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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.23885 OF 2021

AND

W.M.P.NOS.25192 AND 25193 OF 2021

S.Santhanaraman

... Petitioner

-vs-

1. The Additional District Registrar of
Co-operative Societies (MPD),
N.V.N.Natarajan Maligai,
No.170, E.V.R.Periyar High Road,
Kilpauk,
Chennai - 600 010.
2. The Joint-Registrar,
Co-operative Society,
Office of the Joint Registrar Office,
Nagapattinam.
3. The Joint-Registrar,
Co-operative Society,
Office of the Joint Registrar Office,
Tiruvarur.
4. The Deputy Registrar,
Co-operative Society,
Office of the Deputy Registrar Office,
No.5/152, Thirumakkotai Main Road,
Jothinagar, Mannargudi - 641 001.
5. T-1344, Needamangalam Primary Agricultural
Co-operative Credit Society Limited,
Represented by its President,
Needamangalam, Tiruvarur District - 614 404.
6. The State by,
The Inspector of Police,
C.C.I.W. Thiruvarur Police Station,
Thiruvarur District.

... Respondents



PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the first respondent of the enquiry report dated 28.07.2017 passed under section 81 of the Tamil Nadu Co-operative Societies Act, in respect of the fourth respondent Society and consequentially registration of FIR in Crime No.2 of 2021 dated 13.05.2021 on the file of the sixth respondent and quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.E.Vijay Anand
Addl. Govt. Pleader
for R1 to R4 & R6
Mr.V.Nanmaran
Government Advocate for R5

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records of the first respondent of the enquiry report dated 28.07.2017 passed under section 81 of the Tamil Nadu Co-operative Societies Act, in respect of the fourth respondent Society and consequentially registration of FIR in Crime No.2 of 2021 dated 13.05.2021 on the file of the 6th respondent and quash the same.

2. The petitioner is an erstwhile employee of the fifth respondent Society. Against whom, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 in short 'The Act' was initiated and that was concluded, whereby, a report has been filed by the Enquiry Officer on 28.07.2017.

3. Following the said order / report filed under Section 81 of the Act, further proceedings also went on. In one such move, the respondents also acted upon based on the Section 81 enquiry report and registered a complaint, which has been converted into an FIR on 13.05.2021 before the CCIW, Thiruvarur Police Station, wherein an FIR had been lodged for the alleged offences punishable under Sections 408, 409, 465, 468, 471 and 477-A of the Indian Penal Code and the investigation seems to be pending.

4. At this juncture, now the present Writ Petition has been filed challenging the report under Section 81 of the Act dated 28.07.2017 followed by the FIR dated 13.05.2021.



5. Mr.B.Kumarasamy, learned counsel appearing for the petitioner has raised a ground that, even though there has been a reference in the enquiry under Section 81 of the Act to enquire into by the Enquiry Officer with regard to the jewel loan issued by the Society concerned during the relevant point of time, according to the learned counsel appearing for the petitioner, there has been no finding to that effect in Section 81 enquiry report.

6. However in the FIR, that aspect also has been added as if that there has been some discrepancy or some mis-appropriation or mis-management in respect of the jewel loan advanced to various persons by the Society concerned during the relevant point of time, therefore, on that ground, the learned counsel would contend that, the FIR itself has no basis, since no such finding with regard to the jewel loan has been made in Section 81 enquiry report.

7. On that ground itself, Section 81 report is vitiated consequently the FIR also is liable to be declared as a vitiated one and accordingly, both are to be quashed by this Court. For the said purpose, the present Writ Petition has been filed.

8. It is also brought to the notice of this Court by the learned counsel appearing for the petitioner that, subsequent to the Section 81 enquiry report, further surcharge proceedings under Section 87 of the Act also was initiated and concluded. As against the said Section 87 surcharge proceedings, the petitioner had already filed a Civil Miscellaneous Appeal in C.M.A. No. 14 of 2019 before the District Court, Thiruvavur being the Co-operative Appellate Tribunal and the said Civil Miscellaneous Appeal is also pending.

9. Mr.E.Vijay Anand, learned Additional Government Pleader appearing for the respondents on instructions, would submit that, the Section 81 enquiry report which is impugned herein shall be acted upon which culminated in the Section 87 surcharge proceedings, admittedly, as against which, the petitioner preferred an appeal as stated above before the Co-operative Appellate Tribunal, i.e., District Judge, Thiruvavur, where the said appeal is pending. Therefore, at this juncture, the petitioner has no reasons to challenge the Section 81 enquiry report.

10. He would also submit that, if at all, there has been no conclusive findings made in Section 81 report about the jewel loan and its transactions, despite that it has been form part of the FIR, which is also impugned herein, the same can be agitated by the petitioner against the FIR in the manner know to law not



by way of challenging the said FIR also in this writ proceedings along with the Section 81 enquiry report. Therefore, according to the learned Additional Government Pleader, this Writ Petition is deserved to be rejected.

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11. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. As has been rightly pointed out by the learned Additional Government Pleader, if at all, the petitioner has got any grievance over the way in which or the material wherein the FIR was laid is concerned, it is open to the petitioner to agitate the issue in the manner known to law only against the FIR.

13. However, that alleged infirmity if any in the FIR would not be a good ground for the petitioner to challenge the Section 81 enquiry report.

14. Moreover, the Section 81 report is of the year 2017, pursuant to which, further proceedings, i.e., surcharge proceedings under Section 87 of the Act was initiated and was concluded, as against which, admittedly, the petitioner preferred an appeal before the Appellate Tribunal in C.M.A. No. 14 of 2019 and the same is also pending consideration.

15. When that being so, at this juncture, the petitioner has no plausible ground to challenge the Section 81 enquiry report dated 28.07.2017 and on that ground, he cannot put a challenge against the FIR dated 13.05.2021.

16. In that view of the matter, this Court feels that, this Writ Petition is liable to be rejected, accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vji / sp



To

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6. The Inspector of Police,
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Thiruvarur District.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.59134

W.P.No.23885 of 2021
and
W.M.P.Nos.25192 and 25193 of 2021

MT (CO)
RLP (07/02/2022)