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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.583 of 2021

A.Saravanan

... Petitioner

-Versus-

State by Inspector of Police,
Vigilance and Anti-Corruption,
Namakkal District.
[Crime No.8/AC/10]

... Respondent

Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973, praying to call for the records in C.M.P.No.1112 of 2016 in Spl.C.C.No.13 of 2016 on the file of the learned Chief Judicial Magistrate, Namakkal, examine the legality of the order dated 30.07.2021 made in C.M.P.No.1112 of 2016 in Spl.C.C.No.13 of 2016, set aside the order passed by the learned Chief Judicial Magistrate dismissing the discharge petition filed by the petitioner and discharge the petitioner from all the charges.

For Petitioner

: Mr.M.Neelakandan

For Respondent

: Mr.C.E.Pratap,
Government Advocate
(Criminal Side)

ORDER

This revision petition has been filed challenging the legality of the order dated 30.07.2021 made in Crl.M.P.No.1112 of 2016 in Spl.C.C.No.13 of 2016 by the learned Chief Judicial Magistrate, Namakkal dismissing the application filed by the accused under Section 239 of Cr.P.C. seeking to discharge him from the charges leveled against him under Sections 120-B r/w 167, 177, 408, 409, 420, 465, 468, 471 and 477-A of IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.



2. There are totally three accused in the case and the petitioner has been arrayed as A3. A1 in this case was the Secretary in ED-1009, Kumarapalayam Milk Consumer Cooperative Society; A2 was the Special Officer of the society; and the petitioner was Senior Cooperative Auditor, Milk Cooperative Societies, Tiruchengode Circle, Namakkal District. They have been charged with offences u/s 120-B r/w 167, 177, 408, 409, 420, 465, 468, 471 and 477-A of IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. The allegations are that A1 and A2 created incorrect records and made false entries after collecting the amount due from Milk Agents and misappropriated the money for their own use and have created false entry in records showing as if total amount was not collected to the tune of Rs.1,22,077.47 paise from the agents knowing fully well that such amount was actually received. Allegation as against the petitioner/A3 is that in pursuance of the conspiracy hatched with A1 and A2, the petitioner/A3, concluded his audit on the said society on 24.06.2008 itself, in order to facilitate and intentionally aid the acts of A1 and A2 framed incorrect particulars of amounts collected from agents as Rs.1,22,077.47 in his audit report. The petitioner had approached the trial court by way of an application under Section 239 of Cr.P.C. seeking to discharge him from the charges on the ground that he was only an Auditor and he had no role to manipulate, frame in correct or make false entries in the account book, which was dismissed on 30.07.2021. It is this order which is now under challenge in this revision petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner was the senior auditor for 70 societies in the region and he had no role to frame incorrect entries or make false entries. The allegations are only as against A1 and A2 and the petitioner/A3 has been falsely implicated in the case.

4. The learned Additional Public Prosecutor would on the other hand submit that the materials collected would prima facie show that the petitioner conspired with A1 and A2 and with dishonest and fraudulent intention, committed criminal breach of trust and misappropriated the society amount of Rs.1,22,077.47 paise and thereby committed offences leveled in the charge sheet and the trial court has, after having considered the materials available, dismissed the discharge petition filed by the petitioner and, therefore, no infirmity or illegality could be attached to it. The criminal revision filed by A3 is only liable to be dismissed.



5. I have considered the rival submissions carefully.

6. The allegation against the petitioner is that pursuant to the criminal conspiracy hatched with A1 and A2, the petitioner facilitated A1 and A2 and intentionally aided A1 & A2 to misappropriate the amount collected from the agents and framed incorrect particulars of amounts collected from agents as Rs.1,22,077.47 in his audit report knowing fully well that the above said amount was collected and misappropriated by them and shown as balance in society records as if that the amount was collected on 09.07.2008. Knowingly there was no such receipt available in the society records, A3 said to have created forged entry in the account book. There are prima facie materials available against the petitioner, more particularly, the statements of L.W.41 & L.W.42 who spoke about the procedures which were omitted to be followed by the petitioner (A3) and the malpractice committed by him, pursuant to the conspiracy hatched with A1 and A2. Thus, this court is of the view that there are sufficient materials which prima facie constitute offences against the petitioner and the other accused that they had intentionally made false entries and thereby misappropriated the society fund to an extent of Rs.1,22,077.47 paise. The trial court, after having considered the entire materials produced before it, has concluded that there are prima facie materials available against the petitioner to proceed further and passed a detailed order dismissing the discharge petition. This court finds no infirmity or illegality in the order of the trial court dismissing the discharge petition filed by the petitioner and the revision petition is liable only to be dismissed.

In the result, this Civil Revision Petition is dismissed and the order 30.08.2021 passed by the learned Chief Judicial Magistrate, Namakkal, dismissing the discharge petition filed by the petitioner in C.M.P.No.1112 of 2016 in C.C.No.13 of 2016 stands confirmed.

Sd/-
Assistant Registrar(CJ-Conf.)

//True Copy//

Sub Assistant Registrar

kmk



To

1. The Chief Judicial Magistrate,
Namakkal,
Namakkal District.

2. The Public Prosecutor,
High Court,
Madras 600104.

Cr1.R.C.No.583 of 2021

KSM(CO)
SU(14/12/2021)