IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.4996 of 2021 and
Crl.M.P.No.3184 of 2021 and
Crl.M.P.No.10939 of 2022

G.Ravichandran ... Petitioner

/vs/

The Deputy Superintendent of Police,
Commercial Crimes Investigating Wing,
Salem Zone, Salem.
... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records and to set aside the order dated 24.09.2019 made in C.R.P.No.10 of 2016 on the file of the Principal Sessions Judge, Salem reversing the order dated 04.12.2015 made in C.M.P.No.6266 of 2016 in C.C.No.115 of 2013 on the file of the learned Judicial Magistrate – III, Salem by allowing the above criminal original petition.

For Petitioner ... Mr.A.V.Arun

For Respondent ... Mr.A.Gopinath,
Govt. Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to call for the records and to set aside the order dated 24.09.2019 made in C.R.P.No.10 of 2016 on the file of the Principal Sessions Judge, Salem reversing the order dated 04.12.2015 made in C.M.P.No.6266 of 2016 in C.C.No.115 of 2013 on the file of the learned Judicial Magistrate – III, Salem by allowing the above criminal original petition.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

3. On 21.11.2022, this Court has passed the following order:

> *"This Criminal Original Petition has been filed against the order dated 24.09.2019 passed in CRP.No.10 of 2016 by the learned Principal Sessions Judge, Salem, reversing the order dated 04.12.2015 passed in CMP.No.6266 of 2016 in CC.No.115 of 2013 by the learned Judicial Magistrate-III, Salem.*
>
> ***2.****The petitioner is the sixth accused in CC.No.115 of 2013 on the file of the learned Judicial Magistrate -III,*

Salem. The respondent has registered a case in Crime No.2 of 2011 for the alleged offence punishable under Sections 120B, 408, 409, 467, 468, 471, 477A, and 420 IPC read with 109 IPC, said to have been taken place between April-2001 and February-2005, at S.1523 - Dr.Ambethkar Salem City Cooperative House Building Society. The petitioner was working as Special Officer in S.1523- Dr.Ambethkar Salem City Cooperative House Building Society from 04.12.2003 to 08.08.2004 for about only 8 months and during the said period, he was not part of any meeting to sanction Housing Loan. The allegation which led to the filing of the charge sheet is that the first and second accused, who were functioning as Assistant Secretary and Secretary of the Society, in collusion with other accused, had misappropriated the funds of the society by falsification of accounts and fabrication of entries in the Register of the Society. The thrust of the allegation is that the loans have been sanctioned in the names of fictitious persons and money was withdrawn through cheques belonging to the Society.

3.*The petitioner filed an application in CMP.No.6266 of 2013 under Section 239 of the Code of Criminal Procedure to discharge him from the criminal* *case. The said petition was allowed on 04.12.2015. However, the respondent has challenged the same by way of filing Civil Revision Petition before the Principal Sessions Court, Salem and that has been allowed on 24.09.2019. Aggrieved over the same, the petitioner, who is the sixth accused has filed this Criminal Original Petition.*

***4**.The learned counsel for the petitioner submitted that the learned Principal Sessions Judge, Salem, has failed to properly appreciate the merits of the matter; the respondent has stated that conspiracy between the accused 1 and 3 had taken place. However, the petitioner was not working as a Special Officer during that point of time and hence there is no ground to make out the offence of conspiracy. If there is no material to make out the offence of conspiracy, the other offences which are said to be the off-shot of the conspiracy also can not stand.*

***5**. As I feel a fit case is made out, it is adjourned for hearing.*

***6**. Mr.A.Damodaran, learned Additional Public Prosecutor takes notice for the respondent.*

7. List the matter after two weeks."

4. The learned counsel for the petitioner submitted that the petitioner who held the additional charge of Special Officer for the period from 04.12.2003 to 08.08.2004 would have no connivance in the alleged occurrence said to have been committed; the learned Judicial Magistrate had analysed the materials and got convinced that if at all the petitioner had contributed anything for the commission of the offence, it might be due to his negligence and not out of criminal intention. In support of his contention, he cited the decision of the Hon'ble Supreme Court held in the case of ***Pandiselvam and Another Vs. State Rep. by The Inspector of Police reported in 2020 SCC Online Madras 20760.***

5. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that so far as this petitioner who is the sixth accused is concerned, there are certain specific allegations made in connection with sanctioning of loan of Rs.4,03,250/- disbursed to a fictitious person by name Chandrasekaran on 23.07.2003, 13.08.2003, 06.09.2003 and

15.10.2003; the petitioner had conspired with the other accused *viz*., A1, A2, A5 & A7 and misappropriated the said amount even without disbursing any actual amount to any realistic person; the petitioner along with A1, A2, A5 and A7 have also created the documents by falsifying the amount in such a way that a loan of Rs.4,11,500/- is disbursed to one Selvakumar who is also a fictitious person; the entries of disbursal relevant to the above said loan would relate to 13.10.2003, 05.11.2003, 19.12.2003 and 29.01.2004; since the petitioner was in-charge as the Special Officer from 04.12.2003 to 08.08.2004 and during which time, the loan is shown to have been disbursed; the petitioner is also liable to face the criminal case; when there are triable issues made out, the case cannot be quashed and the petitioner should be subjected to trial. In support of the above contention, he relied on the judgment of the Hon'ble Supreme Court made in case of ***Kaptan Singh Vs. State of Uttar Pradesh and Others, reported in (2021) 9 SCC 35.*** The relevant paragraphs are extracted hereunder:

> *"9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections*

147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for theoffencesunder Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the *material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.*

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to herein above."

