IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2023

PRONOUNCED ON : 31.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.11223 of 2021
and Crl.M.P.No.6565 of 2021

Sivaguru Subramaniyam	...	Petitioner / 2nd Accused

versus

1.The Inspector of Police, Central Crime Branch, Salem City Police, Salem. (Crime No.7 of 2020)	...	1st Respondent / State
2.Umesh, Ex-Senior Manager, Sail Refractory Company Limited, No.17, Indira Gandhi Street, Perumal Malai Adivaram, Narasodhipatty, Salem - 636 004.		
3.S.Sridharan, AGM (Personnel & Administration), Sail Refractory Company Limited, No.307 / 147-1A, 5th Cross, Kasakkaranor, Salem - 636 005.	...	Respondents 2 & 3 / *De facto* Complainants

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records relating to Crime No.7 of 2020 on the file of the Inspector of Police, Central Crime Branch Police Station, Salem and quash the same as against the petitioner.

For Petitioner	:	Mrs.L.Maithili
For Respondent No.1	:	Mr.A.Gopinath Government Advocate (Crl. Side)
For Respondent Nos.2 & 3	:	Mr.R.Rajarathinam, S.C. for Mr.A.Aswin Kumar

O R D E R

This Criminal Original Petition has been preferred to call for the records pertaining to Crime No.7 of 2020 on the file of the Inspector of Police, Central Crime Branch Police Station, Salem and quash the same.

2. Heard the learned counsel for the petitioner; learned Government Advocate (Crl. Side) for the first respondent; learned counsel for the respondents 2 and 3 and perused the materials available on record.

3. The petitioner is the second accused; the second respondent has given a complaint before the learned Judicial Magistrate No.II, Salem in

C.M.P.No.658 of 2020 under Section 156(3) Cr.P.C.; in pursuant to the order of the learned Judicial Magistrate No.II, Salem, the First Information Report has been registered and the complaint has been forwarded from the learned Judicial Magistrate No.II, Salem, to the file of the Inspector of Police, Central Crime Branch Police Station, Salem.

The gist of the complaint:-

4. The respondents 2 and 3 had been working in Burn Standard Company Limited, Salem; the said Company was transferred to SAIL Refractory Company Limited [hereinafter referred to as 'SRCL'], which is a subsidiary of Steel Authority of India Limited [SAIL], there was a system of maintaining the provident fund of the employees by a Provident Fund Trust and the same system was invoked even after the company was amalgamated with SAIL; the Provident Fund Trust comprises of members who are selected by nomination and election; out of six Trustees, three will be from Management and three will be from the employees; the Management Trustees will be nominated by the Management and the employees trustees will be elected by the members of the Trust; the financial activities of the Provident Fund Trust and processing of loan applications scrutiny etc., will be handled by a professional Chartered Accountant Firm on contract basis; such a decision for availing the service of an outside Firm was taken by one S.Rajagopal, who was the AGM (F&A) at the relevant point of time.

4.1. M/s.Venkat & Rangaa and M/s.Vimala & Pankaj are the Chartered Accountant Firms, which entered into the above contract with SRCL for the period from March 2017 to September 2017 and October 2017 to till date; the Finance Department of SRCL had handed over all the records and Registers pertaining to the maintenance of the Provident Fund Trust including the cheque books of the Provident Fund Trust, Loan Register, Loan Applications file and all other connected records to M/s.Venkat & Rangaa and M/s.Vimala & Pankaj to be maintained in their custody.

4.2. Whenever Provident Fund loan applications are received from the employees of SRCL, the Chartered Accountant Firms would process the applications and find out the eligibility of the employees and check all the details for disbursing the loan amount, the eligible loan amount for the applicant is determined by the Chartered Accountant Firms [M/s.Venkat & Rangaa and M/s.Vimala & Pankaj] after necessary calculations; after all verifications, the respondents 2 and 3 put their respective signatures believing that the process of issuing the cheques were properly carried out by the Chartered Accountant Firms and its employees; during October 2018, an audit report was handed over to the Provident Fund Trust wherein there was a finding that there had been some mismatch in the balance of amount, in an enquiry conducted by the Chief Operating Officer / Disciplinary Authority on 08.06.2019, the respondents 2 and 3 and other employees were asked to remit the misappropriated amount with accrued interest of Rs.32,38,488/- to the Provident Fund Trust Funds.

