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Crl.R.C.No.635 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2023

PRONOUNCED ON: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.635 of 2022

and

Crl.M.P.Nos.6634 & 6635 of 2022

S.Jagadeesan

...

Petitioner

/vs/

The State represented by
Deputy Superintendent of Police,
CCIW-CID, Dharmapuri.

...

Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure to call for the records culminating in the impugned order dated 04.04.2022 passed by the learned Judicial Magistrate No.II, Dharmapuri in Crl.M.P.No.1578 of 2020 in C.C.No.135 of 2020, examine the correctness, legality and propriety of the findings made therein, set aside the same and discharge the petitioner from the said case.

For Petitioner

...

Mr.Arun Anbumani

For Respondent

...

Mr.V.Meganathan
Govt.Advocate (Crl.side)



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ORDER

WEB COPY Challenging the impugned order dated 04.04.2022 passed in Crl.M.P.No.1578 of 2020 in C.C.No.135 of 2020 by the learned Judicial Magistrate No.II, Dharmapuri, the criminal revision case has been filed.

2.The facts of the case is that the petitioner is the third accused in C.C.No.135 of 2020 on the file of the Judicial Magistrate No.II, Dharmapuri. He was appointed as Special Officer of S.994 Kalappanahalli Primary Agricultural Co-operative Credit Society, Karimangalam, Dharmapuri District and 6 other co-operative Societies on 07.06.2012 and functioned as Special Officer for the period from 08.06.2012 to 08.05.2013. During that period, he was co-signatory for two cheques i.e. bearing Cheque No.571859 dated 06.10.2012 for a sum of Rs.4,00,000/- and another cheque No.118606 dated 02.04.2013 for a sum of Rs.5,00,000/-, totally a sum of Rs.9,00,000/- On inspection of that Primary Agricultural Co-operative Society, they found misappropriation of Rs.14,20,000/-. Hence, on a complaint given by Mr.R.Manikandan, Deputy Registrar of Co-operative Society, Dharmapuri Circle, Dharmapuri, a case



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has been registered in Crime No.4 of 2016. After investigation, final report has been filed on 18.06.2018 for offences under Sections 408, 409, 465, 471, 477A r/w 109, 120B IPC, which was taken on file in C.C.No.136 of 2018 on 26.07.2018 on the file of the learned Judicial Magistrate Palacode. Subsequently, the case was transferred to the file of the learned Judicial Magistrate No.II, Dharmapuri, and renumbered as C.C.No.135 of 2020 on 14.08.2020. In that case, the petitioner (A3) filed a petition in Crl.M.P.No.1578 of 2020 in C.C.No.135 of 2020 to discharge him from the case as he had not misappropriated the Co-operative Society Fund. The trial Court dismissed the discharge petition on 04.04.2022, which is under challenge.

3.The learned counsel for the petitioner contended that the petitioner has been falsely impleaded in the above criminal case as he was a Special Officer of that Society during the relevant period and there was no material to show that he intentionally aided the accused 1 & 2 Secretary and the Assistant Secretary of the Society for misappropriating the society money.



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This petitioner is a co-signatory for the cheques and he had no further role in the misappropriation of the Society money. In the enquiry and surcharge proceedings under Section 81 and 87 of the Tamil Nadu Co-operative Societies Act, 1983, the enquiry officer held that the accused A1 & A2 Secretary and the Assistant Secretary of the Society were found responsible for misappropriation of the amounts covered under the two cheques dated 06.10.2012 and 02.04.2013. Under these circumstances, the registration of FIR against the petitioner and filing the final report tagging the petitioner along with the other accused are illegal and unsustainable in law. The trial Court failed to appreciate the legal principles in respect of prosecution of Special Officers of Co-operative Societies and further contended that the Special Officers cannot be held criminally liable even if there was any failure to discharge their duty, dereliction of duty or negligence in supervisory work and that there cannot be any vicarious liability in criminal law and the prosecution against the petitioner is in complete violation of clause 8 of the Tamil Nadu Co-operative Manual as well as the Circular bearing R.C.No.228696/19/CPI dated 11.12.1991 issued by the Registrar of Co-operative societies, Chennai. Further, there is no material



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to support the charge of either conspiracy or other abetment under Sections 120B and 109 IPC and thus, pleaded to set aside the impugned order.

4.To support his arguments, he relied upon the following judgements.

1.1984 (Supp) Supreme Court Cases 207 (Jethsur Surangbhai Vs. State of Gujarat)

2.(1996) 9 Supreme Court Cases 1 (P.S.Rajya Vs. State of Bihar)

3. 2020 – 1 – L.W.(Crl.)281 (P.Parimaladevan Vs. State by The Inspector of Police, CCIW CID, Vellore, Vellore District.)

4.The order of this Court dated 06.11.2019 in Crl.O.P.(MD).Nos.8482 to 8494 to 2018 and Crl.M.P.(MD).Nos.3787 to 3812 of 2018 (M.Soundarajan and another Vs. The Deputy Superintendent of Police, Commercial Crime Investigation Wing, Villupuram (In charge), Thanjavur Sub Division and 2 others).



