BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.07.2021
Delivered on : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P.(MD)Nos.859 and 983 of 2021
and
Crl.M.P.(MD)Nos.389 and 448 of 2021

Crl.O.P.(MD)No.859 of 2021

A.Shanmugam ... Petitioner/Accused No.6

vs.

1. The State Rep., by Inspector of Police,
   Commercial Crime Investigation Wing,
   Kaja Nagar,
   Tiruchirappalli
   In Crime No.2/2020)

2. The Deputy Registrar Cooperative Societies,
   218/4, College Road, Elango Nagar,
   Mela Vadugapatti, Musiri,
   Tiruchirappalli District. ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash all the further proceedings in pursuant to the impugned F.I.R. in Crime No.02 of 2020 on the file of the Inspector of Police, C.C.I.W, Tiruchirappalli District in so far as the petitioner is concerned.

For Petitioner : Mr.R.Gowrishankar
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

Crl.O.P.(MD)No.983 of 2021

G.Gunasekaran ... Petitioner/Accused No.10

vs.

1. The State Rep., by Inspector of Police,
   Commercial Crime Investigation Wing,
   Kaja Nagar,
   Tiruchirappalli
   (In Crime No.2/2020)

2. The Deputy Registrar Cooperative Societies,
218/4, College Road, Elango Nagar,
Mela Vadugapatti, Musiri,
Tiruchirappalli District. ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash all the further proceedings in pursuant to the impugned F.I.R. in Crime No.02 of 2020 on the file of the Inspector of Police, C.C.I.W, Tiruchirappalli District in so far as the petitioner is concerned.

For Petitioner : Mr.S.Karthikeyan
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions are filed to quash the impugned F.I.R. in Crime No.02 of 2020 on the file of the Inspector of Police, C.C.I.W, Tiruchirappalli District in so far as the petitioners are concerned.

2.The case of the prosecution is that on the basis of the complaint given by the second respondent in this case by exercising the power conferred under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, enquiry was ordered over the financial transaction of the Primary Agricultural Co-operative Societies, Varadharajapuram for the period from 01.04.2016 to 30.09.2018 and in the course of enquiry, it was found that these petitioners and along with the other persons fabricated a document and manipulated the records and misappropriated Rs.9,07,31,632/- (Rupees Nine Crores Seven Lakhs Thirty One Thousand Six Hundred and Thirty Two only). On the basis of the complaint given by the second respondent herein, a case in Crime No.2 of 2020 has been registered by the first respondent herein, against twenty persons and these petitioners, which arrayed as Accused No.6 and Accused No.10. The petitioner / Shanmugam / A6 was working as Supervisor, Thottiyam and the petitioner/Gunasekaran / A10 was working as Field Officer, Thottiyam. During the course of investigation, the petitioners moved these petitions seeking quashment of the First Information Report.

3.The contention on the part of the petitioner/A6, in Crl.O.P.(MD)No.859 of 2021, viz., Shanmugam, is that the Management of the Society vested with an elected board and day to day administration was done only by the Secretary of the Society, who is the Chief Executive Officer and this petitioner/ A6 was working only as a Supervisor at Tiruchirappalli District Central Co-operative Credit Society and even as per Paragraph No.8 of the Tamil Nadu Co-operative Society Manual, he can not be fastened with criminal liability, as the duty was only to supervise the functioning of the Society and no way involved in the day to day affairs of the scene.

Similarly, the Registrar, Co-operative Societies, issued a circular in R.C.No.228696/90, C.P.I., dated 11.12.1991, instructing the Authorities not to file criminal cases against the Officers, who are holding Supervisory or Executing Posts. If any failure or negligence is noted on the part of these Officers, only Departmental action can be initiated and not criminal action. It is also stated that there is no material on record or found, during the course of enquiry, under Section 81 of the Tamil Nadu Co-operative Societies Act, the involvement of this petitioner in the affairs.

4.Similarly, the petitioner/A10, in Crl.O.P.(MD)No.983 of 2021, viz., Gunasekaran, would also rely upon these grounds. He was working as a Field Officer, during the relevant time. It is also his submission that on 17.10.2018, he went for inspection of Varadharajapuram Agricultural Co-operative Society and found misappropriation to the tune of Rs.2,10,10,000/- (Rupees Two Crores Ten Lakhs and Ten Thousand only) from the year 2013. So, he sent a report on the same day, ie., 17.10.2018 to the second respondent. On the basis of which, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, was ordered. It is also his contention that no materials have been placed along with the complaint to involve this petitioner in affairs. Even during the enquiry, under section 81 of the Tamil Nadu Co-operative Societies Act, no materials have been collected.

