



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.06.2021

DATE ON WHICH PRONOUNCED : 25.06.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)Nos.5428, 5433, 5436 & 5440 of 2021

and

Crl.MP(MD)Nos.3134, 3135, 3136 & 3138 of 2021

The Managing Director/Joint Registrar,
Tiruchirappalli District Central Cooperative Bank Limited,
No.1, Fort Station Road,
Tiruchirappalli.

... Petitioner (In all petitions)

Vs.

1.The State rep by

The Inspector of Police,
Commercial Crime Investigation Wing,
Thiruchirappalli.

(Ref.Crime No.7 of 2009) ... 1st Respondent/Complainant
(In all petitions)

2.Dhanabal

... 2nd Respondent/Defacto
Complainant (In all petitions)

Common Prayer: Criminal Original Petition are filed under Section 482 Cr.P.C., to expunge the observation/direction made in paragraph 24 of the judgment passed in C.C.No.159/2010, paragraph 25 of the judgment passed in C.C.No.161/2010, paragraph 24 of the judgment passed in C.C.No.162/2010 & paragraph 23 of the judgment passed in C.C.No.160/2010 by the Judicial Magistrate No.III, Tiruchirappalli, dated 01.09.2017, so far as relating to pay monetary benefits and service benefits to the second respondent by the employer namely, Management of the Tiruchirappalli District Central Cooperative Bank.

(In all petitions)

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R1 : Mr.R.M.Anbunithi,

Additional Public Prosecutor.

COMMON ORDER

These Criminal Original Petitions are filed to expunge the observation/direction made in paragraph 24 of the judgment passed in C.C.No.159/2010, paragraph 25 of the judgment passed in C.C.No.161/2010, paragraph 24 of the judgment passed in C.C.No.162/2010 & paragraph 23 of the judgment passed in C.C.No.160/2010 by the Judicial Magistrate No.III,



Tiruchirappalli, dated 01.09.2017, so far as relating to pay monetary benefits and service benefits to the second respondent by the employer namely, Management of the Tiruchirappalli District Central Cooperative Bank.

2. Since a common question of law and facts arose in all these petitions, all the four petitions were heard together and a common judgment was passed.

3. Since the second respondent has been ordered to remove from the service on 07.07.2009, no notice was served to him.

4. Case of the prosecution:-

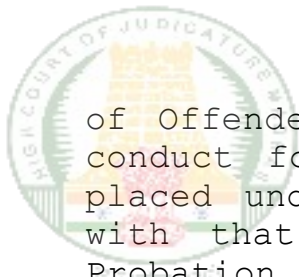
(i) The accused persons in all the cases committed offences under Sections 408, 467, 468, 409, 477 (A), 418 and 204 IPC. So, the case of the prosecution in all the cases is that the accused persons were employees of Central Co-operative Society, Sri Rangam Branch, Trichy District. During the course of business transaction, the accused persons were alleged to have fabricated the documents by falsifying the records of the respective several bank accounts of the customers and thereby, they misappropriated the funds from the several bank accounts of the customers.

(ii) On the basis of the complaint, the Deputy Registrar of Co-operative Societies had ordered to conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. One Mr.Palanivelu, the Co-operative Sub-Registrar was appointed as Enquiry Officer by the Deputy Registrar of the Co-operative Societies.

(iii) On the basis of the enquiry report, a complaint has been lodged in all the cases before the Inspector of Police, Commercial Crime Investigation Wing, Trichirappalli, against the second respondent herein and one Mr.Senthil. So, based upon the complaint, a case in Crime No.7 of 2009 was registered. After completing the investigation, final report was filed before the learned Judicial Magistrate No.III, Trichirappalli, which was taken on file in C.C.Nos.159 of 2010, 160 of 2010, 161 of 2010 & 162 of 2010.

5. During the course of trial, on the side of the prosecution, 8 witnesses were examined and 8 documents were marked.

6. The second accused, namely, Mr.Senthil died, during the trial proceedings. At the conclusion of trial, the second respondent was found guilty for the offences under Sections 408, 467, 468, 409, 477 (A), 418 and 204 IPC. But, however, the Trial Court, chose to give the benefit under the provisions of Probation of Offenders Act, on the basis of the report submitted by Probation Officer, Trichy District. So, on that basis, the Trial Court, extended the benefit under Section 12 of the Probation



of Offenders Act. He was ordered to keep the behaviour of good conduct for 1 year from the date of judgment and he was also placed under the supervision of Probation Officer. Not stopping with that, by exercising the power under Section 12 of the Probation of Offenders Act, service benefits as well as the monetary benefit have also been granted to the second respondent.

7. These Criminal Original Petitions are filed challenging this portion of the order of the Trial Court.

8. Heard both sides.

9. According to the learned counsel for the petitioner, granting benefit under Section 12 of the Probation of Offenders Act, is completely misplaced, having found that the second respondent indulged in fabricating the documents and misappropriated the amount, it is beyond the jurisdiction of the Trial Court. The reason being that based upon the departmental enquiry, the accused was dismissed from service on 07.07.2009 itself, by proceedings No.1908/08-09 (14.3) 10.

10. It appears that the above said dismissal order has not been brought to the notice of the Trial Court during the course of trial proceedings or by the second respondent. Since he has been dismissed from the service, long before the date of trial and judgment, the second respondent ought to have approached the Tribunal for setting aside the dismissal order. But, he has not availed that opportunity.

11. So, the observation of the Trial Court that extending the monetary benefits and service benefits under Section 12 of the Probation of Offenders Act, to the second respondent, has become infructuous. So, the observation is liable to be deleted or expunged from the judgment.

12. In the result, these Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

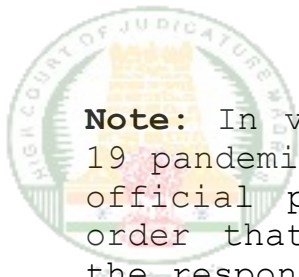
Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

Dss



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.

WEB COPY

To

- 1.The Judicial Magistrate Court No.III,
Tiruchirapalli.
- 2.The Inspector of Police,
Commercial Crime Investigation Wing,
Thiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+4 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-20344, 20347, 20348, 20349 [F] dated 28/06/2021)

Crl.O.P. (MD) Nos.5428, 5433, 5436 & 5440 of 2021
and
Crl.MP (MD) Nos.3134, 3135, 3136 & 3138 of 2021
25.06.2021

SB(27.09.2021) 4P 8C