



*Crl.O.P.(MD) No.11949 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

Crl.O.P.(MD) No.11949 of 2022

and

Crl.M.P.(MD).Nos.7556 and 7557 of 2022

Muruganantham

...Petitioner/Accused No.2

Vs.

1.The State,

Represented by,

The Inspector of Police,

Commercial Crime Investigation Wing,

Sivagangai District.

...Respondent No.1/Complainant

2.Ramanathan

...Respondent No.2/

Defacto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the petitioner in the Final Report in C.C. No. 39 of 2019 on the file of the Judicial Magistrate Court No. II, Sivagangai, Sivagangai District in Crime No. 3 of 2018 on the file of the respondent police and quash the same as illegal.

For Petitioner

: Mr.R.Udhayakumar

For R-1

: E.Antony Sahaya Prabahar,  
Additional Public Prosecutor.



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### **ORDER**

The Criminal Original Petition has been filed to quash the Final Report in C.C. No. 39 of 2019 on the file of the Judicial Magistrate Court No. II, Sivagangai, Sivagangai District in Crime No. 3 of 2018 on the file of the respondent police.

2.The learned Counsel appearing for the petitioner submitted that the petitioner is working as a Manager in short period at Sivagangai District, Central Co-operative Bank Branch, Thiruppathur. With regard to distribution of amount received from the Bank, a case has been registered in Crime No.03 of 2018 for offences under Sections 409, 420, 465, 468, 471, 477(A), 109 I.P.C on 29.05.2018. After investigation, the final report has been filed. The case has been taken on file in C.C.No.39 of 2019 on the file of Judicial Magistrate Court No.II, Sivagangai. He further submitted that the petitioner is only the Manager and supervising the functioning of the Co-operative Society and he support his arguments by relying upon the judgments of this Court referred in Crl.O.P.(MD).No. 18327 and 18389 of 2016 dated 08.12.2020 and also further submitted



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that there is a Government Order for negligence of any staff, co-operative member criminal prosecution cannot be proceeded. Hence he pleaded to quash the criminal proceedings in C.C.No.39 of 2019.

3.The learned Additional Public Prosecutor submitted that after investigation three charges had been contributed against the petitioner. In the first charge, he received Rs.2,00,000/- (Rupees Two Laksh only) by signing required documents and distributed only Rs.35,000/- (Rupees Thirty Five Thousand only) and remaining amount of Rs.1,65,000/- has been misappropriated along with the cashier Alagarsamy and Shanthi. The second charge a specific charge he draw Rs.2,00,000/- (Rupees Two Laksh only) again and distributed only Rs.30,000/- (Rupees Thirty Thousand only) and misappropriated Rs.1,70,000/- (Rupees One Lakh Seventy Thousand only) along with Shanthi and Alagarsamy and third charge is that he draw Rs.2,00,000/- (Rupees Two Laksh only) and distributed only Rs.25,000/- and the remaining amount of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) has been misappropriated. The petitioner now disputed the role play by the petitioner's Manager. Further the exoneration of the petitioner in the



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departmental enquiry has to be concluded before the Trial Court whether any misappropriation committed by this petitioner by considering the evidence and thus pleaded to dismiss this Writ Petition.

4.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal



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proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has



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been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

5.I have considered the matter in the light of the submissions made by both the parties and perused the records.

6. The records reveals the fact that admittedly the petitioner was working as Manager at Sivagangai District Central Co-operative Bank Branch at Thiruppathur, Sivagangai District at relevant period. It is also not disputed that he draw Rs.2,00,000/- three times. Now, the question of fact is whether he distributed all the amount or only the portion of the amount as stated by the prosecution and misappropriated remaining amount. This fact has to be decided by considering the evidence before the Trial Court. Further with regard to the Government Order, the negligence cannot be prosecuted is also cannot be accepted and unsustainable because whether the negligence is intentional negligence with profit or mere negligence which has to be considered or evaluated after considering the evidence. Mere negligence with intentional to the obvious purpose of getting benefit cannot be ignored and in the case of



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negligence on duty whether the misappropriation is committed with intentional obvious benefit obtained by the petitioner has to be considered at the time of letting evidence and evaluating the evidence lead by the prosecution. Merely says negligence in discharge duty cannot observed a person from criminal liability in which he intentionally involved. Further, the judgment relied upon by the learned counsel for the petitioner has to be considered before the Trial Court while evolving the evidence with regard to the over tact contributed by the petitioner and his role play for misappropriated the amount. At the time of trial alone, the Trial Court can evolved it whether the petitioner intentionally misappropriated the amount or negligently signed the papers. Therefore, before letting trial, conducting trial, proceedings cannot be quashed.

7.On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be



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exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.

8. At this stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

**05.07.2022**

Internet: Yes  
Index: Yes/No  
Speaking/Non speaking order  
Nsr

To

1. The Inspector of Police,  
Commercial Crime Investigation Wing,  
Sivagangai District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**V.SIVAGNANAM, J.**

Nsr

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