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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P.(MD)Nos.1315, 898 and 900 of 2022

CRL.M.P(MD) .Nos.633, 636, 953 and 954 of 2022

Raja

... Petitioner in all petitions/
Accused No.3

Vs.

1.State represented by
Inspector of Police,
District Crime Branch,
Karur District.
Crime No.05 of 2003

...Respondent No.1 in all petitions/
Complaint

2.S.Padmanaban

...Respondent No.2 in all petitions/
Defacto Complaint

Common Prayer: The Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in C.C.Nos.494 to 496 of 2006 on the file of the learned Judicial Magistrate No.2, Karur and quash the same as against the petitioner.

In all petitions

For Petitioner : Mr.N.Mohideen Basha

For R1 : Mr.Thanga Aravindh
Government Advocate (Criminal Side)

For R2 : Mr.V.P.Rajan

C O M M O N O R D E R

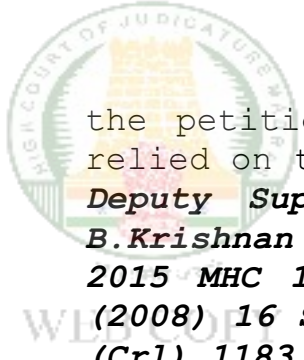
These Criminal Original Petitions have been filed to call for the records relating to C.C.Nos.494 to 496 of 2006 on the file of the learned Judicial Magistrate No.2, Karur and quash the same as against the petitioner.

2. The case of the prosecution is that during the circle audit, it was found that there were serious irregularities in sanctioning 66 loans without completing the required formalities. Out of 66 loans, in 31 cases, some of the loan documents were not available and in 33 cases, no such person was available in the given address and in two other cases, borrowers are available but they have denied availing any loans. The total principal amount in respect of 66 accounts is Rs.16.02 lakhs. Totally, in this case, three accused are involved in the crime.



3. The learned counsel appearing for the petitioner would submit that the petitioner was working as Assistant during the alleged period of occurrence and he is neither a loan recommending or sanctioning Authority nor a custodian of the loan documents. Therefore, the petitioner has no role to play in the alleged crime. He would further submit that the normal procedure followed in State Bank of India for sanctioning of crop loan is that Assistant Manager at first instance shall interact with the prospective borrowers and shall enquire about all the details and the Assistant Manager has to make a field visit to the prospective borrower's place and shall make a pre-sanction inspection. Once the Assistant Manager is fully satisfied about the particulars of the borrowers, he shall hand over the papers submitted by the borrowers to the clerical staff for filling the loan documents. Thereafter, the Assistant Manager shall submit his recommendations for sanctioning of loan to the Branch Manager. Thereafter, on scrutinization of the loan documents, the Branch Manager shall make decision to grant loan. In fact, on the very same set of allegations, the departmental enquiry has been initiated against this petitioner and charges were proved against the petitioner in the departmental enquiry. The petitioner was dismissed from service and the same was challenged before this Court in W.P(MD).No.21275 of 2014. This Court, by order dated 04.06.2018, was pleased to set aside the punishment order. Aggrieved over the same, the Management had preferred a writ appeal before this Court in W.A.(MD).No.1247 of 2018 and the same was also dismissed by this Court on 26.09.2018. The said judgment was confirmed by the Hon'ble Supreme Court of India in S.L.P(Civil).No.1224 of 2019. Therefore, the petitioner was exonerated from identical charges framed in the departmental enquiry.

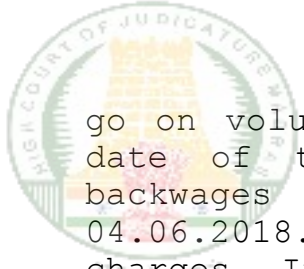
4. The learned counsel appearing for the petitioner would submit that the trial is pending for the past about 15 years before the trial Court and in all the hearings, the petitioner appeared before the trial Court. P.W.1 was partly examined in chief on 07.06.2012 and further chief examination was not done. In fact, after a lapse of nine years, the second respondent filed a petition before the Trial Court to receive the additional documents and the same was dismissed by the trial Court which was challenged before this Court in CrI.O.P(MD).Nos.17431 to 17433 of 2016. However, this Court allowed the said petition and directed the trial Court to receive the additional document filed by the second respondent and complete the trial as expeditiously as possible in any event not later than three months. While being so, again the second respondent filed a petition under Section 216 of Cr.P.C., to frame additional charge and the same was allowed by the trial Court. Aggrieved by the same, the accused Nos.1 and 2 filed a petition before this Court and the same was dismissed by this Court. Therefore, on the part of the petitioner, there is no absolute delay, however, the trial is pending from the year 2006. Hence, the delay is on part of the prosecution and the entire proceedings cannot be sustained against



