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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2022

PRONOUNCED ON : 15.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.Nos.22487 & 24426 of 2014 and
M.P.Nos. 1 & 1 of 2014

G.Jayaprakash ... Petitioner in Crl.O.P.No.22487 of 2014

1.R.Krishnan
2.G.Saroja
3.P.Venkatesan
4.Nanjayammal
5.S.Perumal Gounder
6.S.Elangovan
7.M.Vijayakumar
8.R.Subramanian
9.S.Subramanian
10.K.Kuppusamy
11.M.Saravanan
12.Chithayee
13.P.Gopal

... Petitioners in Crl.O.P.No.24426 of 2014
Vs.

1.State represented by
Inspector of Police,
Commercial Crime Investigation Wing,
CCIW - CID, Salem,
(Cr.No.7 of 2012).

2. The Deputy Registrar of Co-operative Societies,
Sankagiri Circle, Sankagiri,
Salem District. ... Respondents in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under
Section 482 of the Code of Criminal Procedure, to call for the
records in C.C.No.35 of 2014, pending on the file of Judicial
Magistrate, Sankagiri, Salem and quash the Charge Sheet in so
far as against the petitioners are concerned.

In both Crl.O.Ps.

For Petitioners	: Mr.G.Arul Murugan
For Respondent No.1	: Mr.E.Raj Thilak
	Additional Public Prosecutor



COMMON ORDER

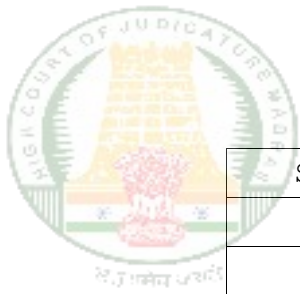
These Criminal Original Petitions have been filed to call for the records in C.C.No.35 of 2014, pending on the file of the Judicial Magistrate, Sankagiri, Salem and quash the same.

2.On the basis of the complaint by Mr.P.Ravikumar, the Deputy Registrar of Co-operative Societies, Sankagiri Circle to the Superintendent of Police, Commercial Crime Investigation Wing, Chennai, FIR had been registered by the Inspector of Police, Commercial Crime Investigation Wing, CCIW - CID, Salem, in Crime No.7 of 2012, for the offences under Sections 408, 464 & 477(A) IPC.

3.The allegations made in the complaint, in brief, are as follows:

On the basis of the allegations of certain irregularities in No.10606, Nedungulam Primary Agricultural Co-operative Society, an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. After completion of the enquiry, the enquiry officer recommended a criminal action against certain officers for their wrong doing. During the period from 25.04.2008 to 13.10.2010, without obtaining loan applications, loan documents, Turmeric bags as security for loan, records have been created as if a sum of Rs.99,61,263/- said to have been distributed to the members of the Co-operative Society without obtaining their signature, thumb impression etc., The then Secretary S.Ramasamy misappropriated a sum of Rs.5,00,000/-. He has received this amount for disbursement of jewel loan. As many as 21 offences were noted under the first category. The details of the amount disbursed are as follows:

S.No.	Name	Amount in (Rs.)
1.	P.Gopal	5,00,000/-
2.	Palanisamy	5,00,000/-
3.	R.Krishnan	5,00,000/-
4.	G.Saroja	5,00,000/-
5.	P.Vadivupalanisamy	5,00,000/-
6.	P.Venkatesh	5,00,000/-
7.	P.Nanjayammal	5,00,000/-
8.	Perumal Gounder	5,00,000/-
9.	P.Kumar	5,00,000/-
10.	S.Elangovan	3,00,000/-
11.	M.Vijayakumar	5,00,000/-
12.	R.Subramaniyan	5,00,000/-
13.	S.Subramaniyan	5,00,000/-
14.	A.Krishnamurthy	5,00,000/-



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S.No.	Name	Amount in (Rs.)
15.	Kuppusamy	5,00,000/-
16.	Ponnappan @ Sellappan	3,00,000/-
17.	M.Saravanan	3,00,000/-
18.	Sithaaye	3,00,000/-
19.	Muthusamy	3,00,000/-
20.	K.Rajaram	3,00,000/-
21.	G.Jayaprakash	5,00,000/-

