



Crl.O.P.No.4125 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.4125 of 2021

and

Crl.M.P.Nos. 2612 and 2613 of 2021

R.Baskaran

.... Petitioner

-Vs-

1. State Represented by,
Inspector of Police,
Commercial Crime Investigation Wing,
Thiruvavarur

2. The Deputy Registrar of Co-Operative Societies,
Mannargudi,
Thiruvavarur District.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.112 of 2018, pending on the file of the learned Judicial Magistrate No.I, Mannargudi, Thiruvavarur District and Quash the same.

For Petitioner

: Mr.R.John Sathyam
Senior Counsel

for Mr.Swamisubramanian

For R1

: Mr.A.Gopinath

Government Advocate (Crl. Side)

For R2

: No appearance



Crl.O.P.No.4125 of 2021

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.112 of 2018 on the file of the Judicial magistrates No.I, Mannargudi.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials available on record.

3. The case of the prosecution is that on 15.11.2016, the Managing Director conducted an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and found that for the period from 01.04.2013 to 31.10.2014, the loan amounts were not properly recovered and some of the recovered amount were not properly credited into the bank account and which caused monetary loss to the society to the tune of Rs.13,42,949/-. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered a case in Crime No.4 of 2016 for the offences under Sections



CrI.O.P.No.4125 of 2021

WEB COPY

408, 409, 477A and 420 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.112 of 2018 on the file of the Judicial Magistrate No.I, Mannargudi.

5. There are totally three accused, in which the petitioner is arrayed as A2. The learned counsel appearing for the petitioner submitted that the petitioner is the erstwhile President of the Society. He participated in the election conducted in the year 2013 and elected as a President on 11.06.2013. On the complaint, there was enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act for the period from 01.02.2013 to 31.10.2014 and found the loan amount were not properly credited into the bank when the petitioner was acted as President of the Society. After due enquiry, the shortage amount was paid by the third accused and there was no allegation of loss at the instance of the petitioner. Thereafter, the Managing Director had dropped the enquiry against the petitioner by an order dated 06.09.2016. No charge proceedings was initiated as against the petitioner, since A3 had remitted, the cash which was allegedly misappropriated by him. In



Crl.O.P.No.4125 of 2021

WEB COPY

support of his contention, he relied upon the Judgment of this Court in ***Crl.O.P.No.499 and batch dated 18.09.2020*** in the case of ***S.Renganathan Vs. State by Inspector of Police, CCIW CID, Cuddalore, Cuddalore District and Anr.***

6. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the petitioner is arrayed as A2. The petitioner permitted the third accused to work even after his suspension, thereby he also conspired with third accused for misappropriation to the tune of Rs.13,42,949/-. Therefore, he is also equally responsible, along with third accused, and there are evidence and materials available to attract the offences under Sections 408, 409, 477A and 420 of IPC.

7. A perusal of the records reveals that the petitioner was a President of the Society during the period from 01.02.2013 to 31.10.2014. On a complaint, enquiry was conducted under Section 81 of Tamil Nadu Co-operative Societies Act. During the enquiry, it was found



Crl.O.P.No.4125 of 2021

WEB COPY

that the petitioner had permitted A3 to work even after his suspension and as such, he also conspired with other person and misappropriated the amount. Thereafter, the charge sheet proceeding was initiated under Section 87(1) of Tamil Nadu Co-operative Societies Act by an order dated 06.09.2016. The petitioner was exonerated, since the petitioner had been implicated along with A3 on the ground that he had permitted to work after his suspension period. Therefore, he is also jointly liable for the misappropriation to the tune of Rs.1,09,445/- with the third respondent. However, the third respondent had paid the same and as such, no surcharge order was passed as against the petitioner and he was exonerated from the liability.

8. In this regard, the learned counsel relied upon the Judgment of this Court in ***Crl.O.P.No.499 and batch dated 18.09.2020*** in the case of ***S.Renganathan Vs. State by Inspector of Police, CCIW CID, Cuddalore, Cuddalore District and Anr***, in which, this Court held that an employee in a Supervisory capacity cannot be held responsible for criminal action. Overall legal position is that when an employee of the Society is found liable for Supervisory lapse, the same will not constitute



CrI.O.P.No.4125 of 2021

WEB COPY

any criminal action against him. Likewise, if such an employee has been exonerated in the proceedings under Section 87 of the Act, it has to necessarily be implied that he had neither misappropriated nor fraudulently retained the money or other property, nor is guilty of breach of trust or willful negligence.

9. In the case on hand, the petitioner had been implicated as an accused only on the ground that he had permitted A3 to work even after his suspension. Initially, the petitioner was not included on the allegation of misappropriation. Pursuant to the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act it was concluded that the petitioner permitted the third accused to work even on the period of suspension of the third accused and due to which the misappropriation was committed by the third accused. Therefore, he is also responsible for the misappropriation committed by the third accused. During surcharge proceedings, A3 categorically admitted his guilt and remitted the entire amount with interest. That apart, the petitioner was exonerated from the proceedings under Section 87 of the Act. Therefore, the entire charges cannot be sustained and it is liable to be quashed.



CrI.O.P.No.4125 of 2021

WEB COPY

10. In view of the above discussions, the proceedings in C.C.No.112 of 2018 on the file of the Judicial Magistrate No.I, Mannargudi, is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

03.10.2023.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Lpp

To

1. The Judicial Magistrate No.I,
Mannargudi.
2. The Inspector of Police,
Commercial Crime Investigation Wing,
Thiruvavarur
3. The Deputy Registrar of Co-Operative Societies,
Mannargudi,
Thiruvavarur District.
4. The Public Prosecutor
Madras High Court,
Chennai.



WEB COPY



Crl.O.P.No.4125 of 2021

G.K.ILANTHIRAIYAN, J.

Lpp

Crl.O.P.No.4125 of 2021
and Crl.M.P.No. 2612 & 2613 of 2021

03.10.2023