4.3. Under such compelling circumstances and without prejudice to the right to conduct the disciplinary proceedings taken against the respondents 2 and 3, the money was remitted; at the end of the enquiry, punishment order was issued on 14.08.2019 by the Chief Operating Officer, SRCL and thereafter, the respondents 2 and 3 were removed from their respective services; the Enquiry Officer had misconstrued the remittance as the admission of guilt by the respondents 2 and 3, by making hectic efforts, the real culprit was found to be one Sindhuja, who was the staff of the Chartered Accountant Firms, she had created forged loan applications of the real employees of the company and obtained the signatures of the respondents 2 and 3 in the cheques and swindled the Provident Fund Trust Funds; the respondents 2 and 3 had signed the cheques by believing that they were properly scrutinised by the Chartered Accountant Firms and they failed to verify whether the beneficiaries of the cheques were the real employees of the company or not.

4.4. Sindhuja had voluntarily disclosed the fact pertaining to her fraudulent transactions and she offered to transfer the entire misappropriated amount of Rs.27,24,213/- to the respondents 2 and 3; in fact, Sindhuja had transferred a sum of Rs.5,00,000/- from her father's account to the account of the second respondent; during the second respondent's tenure as the Provident Fund Trust Chairman of SRCL, he had sent a complaint along with the declaration / admission given by Sindhuja on 13.08.2019 by registered post to the Inspector of Police, CCB and the same was countersigned by the third respondent also; but no F.I.R. has been filed against Sindhuja; after the complaint was received, it was also brought to the knowledge of the Police that there was money transactions between Sindhuja and one loan beneficiary by name 'Murugan', two cheques were issued by Murugan to Sindhuja, who had withdrawn a sum of Rs.78,000/- and Rs.89,000/- on 28.09.2017 and 05.09.2018 respectively; on the complaint given by the respondents 2 and 3, no action has been taken and hence, they have made complaint before the learned Judicial Magistrate No.II, Salem, under Section 156(3) Cr.P.C.

4.5. Apart from Murugan, there are few other suspicious beneficiaries and the details have to be investigated; because of some ones fault, the respondents 2 and 3 have lost their respective jobs and they have been branded as fraudsters; on the orders of the learned Judicial Magistrate No.II, F.I.R. has been registered in Crime No.7 of 2020 for the offences under Sections 406, 408 and 420 of IPC against one Sindhuja and this petitioner. Now the petitioner, who is impleaded as the second accused has filed this petition for seeking to quash the proceedings in Crime No.7 of 2020.

5. The learned counsel for the petitioner submitted that without any allegations against this petitioner, he has been unnecessarily implicated in this case; as against this petitioner, there is no specific overt act and even according to the respondents 2 and 3, Sindhuja, who was the employee of the petitioner had committed the fraudulent activities; without impleading the named accused Murugan as one of the accused, the first respondent police had unnecessarily implicated the petitioner / second accused, who is a partner of M/s.Venkat & Rangaa and M/s.Vimala & Pankaj; in fact it is the petitioner, who had unearthed some irregularities in the Provident Fund Trust loan accounts and submitted a letter to SRCL; he has also sent a letter to the Commissioner of Police about the fraud committed by his staff.

5.1. Only based on the report sent by the petitioner, the company has conducted internal enquiry and found that the first accused (Sindhuja) along with the respondents 2 and 3 had misappropriated a sum of Rs.32,38,488/- from the Provident Fund Trust loan account of SRCL which was reflected in the enquiry report of SRCL dated 08.06.2019; SRCL has filed the police complaint on 12.06.2019 by alleging the criminal misappropriation against the respondents 2 and 3 and they have been terminated from employment on 14.08.2019; since the complaint has been filed without any *prima facie* materials against the petitioner, the First Information Report as against the petitioner should be quashed.