4. The common mode of commission of the offences is that without getting proper loan application, loan documents and security i.e., 240 Turmeric bags, records have been created as if the aforesaid loan amounts had been disbursed to these persons. The accused Gopal acknowledged the receipt of the loan amount in the disbursement register, but he has not given the security of 240 Turmeric bags. The same is the case with the other accused. It is alleged that all the accused, especially the accused Ramasamy and Kandasamy, the then Secretary and Assistant Secretary, respectively, in connivance with the other accused have committed this offence and caused monetary loss to the Society. That apart, the accused Ramasamy and Kandasamy said to have disbursed a sum of Rs.3,00,000/- each to Kandasamy, Muthusamy and Bhagyam without any records. On the basis of this complaint, FIR was registered. After completion of investigation, the first respondent filed a final report against the accused for the offences under Sections 406, 408, 465, 468, 471, 477(A) r/w 109, 120(B) and 34 IPC. The case was taken cognizance by the learned Judicial Magistrate, Sankagiri. Challenging the same, these Criminal Original Petitions are filed.

5. The learned counsel for the petitioners submitted that there are totally 25 accused in this case. A1 and A2 are the Secretary and Assistant Secretary, A24 and A25 are the Salesman and Clerk in the Society. A3 to A23 are only agriculturists. The Society offered commodity loans. A3 to A23 have not submitted any applications for commodity loan. However, A1, A2, A24 and A25 have created records as if A3 to A23 have submitted applications and they have disbursed the commodity loan. A3 to A23 have no connection with either the commodity loan or the disbursal of the amount. They have not received any amount as loan. A3 to A23 are unnecessarily implicated as accused in this case. The properties of A1 were attached and sold and a sum of Rs.92,00,000/- was recovered. No proceedings was initiated against A3 to A23. Witness Nos.6 to 18 are similarly placed like the accused A3 to A23, but they were shown only as witnesses. A3 to A23 have been unnecessarily shown as accused only with a view to harass them. The petitioner in CrI.O.P.No.22487 of 2014 is the 23rd accused and the petitioners in CrI.O.P.No.24426 of 2014 are



accused Nos.5, 6, 8, 9, 10, 12, 13, 14, 15 17, 19, 20 and 3. There is absolutely no case has been made out against the petitioners and therefore, the learned counsel for the petitioners prayed for quashing the proceedings against the petitioners.

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6. In response, the learned Additional Public Prosecutor submits that the petitioners along with the other officials of the Society, namely A1, A2, A24 and A25 have created documents as if they have submitted loan applications, received the amount, thereby caused monetary loss to the Society. The records seized and the statement recorded clearly establishes the prima facie case against the petitioners. Therefore, the learned Additional Public Prosecutor prays for dismissal of these petitions.

7. Considered the rival submissions and perused the records.

8. The allegations against the accused especially A1, A2, A24 and A25 is that they have created records for the disbursement of loan without proper loan applications, loan documents and 240 Turmeric bags as security. A1, A2, A24 and A25 are not before this Court. Only the members i.e, the agriculturists have filed this petition. The main grievance of the learned counsel for the petitioners is that these petitioners have not submitted any applications. They have no control over the functioning of the society. Without any application how can the petitioners be prosecuted for alleged illegal creation of records or disbursement of loan. It is also pointed out by the learned counsel for the petitioners that A1 in the complaint itself alleged that the Secretary had created the documents and records to show that the loan amounts were disbursed to the members without there being any applications from the members supported by loan documents and 240 turmeric bags as security. Though it is claimed that some of the members signed the disbursement register, those signatures are disputed by the concerned members and they are fabricated and forged by A1, A2, A24 and A25.

9. This Court enquired as to whether the respondent police was able to seize any of the applications submitted by the members i.e., A3 to A23, the answer was in the negative. It appears that there is no application submitted by any of the members, who are shown as A3 to A23 in the final report. The complaint and the statement of the witnesses reiterates again and again that A1, A2, A24 and A25 are alone responsible for the commission of offences in this case, the statement of I.Vinayagamurthy, the enquiry officer and the enquiry under Section 81 is very much relevant. It is seen from his statement that the Secretary S.Ramasamy without following any procedures and rules for the disbursement of loan, created documents and without any permission from the administration, disbursed the loan without getting the commodity as security.



