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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.09.2021

PRONOUNCED ON: 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.13048 of 2021

V.Baskaran

...Petitioner

Vs.

1. The State of Tamilnadu,  
Rep by Inspector of Police,  
Vigilance & Anti-Corruption,  
Cuddalore.

2. G.Ramachandran.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records in F.I.R.No.1 of 2020 dated 12.02.2020 on the file of the 1<sup>st</sup> respondent and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Mr.E.Raj Thilak  
Additional Public Prosecutor  
(CrI. Side)

For R2 : No appearance

ORDER

This petition has been filed under Section 482 of Criminal Procedure Code seeking interference with investigation in FIR.No.1 of 2020 dated 12.02.2020 registered by the first respondent/Inspector of Police, Vigilance and Anti-Corruption, Cuddalore, under Section 7 of the Prevention of Corruption Act 1988 as amended by the Prevention of Corruption (Amended Act 2018).

2.The petitioner was working as a Secretary of Panruti Taluk



Co-operative Housing Society Ltd. He was arrested on 12.02.2020 on the ground that he received bribe of Rs.10,000/- from the second respondent for releasing the title deeds of the second respondent.

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3. Heard arguments advanced by Mr.M.S.Palaniswamy, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Government Advocate (Crl.side) for the first respondent.

4. Mr.M.S.Palaniswamy, learned counsel for the petitioner stated that the society, namely, Panruti Taluk Co-operative Housing Society Ltd., where the petitioner was working as a Secretary, was neither funded by the State Government nor by the Central Government. It was therefore, contended that the petitioner was not a public servant under the definition of Section 2(c) of the Prevention of Corruption Act 1988 as amended by the Prevention of Corruption (Amended Act 2018) in short (the 'PC amended Act'). It is also contended that the society itself, cannot be termed to be an organization of the state. It is stated that the society was governed by the Tamil Nadu Co-operative Societies Act which is a Special Act. It is also stated that any allegation of corruption committed by any employee of the Co-operative Society can be investigated only by a special wing viz., CCIW Police and not by the first respondent. The learned counsel relied on a Full Bench Judgment of this Court delivered in on 29.04.2021 in Crl.RC.(MD)No.612 of 2020 and Crl.M.P.No.5514 of 2020, K.Subramanian Vs. State through Inspector of Police, and contended that the Panruti Taluk Co-operative Housing Society Ltd., where the petitioner was working as a Secretary cannot be termed as an organisation of the State. Therefore, the petitioner cannot also be termed as a public servant and consequentially provisions of the PC amended Act cannot be applicable to the petitioner.

5. The learned counsel also relied on the Judgement of the Division Bench of this Court dated 06.03.2020 in W.P.No.28641 of 2019 and W.A.No.2253 of 2018 J.A.Murugan vs. Registrar of Co-operative Society and others for the very same contention and therefore, urged that this Court should interfere with further progress in the investigation, pursuant to the registration of FIR in Cr.No.1 of 2020 dated 12.02.2020 by the first respondent.

6. Mr.E.Raj Thilak learned Government Advocate (Crl. Side) for the first respondent pointed out the reasoning given in Full Bench Judgement (referred supra) and stated that the society in which the petitioner was working was funded by the Tamil Nadu Co-operative Housing Federation Ltd., which is an organization funded by the State. Therefore, by direct implication, the society was also an organisation of the State and therefore, the petitioner was a public servant. It was also pointed by Mr.E.Raj



Thilak learned Government Advocate (Crl. Side) that as a matter of fact, a Government Order waiving the loans obtained by the members of Co-operative societies had been issued and which fact itself shows that the Government has a controlling authority over the society. The learned Government Advocate (Crl.side) therefore, pointed out that the petitioner was a public servant and having committed an offence under Section 7 of the PC Act, further investigation is required as the offence is a cognizable offence.

7. The primary contention placed by Mr.M.S.Palaniswamy, learned counsel for the petitioner, was with respect to the status of the society, where the petitioner was working as a Secretary namely the Panruti Taluk Co-operative Housing Society Ltd. Along with the petition, the audit report of the society for the years in 2017 and 2018 has been filed. It is pointed out that the society was not at all under the control of the Government and the society cannot be described as an organisation of the State, since it is not directly funded by the state.

8.This contention is very seriously disputed by Mr.E.Raj Thilak learned Government Advocate (Crl. Side) appearing for the first respondent.

9. Section 2(c) (ix) of the PC amended Act is as follows:

2.(a).....

(b).....

(c) 'Public servant' means

(i)....

(ii)....

(iii)....

(iv)....

