BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE ON WHICH RESERVED : 08.07.2021

DATE ON WHICH PRONOUNCED : 12.08.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)Nos.6064, 6066, 6080 & 6082 of 2021
and
Crl.MP(MD)Nos.3467, 3470, 3489 & 3491 of 2021

N.Sheik Allaudin ... Petitioner/4th Accused
(In all petitions)

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
(Ref:Crime No.04 of 2007)
... 1st Respondent/Complainant
(In all petitions)

2.Mr.K.Pandian,
Deputy Registrar of Co-operative Societies,
O/o the Joint Registrar of Co-operative Societies,
Kajamalai, Tiruchirappalli.
... 2nd Respondent/Defacto Complainant
(In all petitions)

Common Prayer: Criminal Original Petitions are filed under Section 482 Cr.P.C., to call for records in C.C.Nos.85, 86, 87 & 63 of 2010 on the file of the Judicial Magistrate No.II, Trichy, and quash the charge sheet and consequential all further proceedings as against the petitioner.

(In all petitions)
For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

COMMON ORDER

These Criminal Original Petitions are filed to call for records in C.C.Nos.85, 86, 87 & 63 of 2010 on the file of the Judicial Magistrate No.II, Trichy, and quash the charge sheet and consequential proceedings as against the petitioner.

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 is passed.

3. **The case of the prosecution in Crl.OP(MD)No.6064 of 2021:-**

The petitioner was working as 'Co-operative Audit Officer' in the Co-operative Audit Department. When he was working as Co-operative Audit Officer in Tiruchirappalli District, he has conducted statutory audit in the Trichirappalli Regional Engineering College Employees Co-operative Thrift and Credit Society, for the financial year of 1998-1999 and during that audit, he has not noticed the irregularities and misappropriation of funds of the Society, have been committed by the first and second accused. So, thereby, he committed negligence in his duty and responsibilities. So, on the basis of the complaint, given by the second respondent, a case has been registered in Crime No.4 of 2007. During the course of investigation, it was found that the petitioner colluded with the accused Nos.1 to 3 and actively involved in the above said crime and he was charged under Sections 408, 409, 477(A), 418 r/w 34 and 109 of IPC. Challenging the final report, taken on file in C.C.No.85 of 2010, this petition is filed.

4. **The case of the prosecution in Crl.OP(MD)No.6082 of 2021:-**

In this case, the petitioner was arrayed as fourth accused. The case of the prosecution in this case is that he conducted audit in the above said co-operative Society for the financial year of 1998 - 1999. On the basis of the Audit Report, enquiry was conducted by the Enquiry Officer under Section 81 of the Tamilnadu Co-operative Societies Act. Based upon the Enquiry Report, a complaint has been lodged and the same has been registered in Crime No.4 of 2007 and after completion of investigation, final report has been filed. Wherein, it has been stated that during the period of 1988 - 1989, the petitioner was colluded with the other three accused persons failed to find out the misappropriation and fabrication of records. So, he charged under Sections 408, 409, 477(A), 418 r/w 34 and 109 of IPC. So, challenging the final report, taken on file in C.C.No.63 of 2010, this petition is filed.

5.**The case of the prosecution in Crl.OP(MD)No.6080 of 2021:-**

The petitioner was arrayed as fourth accused in the above said case. The case of the prosecution in this case is that like in other cases also, he conducted audit during the relevant period. But, he colluded with the other accused persons, did not conduct the audit properly and brought to the notice to the Officer about the misappropriation and fabrication of records committed by the other accused persons, during the relevant period of 1988 - 1989. The amount involved in this case is Rs.6070/-. So, he is charged under Sections 408, 409, 477(A), 418 r/w 34 and 109 of IPC.

Challenging the final report, taken on file in C.C.No.87 of 2010, this petition is filed.

6.**The case of the prosecution in Crl.OP(MD)No.6066 of 2021:-** The very same allegations found in the above said cases have been alleged against the petitioner in this case also and he was arrayed as fourth accused in this case also. But, however, separate charge sheet has been filed. But, the crime number is one and the same in all the cases. The relevant period noted in the final report is 1987 - 1988. The amount involved in this case is Rs.10,775/-. Based upon the Enquiry Report, a complaint has been registered in Crime No.4 of 2007. During the course of investigation, it has been found that the petitioner also actively colluded with the other accused persons did not bring to the notice of the authorities about the misappropriation as well as the fabrication of records committed by the other accused persons. So, he is charged under Sections 408, 409, 477(A), 418 r/w 34 and 109 of IPC. Challenging the final report, taken on file in C.C.No.86 of 2010, this petition is filed.

