BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **06.10.2020**
CORAM:
THE HONOURABLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**
**Crl.O.P.(MD)No.16390 of 2016**
**and**
**Crl.M.P(MD)Nos.6136 and 8010 of 2016**

M.Chidambaram ... Petitioner/Accused No.4

Vs.

1.The Sub Inspector of Police,
Commercial Crime Investigation Wing,
Karur District.
(Ref:Crime No.02 of 2014)
....1st Respondent/Complainant

3.P.Balamurugan ...2nd Respondent/*Defacto* Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.03 of 2016 on the file of the Judicial Magistrate No.II, Kulithalai and quash the same and consequential all further proceedings as against the petitioner.

For Petitioner : Mr.Shanmugaraja Sethupathi
For R1 : K.Suyambulinga Bharathi
Government Advocate (Crl.side)

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**ORDER**

This petition has been filed to quash the proceedings in C.C.No.03 of 2016 on the file of the learned Judicial Magistrate No.II, Kulithalai as against the petitioner.

2.The learned counsel for the petitioner would submit that there are totally four accused, in which, the petitioner herein arrayed as 4th accused. The petitioner was working as a Circle Supervisor of the Trichirapalli District Central Co-operative Bank. His duty is to verify the loan application, submit to the concerned Primary Agricultural Co-operative Society and forward the same to the District Central Co-operative Bank. He further submitted that according to the second respondent, the petitioner has recommended for loan to the ineligible members, who had already obtained loan and not repaid the same. Admittedly, the first accused has forged the records, as if the loan sanctioned to the members was already closed and there was no due as on date of the submissions of the loan application. Only on the basis of fabricated document, the loan application has been forwarded to the petitioner for verification. The petitioner has recommended on the basis of the documents submitted along with loan application. Therefore, the petitioner has absolutely no knowledge about the documents submitted by the first accused and the members are genuine or fabricated one. Even assuming that the charge attributed against the petitioner is true, the petitioner can be attributed only for dereliction of duty warranting departmental proceedings and he cannot be held liable for any offence as alleged by the respondents herein.

3.He further submitted that even according to the case of the prosecution, no offence is made out as against the petitioner. The Secretary of the Society namely the first accused and other employees of the society have committed the offence. Admittedly, the petitioner did not involve directly in the crime and the only allegation is that he failed to supervise the society and as such, it would not amounts to any offence. Therefore, he sought for quashment of the entire proceedings as against the petitioner.

4.Per contra, the learned Government Advocate (Crl.side) submitted that on the complaint lodged by the Deputy Registrar of Co-operative Society, Kuzhithalai Circle, the 2nd respondent herein,on the basis of an enquiry report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, the first respondent has registered the case in Crime No.2 of 2014, for the offence under Sections 409, 467, 468, 471, 420, 477-A r/w 34 & 109 IPC, alleging that the first accused was working as a Secretary in Thimmachipuram Primary Agricultural Co-operative Society, he has committed various irregularities by giving loan to the members of the Society, the first accused had sanctioned loan to the ineligible members, who had obtained loan from the society and defaulted in repayment.

5.As per the terms of the loan agreement, the members, who had not repaid the earlier loan are not eligible for obtaining second loan. But, the first accused sanctioned loan to those members without adherence to the existing rule. Further alleged that the members of the society was repaid the loan amount, the first accused had misappropriated the same without crediting the said amount in the accounts of the society. The petitioner herein was being a circle supervisor of the Tiruchirappalli District Co-operative Society, he was supposed to verify the accounts as to whether there is any due payable to the Society by the members. The petitioner, without verifying the records, had recommended for granting loan to the members, who had not repaid the loan granted earlier. Therefore, the offence are clearly made out as against the petitioner and prayed for dismissal of the quash petition.

6.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) appearing for the first respondent.

7.There are totally five accused, in which the petitioner herein is arrayed as Accused No.4. According to the case of the prosecution, while the petitioner was working as a Circle Supervisor of the Tiruchirappalli District Central Co-operative Bank, he ought not to have verify the loan application and submit to the concerned Primary Agricultural Co-operative Society and forward to the District Central Co-operative Bank. The petitioner had recommended the loan to the ineligible members, who had already obtained loan from the society and defaulted in repaying the same. Insofar as the other charges are concerned, the first accused namely, the Secretary of the Primary Agricultural Co-operative Society had forged the records as if the loan sanctioned to the members was already closed and there was no due as on date of submission of the loan applications. On the basis of the fabricated the document, the loan applications were forwarded to the petitioner for verification. On the strength of the documents submitted to the file of the petitioner, he had recommended the loan applications to disburse the loan. Further, there is no pièce of evidence to show that the petitioner also connivance with other accused persons had recommended the loan applications. On perusal of records it is also revealed that the petitioner had no occasion to verify the documents, which was sent to the petitioner herein as genuine or fabricated one. As rightly pointed out by the learned counsel for the petitioner, utmost the charge of dereliction of duty can be invoked, as against the petitioner and no other offences are made out as alleged by the prosecution.

8. In the circular issued by the Registrar of Co-operative Societies, Chennai in R.C.No.228696/19/CP1 dated 11.12.1991 also, the same thing reiterated. For proper appreciation, the relevant portions of the said letter are extracted here 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."*

9. In S.Gunasekaran Vs. State represented by the Inspector of Police (supra), this Court has quashed the Criminal proceedings against the Special Officer stating that the Criminal prosecution cannot be initiated for lapse / negligence in supervising 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- to-day 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.In my 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 Co-operative 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 ingredients of the offences alleged against him."*

10. In N.Baskaran Vs. The State rep. by Inspector of Police, C.C.I.W., CID, Trichy (supra), 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-to-day 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 Co-operative 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.

11. With regard to the abetment of a thing, this Court in R.Gangatharan Vs. The State etc., and Ors. 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.*

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.

12. In Jethsur Surangbhai Vs. State of Gurjarat, AIR 1984 SC 151, the Honble 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.*

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.

13. 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.”*

14. In the case on hand, it is not the case of the prosecution that the petitioners herein got any wrongful gain. Therefore, it cannot be said that the petitioners have dishonestly aided the other

accused persons for committing misappropriation of the Society's funds. So the petitioners cannot be prosecuted for the aforesaid offences.

15.Therefore, the entire proceedings initiated as against the petitioner is nothing but clear abuse of process of law and cannot be sustained as against the petitioner.

16.For the aforesaid reasons, this Court is inclined to allow the petition. Accordingly, this Criminal Original Petition is allowed and the proceedings against the petitioner herein in C.C.No.03 of 2016 on the filed of the learned Judicial Magistrate No.II, Kulithalai is quashed. The trial Court is directed to proceed with the trial as against the other accused within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

vsd

To

1.The Sub Inspector of Police,
Commercial Crime Investigation Wing,
Karur District.
(Ref:Crime No.02 of 2014)

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. SHANMUGARAJA SETHUPATHI, Advocate ( SR-19482[F] dated 08/10/2020 )

**Crl.O.P.(MD)No.16390 of 2016**
**and**
**Crl.M.P(MD)Nos.6136 and 8010 of 2016**
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SE(CO)

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