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5.The order of this Court dated 15.11.2019 in Crl.O.P.(MD).Nos.13210 of 2017 and Crl.M.P.(MD).Nos.8934 and 8935 of 2017 (Saravanan Vs. The Deputy Superintendent of Police, Commercial Crime Investigation Wing, Villupuram (In charge), Thanjavur Sub Division and 2 others).

6.The order of this Court dated 17.11.2021 in Crl.O.P.(MD).No.5490 of 2021 and Crl.M.P.(MD).Nos.3150 & 3151 of 2021 (K.Mathivanan Vs. The Deputy Superintendent of Police, Commercial Crime Investigation Wing, Villupuram (In charge), Thanjavur Sub Division and 2 others). And

7.(2022) 9 Supreme Court Cases 577 (Kanchan Kumar Vs. State of Bihar)

5.The learned Govt.Advocate (Crl.side) for the respondent supported the order of the trial Court and submitted that the petitioner as a Special Officer never verified the fact whether the encashed cheque amount brought to the account of Society and he being a co-signatory, his duty bound to verify the cheque amount to be brought in the Society account, he miserably failed in discharging his duty. Prima facie he being a co-



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signatory to the cheque, that amount was misappropriated by A1 & A2, the requirement of Sections 120B and 109 are made out. While framing a charge, only a prima facie case has to be seen. During the trial only evidence can be analysed. Therefore, the petitioner/third accused cannot be discharged from the offences and there is no reason to interfere with the order passed by the trial Court and no merit in the criminal revision case and thus, pleaded to dismiss.

6.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned Govt. Advocate (Crl.side)

7.The undisputed fact in this case is that the petitioner was the Special Officer at Kalappanahalli Primary Agricultural Co-operative Credit Society, Karimangalam, Dharmapuri District, during the period from 08.06.2012 to 08.05.2013. Further as per enquiry finding report under Section 81 and surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the Enquiry Officer found the responsibility of the misappropriation of fund upon the Secretary and the



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Assistant Secretary of the Society i.e. Accused A1 & A2 and there is no finding against this petitioner in the abovesaid enquiries.

8.The material records reveals that the cheque has been encashed by the Secretary and the Assistant Secretary i.e. A1 & A2. After encashing that cheque amount, the accused A1 & A2 not brought to the account of the Society and misappropriated that amount. No doubt, there is a failure on the part of the petitioner in supervising the Society's function and failed to supervise whether after encashment, the cheque amount has been brought to the account of the Society or not. In this regard, the Tamil Nadu Co-operative Societies issued a circular in R.C.No.228696/19/CP1 dated 11.12.1991 by the Registrar of Co-operative Societies, Chennai. In the circular, para – 3, it is clearly stated that the officers cannot be held criminally liable, for all the criminal irregularities committed by the staff working under them. Though they failed to check and scrutinise the accounts, such failure may not deserve criminal action and their failure to discharge their duties may be dealt with disciplinary proceedings. Unless there is an element to show that they are directly involved in any fraud for



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misappropriation, they need not be included in the criminal case.

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9. In the instant case, in the departmental surcharge proceedings, it is clearly held that the accused A1 & A2 are responsible for misappropriation of the society money. In the departmental surcharge proceedings, the charge is identical for misappropriation of society money. If in the proceedings, the responsibilities for misappropriation is not fixed upon this petitioner and in the absence of any evidence for the petitioner direct involvement in the misappropriation, no meaning to proceed against the petitioner in criminal proceedings.

10. Further, in this case, there is no material on the part of the prosecution to show that the petitioner was directly involved in the misappropriation. In the absence of any material, fasten criminal liability of misappropriation on the ground of abetment of conspiracy is unsustainable. This Court, in *Pparimaladevan Vs. State by The Inspector of Police, CCIW CID, Vellore, Vellore District reported in 2020-1-L.W.(Crl.) 281* and *the order of this Court dated 06.11.2019 in Crl.O.P.(MD).Nos.8482 to 8494 of 2018 and Crl.M.P.(MD).Nos.3787 to*



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3812 of 2018 (M.Soundarajan and another Vs. The Deputy Superintendent of Police, Commercial Crime Investigation Wing, Vilupuram (In Charge), Thanjavur Sub Division) upheld the legal position.

11.On facts and in circumstances of the case, the negligence on the part of the petitioner would not be a positive proof of his intentional help or aid to A1 & A2. Merely because the petitioner as a Special Officer was being a co-signatory to the cheque of the Society, he cannot be held guilty on the ground of vicarious liability. The trial Court was not right in taking the view that the issues raised by the petitioner had to be gone into the final proceedings.

12.Therefore, in the absence of any material to link the petitioner for misappropriation of the Society amount, prima facie case is not made out against the petitioner/third accused, the dismissal of the discharge application by the trial Court cannot be justified. The petitioner is entitled to discharge from the charges against him. Hence, the impugned order dated 04.04.2022 passed in Crl.M.PNo.1578 of 2020 in C.C.No.135 of



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2020 by the learned Judicial Magistrate No.II, Dharmapuri is hereby set aside and the petitioner is discharged from the charges levelled against him. Accordingly, the criminal revision case is allowed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
sms

13.02.2023

To

- 1.The State represented by
Deputy Superintendent of Police,
CCIW-CID, Dharmapuri.
- 2.The learned Judicial Magistrate No.II,
Dharmapuri

V.SIVAGNANAM ,J.



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Pre-delivery order made in
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