



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)Nos.2034 & 2037 of 2022

and

Crl.M.P(MD)Nos.1484, 1485, 1487 & 1490 of 2022

WEB COPY

K.Mathivanan

... Petitioner/
3rd Accused in both petitions

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
(Crime No.3 of 2013)

... 1st Respondent/
Complainant in both petitions

2.K.Athmanathan

... 2nd Respondent/
Defacto Complainant
in both petitions

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.Nos.58 and 59 of 2016 on the file of the learned Judicial Magistrate, Musiri and quash the charge-sheet and consequentially all further proceedings as against the petitioner.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
(In both O.Ps')

For R - 1 : Mr.K.Sanjai Gandhi
(In both O.Ps') Government Advocate (Crl. Side)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.58 & 59 of 2016 on the file of the learned Judicial Magistrate, Musiri, as against the petitioner.

2.The case of the prosecution is that the first accused is the Former Secretary of 6561, Kattuputhur Primary Agricultural Co-operative Credit Society (hereinafter referred to as 'the Society') and the second accused is the Cashier (in-charge)/Attendar of the Society. The petitioner, who is arraigned as third accused, was deputed to the above Society as Special Officer.

3.For the period from 23.12.2010 to 23.02.2011, the first and second accused have fabricated documents as if KCC (agricultural loan) were granted to the seven members of the Society. But the



members were not actually availed loan and the first and second accused misappropriated a sum of Rs.3,57,425/- of the Society's Fund. They have also created false voucher for having allegedly spent a sum of Rs.1,32,000/- without getting any prior approval from the petitioner.

WEB COPY

4.For the period from 22.12.2010 to 15.02.2011, the first and second accused have fabricated documents as if KCC (agricultural loan) were granted to the seventeen members of the Society. They were only disbursed part of the loan amount and the remaining amount was misappropriated by accused Nos.1 and 2. The total loan amount disbursed to the members is Rs.3,25,728/- and the misappropriation amount is a sum of Rs.7,17,474/- by accused Nos.1 and 2.

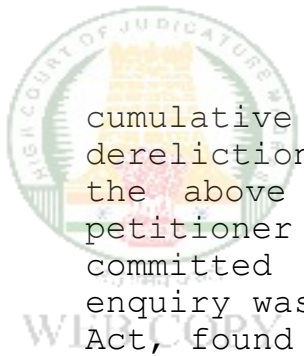
5.Therefore, the second respondent had directed the Co-operative Sub-Regisrar to conduct statutory enquiry as contemplated under Section 81 of the Tamil Nadu Co-operative Societies Act. After enquiry, he filed an enquiry report and found that the first and second accused committed irregularity and misappropriated the Society's Fund. Insofar as the petitioner is concerned, he failed to prevent the irregularities committed by accused Nos.1 and 2 and thereby abetted the crime. On the strength of the enquiry report, the second respondent had lodged a complaint before the first respondent and the same has been registered in Crime No.3 of 2013 and filed final reports. On receipt of the final reports, the trial Court had taken cognizance in C.C.No.58 of 2016 for the offences under Sections 120(b), 408, 409, 420, 468, 471 and 477(A) of I.P.C and also in C.C.No.59 of 2016 for the offences under Sections 120(b), 408, 409, 420, 468, 471 and 477(A) of I.P.C.

6.Asfar as the petitioner is concerned, while he was working as Special Officer during the relevant period as stated above as Supervisory capacity, he failed to find out the irregularities committed by the first and second accused. Further, he neglected his duties and responsibilities as Special Officer.

7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent.

8.On a perusal of the statement recorded under Section 161 of Cr.P.C revealed that the petitioner had committed dereliction of duty by neglecting his duties and responsibilities. Even according to the prosecution, accused Nos.1 and 2 had committed irregularities by fabricating false documents and accounts. However, the petitioner was on deputation basis can only verify the accounts and records. It is not possible to put forth the documents produced by accused Nos.1 and 2 as genuine or not. In fact, in this regard, the petitioner was issued with charge memo on the very same set of allegations and disciplinary proceeding was initiated against him. Accordingly, he

<https://www.hcscs.madras.gov.in/hcscs/>



cumulative effect. Therefore, the petitioner had committed dereliction of duty while he was working as a Special Officer for the above Society. There is no specific allegation against the petitioner and no evidence to connect the petitioner with the crime committed by the first and second accused. Moreover, when the enquiry was conducted under Section 81 of the Co-operative Societies Act, found that there was no allegation as against the petitioner as per the enquiry report. According to the statement recorded from the witnesses revealed that the entire irregularities were committed by accused Nos.1 and 2 alone.

