IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2021
PRONOUNCED ON : 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1602 of 2017
and
Crl.M.P.Nos.16363 & 16364 of 2017

Syed Kamal Batcha ...Revision Petitioner/ Accused-11

Vs.

1. The State of Tamilnadu represented by,
   The Inspector of Police,
   District Crime Branch (DCB)
   Perambalur. (Crime No.11 of 1997) ...1st Respondent/ Respondent

2. Jayapalan
   The Deputy Registrar of Co-operative Societies,
   Ariyalur. ...2nd Respondent/ Defacto Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Ariyalur, in Crl.M.P.No.2688 of 2017 in C.C.No.206 of 2004, dated 25.10.2017 and allow this revision petition and thereby discharging the petitioner from the alleged charges.

For Petitioner : Mr.G.Ilamurugu

For R1 : Mr.R.Vinoth Raja
Government Advocate

For R2 : No appearance

JUDGMENT
(The case has been heard through Video Conference)

This Criminal Revision Case has been filed against the order of dismissal passed in discharge petition viz., CMP.No.2388 of 2017, in C.C.No.206 of 2004, against the revision petitioner herein, dated 25.10.2017.

2.Eleventh accused in C.C.No.206 of 2004, is the revision petitioner herein.

3(a).The 11th accused/revision petitioner herein has filed a petition in CMP.No.2388 of 2017, under Section 239 of Cr.P.C to discharge him from the offence under Sections 408, 420 read with Section 109 of IPC.

3(b).The respondent police had registered a case in Crime No.11 of 1997, against the revision petitioner herein/accused and some others on 19.07.1977 for the offence under Sections 408, 420 read with Section 109 of IPC, for the alleged misappropriation and cheating of bank customers from 29.05.1991 to 15.10.1991.

4.The case of the prosecution is that the alleged misappropriation relates to reduction of weight of pledged jewels of the bank customers. Even in the charge sheet, the respondent police has stated that the revision petitioner was working as Senior Inspector and the statements of the prosecution witnesses under Section 161(3) have also been filed. Alleging insufficiency of material to frame charges, the revision petitioner has filed the above said Crl.M.P.No.2688 of 2017, before the learned Judicial Magistrate No.I, Ariyalur, and by an order dated 25.10.2017, the learned Judge has dismissed the same and hence, the Criminal Revision Case.

5.Heard the respective counsels and perused the materials placed on record.

6.The respondent police has registered a case in Crime No.11 of 1997, dated 19.07.1997 under Sections 408, 420 read with Section 109 of IPC, based on the complaint (prosecution sanction) given by the second respondent herein. The above offence had taken place in the year 1991 to 1992. The employees of the Co-operative Society Bank indulged in misappropriation of funds, swapping, replacing of jewels and valuable ornaments pledged as security for the loan availed by the members of the Co-operative Society. The first respondent filed charge sheet against 15 employees of the Bank, who are alleged to have involved in the above offence. Some of the accused were discharged by the Trial Court on the ground of the absence of their names or designation in the 161 (3) statements, complaint and as per the confession given by the first accused.

7(a).The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that the accused persons viz., A3, A5, A6, A7, A9, A12, A13, A14 & A15 were discharged by filing the petitions, which shows as under:

Name of the accused	Ranking of the accused	Discharge petition filed in
Manimegalai	A3	C.M.P.No.7696/2015
Kandasamy	A5	CMP.No.7697/2017
Rajendran	A6	CMP.No.7698/2017
Narayanasamy	A7	CMP.No.7699/2017
Balasubramaniam	A9	CMP.No.7700/2017
Muthukumaran	A12	CMP.No.7701/2015
Mani	A13	CMP.No.7702/2015
Abdul Razak	A14	CMP.No.7702/2015
Kaliyamoorthy	A15	CMP.No.7702/2015

Further, he would submit that the accused persons viz., Duraiayyapan/A1(died), Sekar/A2, Radhakrishnan/A4(died), Rajagopal/A8(died), Abdul Salam/A10(died), Syed Kamal Batcha/A11/Revision petitioner herein, were not discharged. Now, only second accused and eleventh accused (revision petitioner) are available to face trial.