the petitioner. In support of his contention, the learned counsel relied on the judgments in the case of **Ashoo Surendranath Tiwari vs. Deputy Superintendent of Police reported in (2020) 9 SCC 636, B.Krishnan vs. The Deputy Superintendent of Police reported in CDJ 2015 MHC 1876, Pankaj Kumar vs. State of Maharashtra reported in (2008) 16 SCC 117 and S.P.Ganesan and another vs. State (2010) 2 LW (Cr1) 1183.**

5.The learned counsel appearing for the second respondent would submit that the second respondent was posted as Chief Manager, State Bank of India, Vangal Branch, Karur District in August 2001 and found that there was misappropriation of bank money in sanctioning the crop loan. Therefore, he lodged a complaint on 06.06.2003 against the petitioner and two others alleging that they created forged document with intention to misappropriate the bank money under crop loan scheme meant for farmers during 1999 to 2001. The petitioner was working as Assistant and other two accused were working as Branch Manager and Assistant Manager respectively during such period. On receipt of the said complaint, the first respondent registered the case in Crime No.5 of 2003 for the offence punishable under Sections 409, 464, 465, 467, 468 and 471 of IPC. After completion of investigation, the first respondent filed final reports and the same was taken cognizance in C.C.Nos.494 to 496 of 2006 on the file of the learned Judicial Magistrate No.2, Karur. There are specific complaints against the petitioner that he handed over the forged documents created by him and two others at the time of registration of the case to the Investigation Officer. However, the first respondent did not mark such document on the prosecution side, while filing the charge sheets before the trial Court. From the records, it is seen that the accused persons opened 66 crop loan accounts in the Bank. No documents are available with the Bank in respect of 31 accounts out of 66 crop loan accounts opened by the accused. During verification, the persons named in the account number have denied availing of crop loan amount from the Bank. The crop loan amount was transferred from the loan account opened with false documents to the relatives of the petitioner. The conversion transaction documents are relevant to establish the charges framed against the petitioner. Those documents are only vital to establish the offence committed by the accused and the same was not marked by the first respondent while filing the final report. Therefore, at the instance of the second respondent, the first respondent has filed a memo under Section 173(8) of Cr.P.C for marking those vital documents. However, it was dismissed on the ground of laches. Thereafter, it was challenged before this Court and the same was allowed by directing the prosecution to mark those documents.

6. As against all the accused persons, the departmental action has been initiated and the charges framed against the petitioner are proved. On the strength of the enquiry report, the petitioner was dismissed from service. It was challenged before this Court in W.P(MD).No.21275 of 2014. This Court, by order dated 04.06.2018, allowed the petition and the petitioner was permitted to



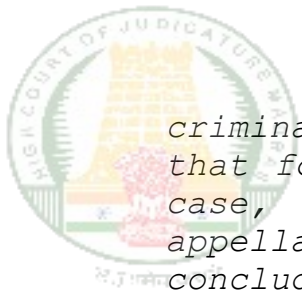
go on voluntary retirement with effect from 04.06.2018 namely the date of the order. Further, the petitioner shall forego 75% backwages from the date of passing of the dismissal order till 04.06.2018. However, the petitioner was not exonerated from the charges. Insofar as the trial is concerned, as stated above, the prosecution failed to mark vital documents before the trial Court. As such, the prosecution filed a memo under Section 173 (8) of Cr.P.C. Thereafter, the second respondent filed a petition under Section 216 of Cr.P.C to alter the chargers and the same was allowed. Aggrieved by the same, the other accused persons preferred a petition before this Court and this Court dismissed the same by order dated 29.03.2021. Therefore, the trial Court could not be able to complete the trial within the time stipulated by this Court. Hence, the judgments relied on by the learned counsel appearing for the petitioner are of no avail to the case on hand.