6. There is no dispute as to the fact that the petitioner was holding the additional charge as Special Officer during the period between 04.12.2003 to 08.08.2004. As against this petitioner, the specific allegation is with regard to sanctioning of loan of Rs.4,03,250/- to a fictitious person by name Chandrasekaran and for whom the records have been falsified to show that the loan was disbursed on 23.07.2003, 13.08.2003, 06.09.2003 and 15.10.2003. Since the petitioner was holding the additional charge only between 04.12.2003 and 08.08.2004 and the above transaction and entries do not relate to the petitioner during which the petitioner held the additional charge, he cannot be attached to the above charge.

7. The next transaction pertains to the falsification of records is with regard to the alleged loan disbursed to a fictitious person by name selvakumar to the tune of Rs.4,11,500/- on different dates ranging from 13.10.2003, 05.11.2003, 19.12.2003 and 29.01.2004. The petitioner was not in-charge of the affairs during 13.10.2003 and 05.11.2003 and the two relevant dates are only 19.12.2003 and 29.01.2004. The materials before the Court would show that the cheques pertaining to the date 19.12.2003 and 29.01.2004 would relate to the matured fixed deposit issued to the depositors and they have given statement that they have received a sum of Rs.50,000/- respectively. The cheque No.442724 dated 19.12.2003 pertains to the cheque issued to one Seshadri as a matured value on the fixed deposit made by him. The other cheque No.442746 dated 29.01.2004 pertains to the matured fixed deposit value issued to the depositor

Venkatachalam. Both Seshadri and Venkatachalam have given statement that they have encashed the cheque and got their amount. But in the counterfoil against the said cheque numbers, it is seen to have been returned as loan disbursed to one Selvakumar.

8. The learned Government Advocate (Crl.Side) also submitted that these entries are the hand work of the petitioner who had falsified the records in order to misappropriate the funds of the Society. It is relevant to make a reference that the disciplinary action has been taken against the petitioner for the above lapse on the part of the petitioner and at the end of the disciplinary proceedings, the charges against the petitioner were dropped.

9. The petitioner is the authorised signatory for the impugned cheques. But it is not his duty to make entries in the counterfoil maintained in the cheque book. Though it is obligatory on the part of the petitioner as a supervising authority to check whether the entries in the counterfoil has been made correctly, the said lapses on his part is not sufficient to fasten the petitioner with the criminal liability especially when he held the additional charge only from 04.12.2003 till 08.08.2004 and during which time the problematic cheques were issued only on 19.12.2003 and 29.01.2004. The allegation of the sanctioning of false loan to two fictitious persons by name Chandrasekaran and Selvakumar appears to be chain of actions which is spread over to several dates. Each of the fictitious person is seen to have been given with the cheques pertaining to the fictitious loan on four dates. So far as this petitioner is concerned, he is not related to six dates out of the eight dates. Even the cheques pertaining to the dates 19.12.2003 and 29.01.2004 are proved to be the fixed deposit amount issued through cheques to two beneficiaries by name Seshadri and Venkatachalam.

10. The learned Magistrate has observed the above details in his order and had relied on Section 8 of the Tamil Nadu Corporation Manual wherein it is stated that the failure to discharge their duties properly or with negligence cannot be considered as acts done with malafide criminal intention or acts of criminal breach of trust or criminal misappropriation, unless any enquiry, inspection or investigation finds *prima facie* materials in this regard.

11. In the case in hand except the presumption as to the conspiracy between the petitioner and the other accused, nothing is available on record to directly connect the petitioner to the alleged occurrence that had taken place on 19.12.2003 and 29.01.2004. Though it is right on the part of the learned Government Advocate (Crl.Side) to argue that whenever there triable issues are seen to have arisen, the accused should be subjected to trial, that cannot be the only ground to quash the proceedings. It is to be seen whether the materials makes out a negligent act or a criminal act as against the accused. In this regard, it is relevant to cite the decision of this Court held in the case of ***Pandiselvam and Another Vs. State Rep. by The Inspector of Police reported in 2020 SCC Online Madras 20760.*** In the said case, it is held as under:

> *"12. From the aforesaid decisions, it is clear that negligence may create only the civil liability and there cannot be any vicarious liability in the criminal law. Further, mere negligence to look into the records properly*

would not satisfy any of the ingredient of the offences alleged against the petitioners herein.”

12. The petitioner who happened to be a Supervising Authority could have exercised better vigilance in supervising the records and see that the staff working under him or the officers above him do not make use of the records in his custody to make false entries and thereby appropriate funds of the Society. But the failure of the petitioner to exercise appropriate caution alone cannot be considered as criminal intention without any preponderance of probability as stated already. The impugned cheques dated 19.12.2003 and 29.01.2004 pertains to the fixed deposit issued to two of the beneficiaries and that is not in dispute. Since the chain of action which constituted the offence of misappropriation in the name of two fictitious persons *viz*., Chandrasekaran and Selvakumar do not directly relate this petitioner, except for his negligence subjecting the petitioner to undergo criminal trial will not serve any useful purpose.

13. In view of the above stated reasons, I feel the order of the learned Judicial Magistrate – III, Salem stands good and it need not be reversed by the learned Principal Sessions Judge, Salem.

14. In the result, this Criminal Original Petition is allowed and the order passed in C.M.P.No.6266 of 2016 in C.C.No.115 of 2013 on the file of the learned Judicial Magistrate – III, Salem, is confirmed. Consequently, connected miscellaneous petitions are closed.

15.12.2022

Index: Yes/No
Internet: Yes/No
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To

1.The Deputy Superintendent of Police,
Commercial Crimes Investigating Wing,
Salem Zone, Salem.

2.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA ,J.

gsk

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