5.In both the cases, counter has been filed by the Deputy Superintendent of Police, C.C.I.W/C.I.D, Thanjavur Sub Division. In Crl.O.P.(MD)No.859 of 2021, it is stated in the counter that the elected body is vested with the powers for day to day administration. The petitioner viz.,Shanmugam/A6 was appointed as Supervisor in the Circle Area, he ought to have checked the day to day activities of the Society, to safe guard the public money. But, he has colluded with the other accused. It is further stated that the petitioner’s involvement can be found out and his intention can also be brought on record, only during the investigation. According to the respondent police, this is a pre-matured stage to decide the non-involvement of the petitioner in the offence.

6.In respect of Gunasekaran/A10, in Crl.O.P.(MD)No.953 of 2021, it has been stated that mere Field Officer is responsible for the Organization, Formation and Development of Co-operative Societies in the Block Area, he shall conduct verification of loans issued by the Primary Agricultural Co-operative Society and Primary Agricultural and Rural Development Bank, for ensuring use of credit and collection of loans. Two detailed inspections have been conducted and must also to conduct surprise inspection, one quarterly inspection of Non-Credit Co-operative every Month. Here, had proper inspection being undertaken by the petitioner, the misappropriation would have been averted. Since, he has colluded with the other accused persons, he has not undertaken inspection properly.

7.Heard both sides.

8.Since, common question of law and facts involved in both the matters, they have heard together and common order is passed.

9.Before we go in to the factual aspects, the duties and responsibilities of these two Officers with regard to day to day administration of the Varadharajapuram Primary Agricultural Co-operative Society must be taken into account. Unfortunately, no such Rule Book showing the Duties and Responsibilities of Supervisor and Field Officer has been produced before this Court. But, however, Co-operative Societies Manual has been produced in the typed set of papers, that too only a portion has been produced and not the entire Co-operative Societies Manual Books. More over, it is also mentioned in Rule 8 with regard to the prosecution to be initiated against the Departmental Officers. Rule 8 reads as under:-

> *"8.Departmental Officers are working on foreign service in prosecution against the Co-operative Organisation as Chief Executive Departmental Officers. Officers or otherwise and at times, in additions to their regular government post, they are also holding additional charge of the post of Special Officers in more than one cooperative society and functioning as such. They are holding supervisory posts also over such institution. The Act or the Bylaw of the society do not differentiate a regular or additional charge Chief Executive Officer / Special Officer and both are the same in the eyes of law. These officers either in a regular capacity and more so in the additional capacity or in a supervisory capacity may not have the chance to scrutinise each and every transactions of the society. They would have failed to check and scrutinise the accounts and or exercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under I.P.C committed by the staff. Failure of such nature i.e., failure to discharge their duties properly or negligence or ommissions, unless the inquiry, inspection or investigation officer finds it prima facie, that such officers with malafide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offences by the subordinate staff, will not fasten criminal liability on such officers. 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, 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."*

10.So, reading of this Rule shows that the Officers, who are working in the capacity of Supervisors and other Field Officers, cannot be held criminally responsible for the misappropriation committed by the other Officers. Unless there is material on record to show that they are directly involved in the commission of the offence. So, this is the only criteria, which has been taken into account.

11.Mechanical lodging the complaint after receipt of the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, is also been deprecated. Subsequent to that, the Registrar, Co-operative Societies, also issued a circular in R.C.No.228696/90/C.P.I, dated 11.12.1991, regarding the prosecution to be initiated against the Officers. Paragraph Nos.3 and 4, which are relevant for the discussion, which reads as under:

> *"3.Taking criminal action against the departmental officers helding chief executive or administrative and other supervisory posts in the Cooperatives who are involved vicariously has also been examined. The departmental officers, working have the 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.*
>
> *4.It is further felt unnecessary to initiate disciplinary action in a routine way against the officers, who have conducted non statutory inspection of the society for their failure to detect the frauds occurred in the Co-operatives during the period of their inspection / supervision and against officers, who have failed to take up periodical inspection of the society as per the instruction of the Registrar. It is therefore informed that the disciplinary action need be recommended in the inquiry report against the inspecting and supervisory staff, who visited the society or who may fail to take up inspection of the society unless during the enquiry, it is found that such omission by the inspecting / supervisory officer is not wantonly committed by the officer."*