7(b).Further, the learned Government Advocate would contend that there is sufficient material against the revision petitioner herein.

8.The learned counsel for the revision petitioner would contend that the alleged occurrence took place in Ariyalur Co-operative Urban Bank Limited. The Special Officer, by his letter dated 10.04.1992, has communicated to the superior regarding irregularities committed by the appraiser of the Bank viz., A2/Sekar. Based upon the said recommendation of the Special Officer an enquiry under Section 81 of the Tamil Nadu Cooperative Society Act was ordered on 23.09.1992 and enquiry was completed and the report was submitted. Later on, in the year 1994, the Joint Registrar of Cooperative Societies, Trichirapalli, has send a letter to the Registrar of Cooperative Society for sanction for prosecution and the sanction was accorded by a letter dated 07.11.1995 in respect of the accused viz., A1 to A9 alone and in respect of the petitioner only the criminal proceedings have been recommended and the Registrar of Cooperative Society has directed the subordinates to take disciplinary proceedings against the revision petitioner herein and other accused persons, for the dereliction of the duty for the lapses pointed out in the enquiry report.

9.On 19.07.1997, a complaint was lodged and FIR has been registered against 9^{th} accused and the revision petitioner name was not found place in FIR. After investigation, the Investigating Officer has filed charge sheet and the same was taken on file in the year April, 2004 and numbered as C.C.No.206 of 2004 for the offence under Sections 408, 420 read with Section 109 of IPC.

10.The summons have been served upon the revision petitioner on 04.08.2015 and thereafter, the discharge petitions have been filed by the other accused in the year 2017. Based upon the confession statement given A2 that he only committed the offence, the accused viz., A3, A5, A6, A7, A9, A12, A13, A14 and A15 were discharged from the case as per the respective petition mentioned as stated supra and the discharge petition was dismissed against A2.

11.The revision petitioner herein was working as a Senior Inspector of Cooperative Societies and was deputed to the present Bank as Assistant Secretary with certain duties and responsibilities. It is the specific case of the revision petitioner that he was not custodian of the locker keys/jewel keys/cash and he has only the duty of the Secretary and Special Officer.

12.The sum and substance of the allegation in the final report is that the misappropriation of jewels for a sum of Rs.48,331/- by way of reducing the weight of pledged jewels of the customers of the bank and offence committed by the appraiser (A2).

13.On a perusal of the final report, it is seen that the first accused is the Cashier of the Bank, second accused is the Jewel Appraiser, third accused is the Clerk-Bank Staff, fourth accused is the Accountant, accused viz., A5 to A9 are the Clerk-Bank Staff, A10 is the Special Officer in the cadre of the Special Corporative Sub Registrar, act as Secretary, A11 who is the revision petitioner is Senior Inspector, A12 is the Auditor and while A13 to A15 are the Office Assistant who worked on contract basis.

14.The sum and substance of the arguments of the learned counsel for the revision petitioner is that under the letter dated 07.11.1995, sanction for prosecution was accorded by the head of the Cooperative Department only in respect of A1 to A9 and not for the revision petitioner herein and what was recommended by a separate letter, on very same day, is the disciplinary action alone was ordered against A10 and A11 for the dereliction on the part of the revision petitioner and further, there is a delay in every stage of prosecution.

15.In addition to the above the learned counsel for the revision petitioner also stated that discharge from charge against whom sanctioned was granted is based upon character and the confession of the co-accused/A2 and hence, the similar relief cannot be expected to the revision petitioner also and there is no culpable and incriminating statement against the revision petitioner herein.