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The statement of M.Thangavel, former field officer, Sankagiri shows that the records had been under the custody of the Secretary. The day book, ledger, Chitta were all maintained by Ramasamy, Kandasamy and Malathy and they created wrong entries and misappropriated the amount. It appears that the members have not received any loan amount. The statement of K.M.Ponnusamy, daily worker in the Society is that there is no godown facility available for the Society and no member had deposited Turmeric bags in the Society, as security. The accused Ramasamy, Kandasamy and Malathy had made entries in the disbursement register as if money was distributed to the members. At the instance of and at the threat of Ramasamy, he obtained signatures from some members, as if the signature relates to crop loan. No one has applied for commodity loan on the basis of the deposit of the Turmeric Bags. Kumar, Sub-Registrar states in his statement that as a Secretary, Ramasamy was responsible for the maintenance of the staffs and the disbursement of the loan. Ramasamy, Kandasamy and Malathy were responsible for the irregularities found in the Society. It is seen from the statement of Rajan, Sub-Registrar that after passing of resolution, certain entries were made in blue ink by Ramasamy for committing misappropriation of funds. Ramasamy was keeping the records in his custody and indulged in misappropriation of money. Thus, from the statements of these important witnesses, it is clearly evident that A1, A2, A24 and A25 as the officials of the Nedungulam Primary Agricultural Co-operative Society, without getting any loan applications, loan documents and 240 turmeric bags as security, created documents and records to show that the loan amount have been disbursed to the members who are agriculturists. Strangely, no loan application was submitted by any of the members. Therefore, it is not known as to how the members had been arraigned as accused, especially, when the similarly placed members LWs 6 to 18 were shown as witnesses.

10. The learned Additional Public Prosecutor submitted that A3 is the main accused in this case. He is the one who organized this criminal act conspiring with the other accused. It is seen from the statements of I.Vinayagamurthy, Enquiry officer that none of the members appeared for enquiry, but most of them sent a reply containing the same contents. It shows that they act in concert and at the instigation of A3. Merely because a common reply was sent in response to the enquiry, one cannot come to the conclusion that the members have conspired to commit offences alleged against them. In the absence of any application submitted by the members, this Court is of the considered view that there is absolutely no grounds for prosecution. Therefore, this Court is of the view that the further proceedings against the petitioner (A23) in CrI.O.P.No.22487 of 2014 and the petitioners in CrI.O.P.No.24426 of 2014 except the 13th petitioner (A3) is liable to be quashed.



11. The allegations against the 13th petitioner (A3) is that he was a former president of the Society and he was an influential person and responsible for organizing this offence. There is a specific allegation made against him that he was putting blocks and hurdles to the enquiry, so that the truth will not come out. The final report was filed not only for the substantive offences under Section 406, 408, 465, 477, 477A IPC, but the accused are also charged with Sections 109, 120b, 134b IPC. In view of the specific allegations that A3 is a former President and had been exercising his dominion over the Society and he is informally considered as the supremo of the Society and entire administration was under his command and directions, this Court is of the view that the allegations against the 13th petitioner (A3) in Crl.O.P.No.24426 of 2014 need to be tried. Thus, for the reasons stated above, Crl.O.P.No.22487 is allowed and Crl.O.P.No.24426 of 2014 is allowed so far as the petitioners 1 to 12 are concerned and dismissed as against the 13th petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate, Sankagiri, Salem.

2. The Inspector of Police,
Commercial Crime Investigation Wing,
CCIW - CID, Salem,
(Cr.No.7 of 2012).

3. The Deputy Registrar of Co-operative Societies,
Sankagiri Circle, Sankagiri,
Salem District.

4. The Public Prosecutor,
High Court, Madras.

+2 ccs to Mr.G.Arul Murugan, Advocate Sr.NO. 17588,17587
CRL.O.P.Nos.22487 & 24426 of 2014

PMK (CO)
A.SK(29/03/2022)