trichy,
Trichy District.

3.The Inspector of Police,
C.C.I.W., CID Police Station,
Trichy,
Trichy District.

4.The Public Prosecutor,
High Court,
Madras.

P. DHANABAL,J

nst

Pre Delivery Order in

Crl. O.P. (MD).No.5803 of 2020
and Crl.M.P.(MD).Nos.3360 & 3359 of 2021

10.11.2023

(1/7)