BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2022
CORAM:
THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL OP(MD). Nos.311, 332, 435, 490, 505, 506 of 2021
and
CRL MP(MD). Nos.130, 139, 201, 226 of 2021

In all the petitions:

P.Balasubramani
... Petitioner

Vs

1. The state through the
Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
In Crime No.9/17

2. The Deputy Registrar of Cooperative Societies,
College Road, Vadugappatti Village,
Musiri and Po. Tiruchirappalli District,
in FR 3, 2, 4, 5, 7, 6-2019 ... Respondents

COMMON PRAYER :- These Criminal Original Petitions filed under Section 482 Cr.P.C., to quash all the further proceedings of the cases in C.C No.71, 70, 72, 73, 75, 74 of 2019 on the file of the learned Judicial Magistrate, Musiri, Tiruchirappalli District, so far as the petitioner is concerned.

For Petitioner : Mr.S.Karthikeyan

For Respondent R1 & R2 : Mr.B.Thanga Aravindh
Government Advocate(Crl.Side)

COMMON ORDER

These Criminal Original Petitions have been filed to quash all the further proceedings of the cases in C.C No.71, 70, 72, 73, 75, 74 of 2019, on the file of the learned Judicial Magistrate, Musiri, Tiruchirappalli District, so far as the petitioner is concerned.

2.In all these cases, the petitioner is arrayed as fifth/sixth accused. The petitioner and other accused persons have been charged in C.C No.71, 70, 72, 73, 75, 74 of 2019, on the file of the learned Judicial Magistrate, Musiri, Tiruchirappalli.

3.In all these cases, the case of the prosecution is that in Tiruchirappalli R 1594 Pillathurai Primary Agricultural Credit Society during the period from 01.04.2015 to 31.03.2017, there was misappropriation of funds forging the documents and altering the entries in the registers. The allegation against the petitioner is that when the petitioner was working as a Supervisor, he failed to go for periodic audit, thereby failed to prevent the commission of offence. When the petitioner was working as a Circle Supervisor, Thathainagar Pettai Circle, for the period from 2014 to 2017, was allotted 16 Primary Agriculture Co-operative Credit Societies. All the societies are situated in the different area, within the surroundings of 30 kms. The petitioner visited the societies for recommending the various category of loan applications and take surprise and periodical inspection in several societies and also collect the datas from the societies on monthly basis and submitted to the Head Office. Admittedly, the petitioner is only the Supervisor and not having any power to manage the affairs of the society and he has no power to run day-to-day business of the society, according to the by-law of the society.

4.The learned Government Advocate (Crl.Side) appearing for the respondents submitted the duties of the Supervisor. The Supervisor should perform the following duties:

1. *He will check all the accounts, registers etc, of the society, prepare and send the quarterly inspection report to the bank.*
2. *He will arrange to prepare KCC application in all the societies in his charge, scrutinise the application with relevant facts to land register etc, and recommend it for sanction in the Central Bank through the Regional Manager and Executive Officer.*
3. *He will verify the over dues list at the time of his visit.*
4. *He will arrange for the collection from the members of the society and also make arrangements for taking legal actions of the defaulter.*
5. *He will verify the cash balance of the society and will arrange to remit it then and there without any retention.*
6. *He will verify the manure and other stocks of the societies periodically.*
7. *He will submit all particulars required by the bank whenever necessary.*
8. *He will take periodical inspection of the societies and will send reports accordingly.*
9. *He will arrange to rectify the defects by the societies mentioned by the inspecting officers during inspection.*
10. *He will have the control over the paid Secretaries of the Societies.*
11. *He is responsible for achieving the target fixed by the bank for issue of loans, collection, share capital, deposits effective members etc.*

5.If the Supervisor is failed to supervise and inspect the societies, disciplinary action can only be initiated and no prosecution can be initiated against him. While that being so, the second respondent lodged complaint against the petitioner without even considering the duties of the petitioner and also charge sheet has been laid and the same has been taken cognizance by the trial Court.

6.It is relevant to extract the Circular dated 11.12.1991 in RC.228696/90 CP1, with regard to criminal action as against the officer.

> "..*hold chief executive or administrative and other supervisory posts in the Co-operative 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. Through 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 negligency 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.*"

It is relevant to extract Para 8 as follows:

> "*Departmental Officers are working on foreign service in prosecution against the Co-operative organization 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 on 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 scrutinize each and every transactions of the society. They would have failed to check and scrutinize 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 I.e., failure to discharge their duties property or negligence or omissions 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 property 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."

7.Accordingly, the petitioner has overall control and he cannot be held criminally liable for all the irregularities committed by the staff working under him. Though, the petitioner failed to check and supervise the accounts, such failure cannot amount to any criminal action.

8.In similar circumstances, this Court is inclined to quash the entire proceedings in Crl.OP(MD)Nos.8482 to 8494 of 2018 dated 06.11.2019 and held as follows:

"In S.Gunasekaran Vs. State represented by the Inspector of Police (supra), this Court has quashed the Criminal proceedings against the Special Officer stating that the Criminal prosecution cannot be initiated for lapse / negligence in supervising 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.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."*

9.As observed by the ***Hon'ble Supreme Court in Jethsur Surangbhai Vs. State of Gurjarat (supra)***, in a case of serious charges of defalcation of properties of a Society *mens rea* cannot be excluded. In respect of the offences under Sections 408 and 409 of IPC., one of the essential ingredients is that there must be a dishonest misappropriation of property. Dishonestly is defined under Section 24 of IPC., which reads as follows:

''24. Dishonestly - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly."

10.In all the cases on hand, it is not the case of the prosecution that the petitioner herein has got any wrongful gain. Therefore, it cannot be said that the petitioner has dishonestly aided the accused persons for committing misappropriation of the Society's funds and hence the petitioner cannot be prosecuted for the aforesaid offences.

11. For the aforesaid reasons, this Court is inclined to allow all these petitions. Accordingly, these Criminal Original Petitions are allowed and the entire proceedings in C.C No.71, 70, 72, 73, 75, 74 of 2019, on the file of the learned Judicial Magistrate, Musiri, Tiruchirappalli District, are hereby quashed, as against the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

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, Musiri, Tiruchirappalli.

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

3. The Deputy Registrar of Cooperative Societies,
College Road, Vadugappatti Village,
Musiri and Po. Tiruchirappalli District.

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

CRL OP(MD). Nos.311, 332, 435, 490, 505, 506 of 2021 and
CRL MP(MD). Nos.130, 139, 201, 226 of 2021
25/03/2022

RD(12.04.2022) 6P 5C