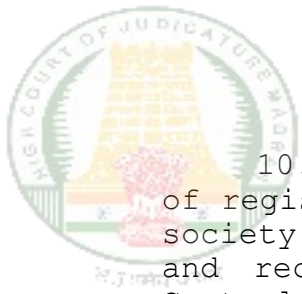
(v).....

(vi)....

(vii)...

(viii)....

(ix) any person who is the President, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the government or a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).'



10. A reading of the said provision reveals that a Secretary of registered Co-operative Society, is a public servant, if the society is engaged in Agriculture, Industry, Trade or banking and receives or had received financial aid either from the Central Government or State Government or from any corporation established by the Central or a State Government or controlled by the Government or by the Government company. In this case, the petitioner was working as Secretary of Panruti Taluk Co-operative Housing Society Ltd. That he was Secretary, is not denied or disputed by Mr.M.S.Palaniswamy learned counsel for the petitioner. The fact which will have to be examined is as to whether Panruti Taluk Co-operative Housing Society Ltd., is a society which has received any financial aid from the State Government or from a corporation established by the Government or controlled by the Government.

11.Mr.M.S.Palaniswamy, learned counsel for the petitioner states that the society is not engaged in Agriculture or Industry or Trade or Banking. He also contends that the society has not received any aid from the State Government. However, he admitted that the society had received financial aid from the Tamil Nadu Co-operative Housing Federation Ltd.

12.The further fact which will have to be examined is whether Tamil Nadu Co-operative Housing Federation Ltd., is a company controlled by the State Government. A perusal of the manner in which funds are obtained by the said Federation reveals the following:

''(A)loans from the Life Insurance Corporation of India, National Housing Bank, Housing and Urban Development Bank, Housing and Urban Development Corporation, Housing Development Finance Corporation, General Insurance Corporation and Unit Trust of India, Nationalised and Commercial Banks.''

13.All the above organisation are controlled either directly or indirectly by the State or the Central Government and it is also seen that the federation also obtains ''Loans from Government''.

14.It is seen that the Federation in turn provides aid to housing societies across the State and more particularly to the Panruti Taluk Co-operative Housing Society Ltd. Thus the said society is an organisation of the State Government.

15. It is also seen that by G.O.M.S.No.126, dated 20.05.2014 Finance (Loans & Advances Cell) Department, the Tamil Nadu Government, in exercise of powers under Article 293(1) of the



Constitution had guaranteed repayment of loans up to Rs.100 crores availed by the Tamil Nadu Co-operative Housing Federation Limited from Financial Institutions so that loan can be given to the members of Primary Co-operative Societies at lower rate of interest. This Government order implies that the Tamil Nadu Co-operative Housing Federation Ltd., had been authorised to extend loan facilities to primary Co-operative Societies, more particularly for the purpose of advancing loans to the members of such Primary Co-operative Societies. This would naturally indicate that Primary Co-operative Societies would be controlled by the Tamil Nadu Co-operative Housing Federation Ltd., which in turn is an organisation of the State. Naturally any employee of a Primary Co-operative Society would also be controlled by the Government, as the society is funded by the State Government. This would also imply that the Secretary of a Co-operative Society will come into the definition of a public servant as given in Section 2(c)(ix) of the PC amended Act.

16. A re-examination of the said provision would indicate that the Secretary of a registered Co-operative Society which received financial aid from the State Government or any Corporation established by the Government would be a public servant.

17. The further fact to be now examined is whether Panruti Taluk Co-operative Housing Society Ltd., is engaged in any of the activities viz., Agriculture, Industry, Trade or Banking.

18. A perusal of the audit report filed along with the petition reveals that for the financial year 2017-2018 receipts and payments for the year ending dated 31.03.2018 included Sundry Creditors and Sundry Debtors. Further, loans were also advanced to the staff, as staff consumer loan, staff vehicle loan etc.,. Creditors and borrowers would exist only when there is extending of loan to the members. If a member receives a loan he becomes a debtor to the society with obligation to repay the amount. This would indicate a financial transaction between the society and the member. This financial transaction of lending money is an essential feature of any banking industry. The banking industry may not be open to all customers but, this facility is extended to all its members. Therefore, with respect to each member, the society is a banker. Monies are lent, Monies are borrowed. Loans are advanced. Loans are recovered. These are all necessary ingredients of banking transactions. It is also seen that these advances had been guaranteed by the State Government and had been actually, originally advanced by the Tamil Nadu Co-operative Housing Federation Ltd. Thus, a direct link is established running from each member to the State Government. The Secretary who works in such society, is



therefore a public servant. Since he is the public servant, the provisions of the PC amended Act, automatically applies to him.