9.Further, on a perusal of the statement revealed that the petitioner, who is the special Officer of the Society during the relevant point of time, has failed in his duty in identifying the misappropriation and has in a way enabled the accused persons to commit misappropriation and this was not even informed to the higher authorities. Only on this ground, the petitioner has been made as an accused in this case. Without considering the above, the learned Magistrate mechanically had taken cognizance as against the petitioner for the above said offences.

10.At this juncture, it will be relevant to rely upon the judgment that has been cited by the learned counsel for the petitioner in the case of **Anbalagan Vs. State made in Crl.O.P (MD) No.20309 of 2016 etc., batch, dated 20.07.2018**. That was also a case where the Special Officer was sought to be made as an accused in the very same society. The relevant portions of the judgment is extracted here under:-

"12. Clause 8 of the Tamil Nadu Co-operative Manual deals with the prosecution against the Departmental Officers which reads thus:

Prosecution against the Departmental Officers:-

'Departmental Officers are working on foreign service in Co-operative organisation as Chief Executive 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 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 additonal 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 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 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 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."

From the aforesaid provision, it is clear that if the officers who have been posted to supervise the societies failed to discharge their duty properly such officers will not fasten criminal liability unless prima facie shows that such officers with malafide criminal intention committed criminal breach of trust or criminal misappropriation or aided and abetted such criminal offences by the supporting staff.

11. In the circular issued by the Registrar of Cooperative Societies, Chennai in R.C.No.228696/19/CP1 dated 11.12.1991 also, the same thing reiterated. For proper appreciation, the relevant portions of the said letter are extracted here under:

"3. Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the Cooperatives 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 criminally 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 or misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police."

WEB COPY

12. 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."

13. In **N.Baskaran Vs. The State rep. by Inspector of Police, C.C.I.W., CID, Trichy (supra)**, after referring to the decision in **S.Gunasekaran Vs. State represented by Inspector of Police (supra)**, has observed in paragraph Nos. 5 and 6 as follows:

"5. It is further submitted that in similar facts, this court in 2008 (1) Crimes 681 (Mad.) (**S.Gunasekaran Vs. State rep. By Inspector of police**), quashed the charge laid against the Special Officer categorically stating that criminal prosecution cannot be initiated for lapse/negligence in supervisory work, which is extracted below:-

"8. The learned Government Advocate (Crl.Side) would submit that as per a



WEB COPY

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 ingredient of the offences alleged against him."

14.This Court had the occasion to deal with the nature of duties that are performed by a Special Officer in Co-operative societies. After analyzing the same, this Court categorically found that if the Special Officers, who are posted to supervise the cooperative societies, failed to properly discharge their duties, the same will not fasten any criminal liability, unless there is a *prima facie* material to show a criminal intention to commit criminal breach of trust or criminal misappropriation or to aid or abet the said crime.

15.This Court has held that such dereliction of duty or negligence may create only a civil liability and the concept of vicarious liability cannot be applied in criminal law, unless the same is specifically provided by any special enactment. Even to initiate proceedings under Section 87 of the Co-operative Societies Act, the test required is willful negligence and not mere negligence. When such is the requirement even for the recovery proceedings under Section 87 of the Co-operative Societies Act, the requirement to criminally prosecute a Special Officer is even more stringent and there must be materials to show his direct involvement in the crime, with a criminal intent. Negligence including willful negligence by itself will not constitute a crime.

16.In the present case, neither in the enquiry report nor in the statement that was given to the police by the enquiry officer, there is any reference to the Special Officer. At the fag end of the investigation, by recording a further statement from the enquiry



officer, the petitioner has been added as an accused on the allegation that he failed in his duty to stop the misappropriation and inform the same to the higher authorities. The petitioner has been added as an accused without any material whatsoever except the ipse dixit made in the further statement given by the enquiry officer.

17. In the considered view of this Court, there is absolutely no material to make the petitioner face the ignominy of trial before the Court below. The continuation of the proceedings as against the petitioner will only result in an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

18. In the result, the proceedings in C.C.Nos.58 and 59 of 2016 on the file of the Judicial Magistrate, Musiri, is hereby quashed, insofar as the petitioner alone is concerned and accordingly, these Criminal Original Petitions are allowed. The trial Court is directed to complete the trial as against the other accused within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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.

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

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

+2 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-11688[F] & SR-11689[F] dated 11/03/2022)

Crl.O.P(MD)Nos.2034 & 2037 of 2022
11.03.2022

MGJ(24.03.2022) 7P 6C

<https://hcservices.ecourts.gov.in/hcservices/>