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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02/03/2022
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.20896 to 20901 of 2018
and
Crl.MP(MD)Nos.9660 to 9671 of 2018

T.Rengarajan : Petitioner/A2
(in all cases)

Vs.

1.State through
The Inspector of Police,
Commercial Crime Investigation Wing,
Pudukkottai District.

2.The Deputy Registrar of
Co-operative Societies,
6103/2, Combined Co-operative Complex,
Annavasal Road, Pudukkottai. : Respondents in all cases

Common Prayer: Criminal Original Petitions have been filed under Section 482 Cr.P.C. to call for the records and quash the proceedings of the charge sheet in CC No.409 to 414 of 2018 pending on the file of the Judicial Magistrate No.II, Pudukkottai, respectively.

For Petitioner (in all cases) : Mr.G.Prabhu Rajadurai
For Respondents (in all cases) : Mr.SS.Madhavan
Government Advocate
(Criminal side)

COMMON ORDER

These criminal original petitions have been filed seeking quashment of the case in CC Nos.409 to 414 of 2018 pending on the file of the Judicial Magistrate No.II, Pudukkottai, respectively.

2.**The case of the prosecution in brief**:-

The 1st accused by name Duraisamy was working as 'Godown Keeper' in the Tamil Nadu Co-operative Marketing Federation (TANFED) from

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12/01/2005 till 31/10/2013. It is his duty and responsibility to receive the fertilizers, insecticides and seeds and issue receipt vouchers, maintaining the proper stock registers. It is also his duty to inform any cause of deficiency in the stock and supply. He can receive only the stock with the specific brand 'TANFED'. It is also his duty to deliver the stock. On the basis of the demand to the Agricultural Co-operative Societies only through the recognized transport service, the stock must be delivered and supplied. So for that purpose, he must also receive proper vouchers from the transport owners.

3.In so far as this petitioner is concerned, he was working as 'Junior Assistant' in various places and finally from 07/06/2012 to 16/12/2013, he was working as 'Additional In-charge of the Regional Internal Auditor. So it is his duty to audit and verify all the stock registers and delivery registers etc. It is also his duty to inform the higher officials in case of any deficiency is noticed during the audit period.

4.It is further stated that all the accused persons joined together, conspired and misappropriated the money. They have also created documents, as if fertilizers have been delivered to the Agricultural Co-operative Societies and they have been sold the same in the open market and misappropriated the money. The total amount misappropriated in the above process is **Rs.43,90,144/-** and this petitioner is also actively colluded and conspired with the other accused persons and have misappropriated the money. So a report has been filed on the basis of the enquiry report, which was registered in Crime No.1 of 2015. After completing the investigation, the final report was filed alleging that this petitioner along with the other accused persons committed the offences under sections 408, 467, 468, 471, 477(A) r/w 34, 109 IPC.

5.Seeking quashment of the above said criminal proceedings, these petitions have been filed by A2, who was working as Internal Auditor in TANFED during the relevant time.

6.Heard both sides.

7.These petitions can be disposed of on a short premise, since the learned counsel appearing for the petitioner relied upon several judgments, which are directly on this point.

8.Straightway we will go to the order that has been passed by this court in C.R.P(MD)No.609 of 2017, dated 11/10/2018 (T.Rengarajan Vs. V.Ramachadnran and another), which was filed by this petitioner. That petition has been filed in the following facts and circumstances.

9.As set out in the preamble portion, enquiry was undertaken under section 81 of the Tamil Nadu Cooperative Societies Act, 1983.

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Following the above said order, surcharge proceedings were also initiated. In this proceedings, the Godown Keeper namely Duraisamy and Regional namely S.Ramachandran and the Internal Auditor T.Rengarajan, who is the petitioner herein were held responsible for the loss of the amount, which has been mentioned in that final order. The final order was passed under section 87 of the Act and surcharge proceeding was also directed to be initiated on 11/03/2015. Against the above said surcharge proceedings, appeal was filed in C.M.A(CS) No.2 of 2015 before the Principal District Judge, Pudukottai. That was dismissed, on 18/01/2017. Over the above said dismissal of the CMA, that civil revision has been filed. Even though maintainability of the revision was one of the grounds of attack by the respondents, that was negatived by this court, which we are not concerned in these petitions.