19. In the Division Bench Judgment referred, supra, J.A. Murugan Vs. The Registrar of Co-operative Societies and others, it had been found as a fact that the society in that particular case extended facilities only for employees working in private companies in Krishnagiri. The Registrar of Co-operative Societies had issued a certificate on 11.08.2015 which was impugned in the writ petition. The Division Bench found that the said society cannot be termed to be engaged in Agriculture, Industry, Trade or Banking. Therefore, the Division Bench held that the Secretary of the Society was not a public servant as defined under the PC amended Act.

20. This Judgment came up for further consideration by the Full Bench in J.A. Murugan vs. Registrar of Co-operative Society and others referred supra and held as follows:

''(35) The Hon-ble First Bench of this Court, in the decision reported in 2020 SCC Online Mad 782 [J.A. Murugan Vs. Registrar of Cooperative Societies and others], in paragraph No.15, had made a factual note that in respect of the Society in which the petitioner therein was employed, there is no material to even remotely suggest that the Society in question receives any financial aid from the State or Central Government and therefore, it is neither controlled nor aided so as to render the employees liable to prosecution under the PC Act, 1988. In paragraph No.16 of the said decision, the Division Bench has recorded the finding that the Registrar of Cooperative Societies cannot expand the definition of -- public servant-- in the impugned Circular dated August 11, 2015, as he lacks authority to do so and it is completely in the domain of the legislature to define or lend a meaning to the terms in the Act.

(36) The Division Bench, in our view, has not taken into consideration the definition of 'public duty' under Section 2[b] of the PC Act. In our considered view, the Society which came into being for the benefit of agriculturists and the petitioner, being the Secretary of the Society, who is in-charge of the day-to-day administration of the Society is a public servant as defined under Section 2[c]



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[ix] of the PC Act and performs/discharges public duty under Section 2(b) of the PC Act.

(37) For a person to be regarded as a public servant within the meaning of Section 2(c)(ix) of the Act of 1988, three conditions have to be fulfilled: the first is the status of the person in the registered co-operative society; the second is the nature of the business that the relevant registered co-operative society is engaged in; and the third is as to whether the society receives or had received during the relevant period any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or authority or body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956. All three limbs have to be satisfied for the person to be reckoned as a public servant within the meaning of Section 2(c)(ix) of the said Act.

(38) As of the status of the relevant person, he must be the President or Secretary or other office-bearer of a registered co-operative society. As to the nature of business that the co-operative society must be engaged in, the relevant areas would be agriculture, industry, trade or banking. The third aspect is of such registered co-operative society, in which the person holds the office of President or Secretary or office-bearer and which registered co-operative society is engaged in the business of agriculture, industry, trade or banking, also receiving financial aid from the Government bodies specified or had received financial aid from the specified Government bodies at the relevant point of time.'

(Emphasis supplied)

21. Further, Section 2(b) of PC amended Act reads as follows:

2(b) 'Public duty' means a duty in the discharge of which the State, the Public or the Community at large has an interest.

Explanation: In this Clause 'State' includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the



government or a government company as defined in Section 617 of the Companies Act, 1956(1 of 1956).''

As stated by the Hon'ble Full Bench, three conditions have to be fulfilled. The first condition is the status of the person in registered Co-operative Society. In this case, the petitioner was the Secretary therefore, this condition is satisfied. The second condition to be satisfied is the nature of the business that the society was engaged in. In this case, it has been held that the society was engaged in the business of banking and therefore, the second condition is also satisfied. The third condition is whether the society had received any financial aid from the State or the Central Government. In this case, it has been found as a fact that the society had received funds from the Tamil Nadu Co-operative Housing Federation Ltd., which is an organisation of the State. Therefore, this condition is also satisfied. The petitioner is a public servant as defined under the PC amended Act.

22. In view of the above reasons, I fear that I cannot accede to the arguments put forth by Mr. M. S. Palaniswamy, learned counsel for the petitioner who urged that interference in investigation in Cr. No. 1 of 2020 is warranted. I hold that interference is not warranted. Let investigation continue.

23. Accordingly, this Criminal Original Petition stands dismissed. Connected miscellaneous petition is closed.

24. I am informed that final report has been filed after due investigation. Let therefore trial continue but however learned Magistrate, should examine the charges on the basis of the evidence adduced and on analysis of evidence produced by the prosecution and should not be influenced by any of the observations made in the course of this order which observations were only to determine whether the First Information Report should be interfered with or not.

Sd/-  
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

vsn



To

1. The Inspector of Police,  
Vigilance & Anti-Corruption,  
Cuddalore.

2. The Public Prosecutor,  
High Court, Madras.

+lcc to Mr.M.S.Palaniswamy, Advocate, S.R.No.47621/21

Crl.O.P.No.13048 of 2021

RLP(CO)  
RGA(01/10/2021)