12.Paragraph No.4 speaks about the Inspection to be undertaken by the Officers and the consequence of their failure. So, the plain reading of Paragraph Nos.3 and 4, makes the position more clear. As I mentioned earlier, unless the involvement of the Officers and Supervisor and Field Officer cadre involvement is vested the duty, during the course Section 81 of the said Act, they cannot be fastened with any criminal liability. So, based upon these position, this Court also in a number of judgments rendered in a batch of matters in Crl.O.P.(MD)Nos.8482 to 8494 of 2018, dated 06.11.2019, elaborately discussed the position not only with reference to the above said Manual and Circulars, but also with reference to various judgments as to the extent, to which, the criminal liability can be fastened upon the Officers.

13.So, in the light of the above discussion, we will scrutinize the enquiry report, based upon which, the criminal complaint has been filed. It is also enclosed in the typed set of papers. The petitioner / Gunasekaran, the enquiry report reads that he conducted the periodical, temporary and complete inspection from 2016-2017 and during the course of inspection, he did not bring out the misappropriation, which has been committed. So, because of that there was a loss of Rs.4,37,52,025/-. He actually failed to prevent the fabrication of records and misappropriation of the amount, which was committed by the Ex-Secretary/ Saravanan, Secretary / Singaram, Cashier/ Aarayi, Clerk / Ganesan. So, reading of this enquiry report shows that only the above said four persons actively involved in the commission, fabrication of records and misappropriation of the Society amount. The role played by the petitioner / Gunasekaran is that he is only an Inspecting Authority. So, the allegation in the report is that he failed to prevent the misappropriation and been brought on record. But, it is admitted that he has also sent a periodical inspection report. So, if any negligence or careless was exhibited by the petitioner/ Gunasekaran, the proper course only to take Departmental action and not criminal action as mentioned above. The enquiry report does not indicate that the petitioner was actively involved in the fabrication of records and misappropriation of the amount. It is also not the report to the effect that he was a beneficiary of the crime or shared the misappropriated amount.

14.In the light of this factual position, now let us go back to the legal position of this aspect. In the case of ***Gunasekaran Vs. State by Inspector of Police,*** reported in ***2008(1) Criminal 681 (Madras***), the following observation has been made:

> *"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."

15.Following this judgment in the case of ***Baskaran Vs. State rep. by Inspector of Police, C.C.I.W., C.I.D., Trichy,*** the further observation:-

''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.*

16.So, from this decision, it is clear that mere negligence will create only civil liability and certainly not criminal liability. It is clear that no criminal liability can be fastened upon these petitioners with regard to falsification of account and misappropriation.

17.The second point is that in the enquiry report, it has been mentioned that he failed to bring on record the falsification of accounts and misappropriation. So, with regard to this position, it is observed in ***Gangatharan Vs. The State etc., and Ors***., which reads 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.

18.So, with regard to the falsification of accounts, it has been observed, ***in Jethsur Surangbhai Vs. State of Gurjarat, AIR-1984- SC -151,*** that unless there is a nexus between the other accused persons, the charge will not lie. Here, as I mentioned earlier, in the enquiry report nothing has been found to the effect that the petitioner has also actively involved in the commission of offence for falsification of account and misappropriation.

19.Regarding the other petitioner, namely, Shanmugam, the enquiry report is not available. His position is some what better than Mr.Gunasekaran. Because, even as per the complaint, it is stated that he was working as a Supervisor. What applies to Mr.Gunasekaran, more fully applies to the case of Shanmugam also. Because, he was holding only a Supervisor Post. As I mentioned earlier, the main allegations are only against the Officers, who are responsible for the day to day affairs of the Society, namely, Secretary, Cashier, Clerk and Chairman. So, as I mentioned earlier what applies to Mr.Gunasekaran applies to the case of the petitioner/Mr.Shanmugam. So, he cannot also be fastened with the criminal liability. As I stated above, if at all, he can be proceeded, it is only with Departmental proceedings for the lapses, committed during the course of Supervising functioning.

20.So, following the settled position of law, both the Criminal Original Petitions are liable to be allowed and accordingly, allowed and the F.I.R. in Crime No.02 of 2020 on the file of the Inspector of Police, C.C.I.W, Tiruchirappalli District, is hereby quashed as far as the petitioners herein are concerned. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
   Commercial Crime Investigation Wing,
   Kaja Nagar,
   Tiruchirappalli.

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

Crl.O.P.(MD)Nos.859 and 983 of 2021
22.07.2021

RC (04.08.2021) 10P-3C