7. Heard both sides.

8. The only point, which has been raised by the learned Additional Public Prosecutor, at the time of argument, is that the petitioner was working only as 'Auditor', during the relevant periods. When he conducted audit in Trichirappalli Regional Engineering College Employees Co-operative Thrift and Credit Society, during the financial year of 1988 -1989, even though, he found out misappropriation and fabrication of records, that has been committed by the other accused persons, he did not bring forward to the notice of the Higher Authorities and this has been done by him deliberately with the active collusion of other accused also. So, he has been charged under Sections 408, 409, 477 (A), 418 r/w 34 and 109 IPC also.

9. According to the learned counsel for the petitioner, in the batch of Criminal Original Petitions, similarly, persons moved petitions in Crl.OP(MD)Nos.8482 to 8494 of 2018 before this Court. After going through the Co-operative Society Manual and Duties and Responsibilities that has been cost upon the Audit Officer, came to the conclusion that without any proper base or materials, criminal liability cannot be fastened on the Audit Officer. In short, what he tried to argue is that he was only auditing the records, during the course of auditing, there was no chance, for him to find out whether the documents and records that have been produced before him are genuine or not. So, absolutely, such a cross checks with regard to the genuineness of the accounts and records were beyond his central and duty. So, as such, he cannot be fastened with any criminal liability, in the absence of

materials to show that he was also actively involved in the fabrication of records and misappropriation of money, during the relevant periods. During the relevant period, when misappropriation and fabrication of records were committed, he was not employed in the Trichirappalli Regional Engineering College Employees Co-operative Thrift and Credit Society. So, he was not at all in the picture, during the period when the alleged misappropriation took place.

10. According to the learned counsel for the petitioner, absolutely there was no chance for him to collude with other accused persons to commit those offences. So, this argument, on the side of the petitioner appears to be acceptable and reasonable one. The Auditor/Officer, who came to the picture, subsequent to the misappropriation cannot be fastened with any criminal liability. If he has omitted to verify the records and accounts, then if at all it is a civil liability and departmental action can be taken and certainly not a criminal action in the absence of any materials to connect him with the offence. So, on this ground only, the above said Crl.OP(MD)Nos.8482 to 8494 of 2018, came to be allowed by this Court.

11. In that case also, the Tamilnadu Co-operation Manual with regards to prosecution as against the Departmental Officer is extracted. The extract runs like this :-

> *"Departmental Officers are working on foreign service in Co-operative Organisation as Chief Executive Officers of 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 Co-operative 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 scrutinies each and every transactions of the society. They would have failed to check and scrutinies the accounts and or exercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under IPC committed by the staff. Failure of such nature ie., failure to discharge their duties properly or negligence, or omissions, unless the inquiry, inspection or investigation officer finds it prima facie, that such officers with mala fide 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."

12. So, reading of this manual shows that if at all the Officer can be proceeded departmentally, implicating them in routine manner is also been deprecated.

13. Following the above said manual, a circular has been issued by the Registrar of Co-operative Societies, Chennai in R.C.No.228696/19/CP1, dated 11.12.1991. This circular runs like this:-

> *"3.Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the Co-operatives who are involved vicariously has also been examined. The departmental officers, working have no chance to scrutinize each and every transactions of the society. Though they may have an overall control, they cannot be held criminal 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 of misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police."*

14. Following these two things, manual and circular issued by the Registrar of Co-operative Society, Chennai, the case in **N.Baskaran Vs The State represented by Inspector of Police, of C.C.I.W., CID, Trichy,** was filed by the accused, who were working in Officer Cadre, during the relevant period. Another Important feature is that one P.Mahalingam, was also working as Auditor and

he made the auditing in Trichirappalli Regional Engineering College Employees Co-operative Thrift and Credit Society. Based upon which, 12 cases have been registered. In paragraph 10 of the said order, audit has been conducted only subsequent to the alleged fraud alleged to have been committed by the co-accused, which was continued for several years and during the relevant periods, several auditors have audited the accounts for several years. Even though, there is no negligence and dereliction of duty, on the part of the Auditors and no criminal liability has been fastened upon them, in the absence of any materials. All the cases, came to be quashed in Crl.OP(MD)No.5406 to 5417 of 2012. So, what apply to Mr.Mahalingam, also squarely apply to the petitioner herein. Even going through the materials available on records, it does not connect the petitioner, to the above said fabrication of records and misappropriation of money committed by the co-accused person, who are doing day to-day works in the said Society. So, on this lone ground, all the petitions are liable to be allowed and accordingly allowed.

15. In the result, proceedings in C.C.Nos.85, 86, 87 & 63 of 2010 on the file of the Judicial Magistrate No.II, Trichy, are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

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.

To

1.The Judicial Magistrate No.II,
Trichy.

2.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.

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

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-26264[F] dated 13/08/2021)

Crl.O.P.(MD)Nos.6064, 6066, 6080 & 6082 of 2021
and
Crl.MP(MD)Nos.3467, 3470, 3489 & 3491 of 2021

12.08.2021

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