10.Regarding the factual issues, this court has observed that this petitioner was appointed as 'Internal Auditor' of TANFED for Trichy Region. He was given additional charge of Pudukottai Region also on 07/06/2012. As mentioned earlier, the main allegation is only against the Godown Keeper Duraisamy, who alleged to have fabricated the documents, bills and sold the fertilizers in the open market and misappropriated money. This court further pointed out that under section 87 of the Act, a person who is entrusted with the organisation or management of the society is responsible.

11.These petitions were disposed of on the short point as to whether this petitioner has caused any loss to the society by his willful misconduct or breach of trust. On the basis of the factual aspect, as found that this petitioner has not caused any loss to the society by his negligence and it was Duraisamy, who caused the loss by removing the fertilizers from the godown stealthy. The allegation against this petitioner is that he failed to discover the above said crime, that was committed by the above said Duraisamy. Since already misappropriation occurred, this petitioner came to be scene only subsequently, according to this court, no doubt that a serious lapse has been committed, warranting initiation of disciplinary proceedings.

12.Regarding the surcharge proceedings, it has been held that there it be levelled only if any material available or evidence has been recorded. The allegation against the petitioner is that he has committed willful negligence. Noting that the petitioner was held additional in charge as many as one to three societies, it has been held that the lapse on the part of the petitioner will not amount to willful negligence.

13.By relying upon the judgment of the Hon'ble Supreme Court in the case of ***Surinder Nath Dewan Vs. State of Haryana (1994) Supplement 3 SCC 134,*** this court has held that even though the petitioner was guilty of willful negligence, absolutely there is no

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material on record to show that he actively in collusion with the above Duraisamy. So when we apply this finding to the facts of the present case, willful negligence cannot fastened upon the petitioner.

14.As rightly pointed by the learned counsel appearing for the petitioner, even criminal investigation cannot be fastened upon the petitioner. As it has been stated by this court, if at all only the disciplinary proceedings can be initiated against this petitioner. Absolutely no merit is available to show that this petitioner has also colluded and committed the offence conspiracy along with Duraisamy and caused wrongful loss to TANFED. More-over, the role that has assigned to the Internal Auditor has been elaborately discussed by this court in more than one occasions. Starting from the judgment in the case of T.Elengo Vs. State represented by the Inspector of Police, Commercial Crime Investigation Wing-CID, dated 15/11/2017 (Crl.OP Nos.1734 to 1737 and 19846 of 2017], (G.Selvakumar Vs. State through Inspector of Police, C.C.I.W, CID, Tirunelveli (2011)2 MLJ (Crl) 608; following Anbalagan Vs. State represented by the Inspector of Police C.C.I,W, CID, Thiruchirappalli (CrlO.P(MD)Nos.2039 to 20320 of 2016 and 20309 to 20320 of 2016, dated 20.07.2018), it has been uniformly held by this court that person, who is in the capacity of the supervisory nature cannot be held criminally liable for the criminal act that has been committed by the employee, unless a strong materials are available. In the light of the above said judgments and the surcharge proceedings that has been issued by the Registrar of Co-operative Societies, I am of the considered view that the continuation of the proceedings against the petitioner will amount to abuse of process of court and law.

15.In the result, these criminal original petitions are **allowed.** The proceedings in CC Nos.409 to 414 of 2018 pending on the file of the Judicial Magistrate No.II, Pudukkottai, are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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TO

1.The Judicial Magistrate No.II,
Pudukottai.

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Commercial Crime Investigation Wing,
Pudukkottai District.

3.The Deputy Registrar of Co-operative Societies,
6103/2, Combined Co-operative Complex,
Annavasal Road, Pudukkottai.

4.The Inspector of Police,
C.C.I.W, CID,
Tirunelveli.

5.The Inspector of Police,
C.C.I.W, CID,
Tiruchirappalli.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9799[F] dated 03/03/2022)

Crl.O.P.(MD)Nos.20896 to 20901 of 2018
02/03/2022

sb(CO)
GC(05.05.2022) 5P 8C

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