16(a).The learned counsel for the revision petitioner had relied upon the circular issued by the Registrar of Cooperative Societies, dated 11.12.1991 wherein, with regard to taking of criminal action against the departmental officers, it is observed that "departmental officers, who are not directly involved in the frauds or misappropriations need not be included as delinquents, in a routine manner, in the enquiry report or complaints filed with the police" (routine manner emphasis supplied)

16(b).At paragraph No.6, it is stated that "since it has been decided not to restore the criminal action against the persons involving themselves in the criminal offenders, for the first instance involving Monetry value of less than Rs.50,000/- initiated disciplinary action and civil action should be speeded up and recovery misappropriated amount should be effected within a reasonable time i.e., within a period of 6 months. It is open to the Joint Registrar to accord or recommend sanctioning nor initiating criminal against the delinquent".

17.Hence, based upon the above two clauses mentioned in the above said circular of the Registrar of the Cooperative Societies, the learned counsel for the revision petitioner urged that the criminal action should not be taken. This Court unable to uphold the said contention that a circular of the Registrar of Cooperative Societies, Chennai, namely Mr.J.T.Acharyulu, I.A.S., in RC.No.228696/90/CP1, dated 11.12.1991, wherein, it is mentioned as above, will not stand in the way for prosecution and it is only an administration order, giving an exemption from prosecution.

18.When the public money has been misappropriated by the Special Secretary and Bank authorities of the Cooperative Department, they cannot whittle away of the criminal prosecution since the act committed by the accused false under the offence as said so in IPC.

19.The next contention is, the Registrar of Cooperative Societies has only recommended for departmental action and not recommended for criminal action.

20.After perusing Statements recorded under Section 161(3) of Cr.P.C., annexed with the final report, the petitioner herein, who has arrayed as A11 is working as Assistant Secretary of the Cooperative Department and during relevant period viz., 1991 to 1992, he hold the position in the Cooperative Bank as Supervisor to subordinate employees. The Statement on record show that Secretary/A10 was involved in the above offence, under whose guidance or directions, the revision petitioner herein must work.

21(a).After perusing the list witnesses viz., LW43, who was Deputy Registrar, now working as Regional Manager, has narrated the nature of the working of the Bank. After perusing the statement, this Court finds that the statement of LW43 is fatal to the discharge petition filed by the revision petitioner herein.

21(b).It is the specific statement of LW43 that the jewels were returned in the presence of Assistant Secretary viz., the accused and he has omitted to supervise the subordinates, is the root cause or the offence. The procedure followed when the Secretary/ A10 went of leave or A10 is entrusted with other works, would also found to be sufficient material to frame charges against the revision petitioner. Hence, this Court find that the revision petitioner herein cannot be discharged without undergoing trial.

22.In view of the specific statement of LW43 regarding duties and responsibilities, this Court finds that there is a prima facie substantial materials are available to presume that the revision petitioner herein has committed the offence and hence, he has to face the charge and the trial. Further, the dismissal order passed in Crl.M.P.NO.2688 of 2017 in C.C.No.206 of 2004, by the learned Judicial Magistrate No.I, Ariyalur, dated 25.10.2017, by directing the revision petitioner herein to face trial is just and proper.

23.May be because name of the person mentioned in the FIR is not ground for including his name in the final report when sufficient materials are available and in view of the specific statement as stated above, this Court finds that there is a sufficient material to frame charge against the accused.

24.Accordingly, this Criminal Revision Case stands dismissed. The order passed in Crl.M.P.No.2688 of 2017 in C.C.No.206 of 2004, by the learned Judicial Magistrate No.I, Ariyalur, dated 25.10.2017, is hereby confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Inspector of Police,
   District Crime Branch (DCB)
   Perambalur.

2. The Judicial Magistrate No.I,
   Ariyalur.

3. -do through- The Chief Judicial Magistrate,
   Perambalur.

+1cc to Mr.G.Ilamurugu, Advocate, S.R.No.45267

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Crl.M.P.Nos.16363 & 16364 of 2017

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NSK 01/10/2021