7. The learned counsel appearing for the second respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of **STATE (NCT OF DELHI) vs. AJAY KUMAR TYGAI**, in which, the Hon'ble Apex Court held as follows:-

"21. It is worth mentioning that decision in P.S. Rajya (supra) came up for consideration before a two-Judge Bench of this Court earlier, in the case of State v. M. Krishna Mohan, (2007) 14 SCC 667. While answering an identical question i.e. whether a person exonerated in the departmental enquiry would be entitled to acquittal in the criminal proceeding on that ground alone, this Court came to the conclusion that exoneration in departmental proceeding ipso facto would not lead to the acquittal of the accused in the criminal trial. This Court observed emphatically that decision in P.S. Rajya (supra) was rendered on peculiar facts obtaining therein. It is apt to reproduce paragraphs 32 and 33 of the said judgment in this connection:

32. Mr Nageswara Rao relied upon a decision of this Court in P.S. Rajya v. State of Bihar [1996 (9) SCC 1]. The fact situation obtaining therein was absolutely different. In that case, in the vigilance report, the delinquent officer was shown to be innocent. It was at that juncture, an application for quashing of the proceedings was filed before the High Court under Section 482 of the Code of Criminal Procedure which was allowed relying on State of Haryana v. Bhajan Lal [1992 Supp. (1) SCC 335] holding: (P.S. Rajya case [1996 (9) SCC 1, SCC p.9, para 23])

"23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the



criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued." Ultimately this Court concluded as follows:

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"33. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding ipso facto would lead to a judgment of acquittal in a criminal trial."

This point also fell for consideration before this Court in the case of Supdt. of Police (C.B.I.) v. Deepak Chowdhary, (1995) 6 SCC 225, where quashing was sought for on two grounds and one of the grounds urged was that the accused having been exonerated of the charge in the departmental proceeding, the prosecution is fit to be quashed. Said submission did not find favour with this Court and it rejected the same in the following words:

"6. The second ground of departmental exoneration by the disciplinary authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which the sanction has been sought for."

23. Decision of this Court in the case of Central Bureau of Investigation v. V.K. Bhutiani, (2009) 10 SCC 674, also throws light on the question involved. In the said case, the accused against whom the criminal proceeding and the departmental proceeding were going on, was exonerated in the departmental proceeding by the Central Vigilance Commission. The accused challenged his prosecution before the High Court relying on the decision of this Court in the case of P.S. Rajya (supra) and the High Court quashed the prosecution. On a challenge by the Central Bureau of Investigation, the decision was reversed and after relying on the decision in the case of M. Krishna Mohan (supra), this Court came to the conclusion that the quashing of the prosecution was illegal and while doing so observed as follows:

"In our opinion, the reliance of the High Court on the ruling of P.S. Rajya was totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case."



24. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy.

8. The Hon'ble Supreme Court of India has held that exoneration in departmental proceedings ipso facto would not result in quashing of the criminal prosecution. In the case of departmental proceedings, as the criminal trial and the departmental proceedings are held by two different entities, there cannot be any higher authorities. In fact, the petitioner was not exonerated from all the charges. This Court found that the punishment imposed on the petitioner is not proportionate to the punishment imposed on the other accused persons namely A1 and A2 and allowed the petitioner to go on voluntary retirement with effect from 04.06.2018. As stated supra, the petitioner has committed serious offence. On perusal of the statement recorded under Section 161 (3) of Cr.P.C., it reveals that there are vital materials as against the petitioner to attract the charges framed against the petitioner herein. Hence, this Court is not inclined to quash C.C.Nos.494 to 496 of 2006 pending before the learned Judicial Magistrate No.2, Karur. However, the trial Court is directed to conclude the trial within a period of six months from the date of receipt of a copy of this order.



9. Accordingly, the Criminal Original Petition stands dismissed. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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/ /2022

Sub Assistant Registrar (CS)

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To:

1. The Judicial Magistrate No.II,
Karur.
2. Inspector of Police,
District Crime Branch,
Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P.(MD) Nos.898, 900 and 1315 of 2022
19.04.2022

MGJ(17.05.2022) 7P 4C