5.2. The first accused Sindhuja was an employee of M/s.Venkat & Rangaa and she was deputed to SRCL to do the services relating to the Provident Fund Trust of SRCL; she would work in the premises of SRCL where the records are kept normally and on approving those applications and documents prepared by Sindhuja, the respondents 2 and 3 would sign the cheques and disburse the amount, the process of the application at no point involves the scrutiny of the petitioner / second accused; hence the malpractice came to be noticed only when the audit was done by the second respondent, the respondents 2 and 3 have got an active involvement with the said Sindhuja and they have been terminated from service after the disciplinary proceedings were completed; the petitioner has been consistently helping the company to find out the real culprits, the complaint does not mention anything on the part of the petitioner in the alleged crime; in fact, the respondents 2 and 3 are individuals, who are in charge of the Provident Fund loan account; so there is no ingredients to make out any offence under Sections 406, 408 and 420 IPC against the petitioner. In support of his above contention, the learned counsel for the petitioner relied on the following judgments:-

(i) ***R.Kalyani vs. Janak C.Mehta*** reported in ***(2009) 1 SCC 516***

(ii) ***Sunil Bharti Mittal vs. Central Bureau of Investigation*** reported in ***(2015) 4 SCC 609***

6. The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that the second accused, who is a partner of M/s.Venkat & Ranga and M/s.Vimala & Pankaj, with whom SRCL has got the contract with regard to the Provident Fund Trust were entrusted during the relevant point of time would know the fraudulent activities committed by his staff. Unless a detailed investigation is done the non-involvement of the petitioner cannot be ruled out.

7. The learned counsel for the respondents 2 and 3 submitted that the nature of functions and responsibilities to be carried out with regard to the Provident Fund Trust have been clearly defined in the contract work orders. Even prior to the year 2016, M/s.Venkat & Rangaa was the contractor for carrying out the statutory services at SRCL. The Provident Fund loan applications scrutiny, loan processing for payment of loans, bank reconciliation with Provident Fund Trust operating banks UBI, SBI and

ICICI banks are some of the exclusive responsibilities assigned to the Firms. The work order does not say about any supply of manpower to SRCL. The petitioner's Firms had undertaken jobs, job orders and not supply of manpower and hence it cannot be said that the staff namely Sindhuja was deputed and no liability can be fastened against them. The Firms was provided with a separate office at the premises of SRCL along with necessary computers and office accessories for facilitating and performing the services as per the work orders. The petitioner / second accused was looking after the day-to-day affairs of the contract and he was exercising complete control over the performance of various contractual jobs assigned to the contract Firms.

7.1. Apart from Sindhuja, three more staffs were reporting to the petitioner, the petitioner was reporting to one S.Rajagopal, AGM (F&A), who was nominated as the Operating Authority for the contract in terms of the work orders. During the period from March 2017 to September 2018, the petitioner recommended and certified 31 fraudulent applications. The petitioner has created false recommendations / certification to the non-employees and sent the same along with the regular employees' applications, obtained cheques from respondents 2 and 3. The recovery list for each month was prepared by the employees and verified by the petitioner and therefore, he cannot say that he had no role in performing the functions mentioned in the work order. Because of the fraud committed by the petitioner, the respondents 2 and 3 have suffered huge financial loss, lost employment, image and reputation.

7.2. The petitioner's Firms have never been engaged by SRCL for auditing their accounts as alleged in the petition. The auditing of Provident Fund Trust was done by an audit Firm 'Gopalan and Sundaravasu' and they have expressed certain apprehensions in the report dated 28.08.2008. Based on that, Vigilance Department of SRCL has visited the petitioner's Firms and seized certain documents. To cover up those lapses, the petitioner by way of after thought has prepared a letter dated 18.12.2018 and handed over to SRCL and Police. If the petitioner unearthed the irregularities in July 2018 itself, he could have preferred a complaint and informed the Police immediately. There is no enquiry report dated 08.06.2019 as alleged by the petitioner.

7.3. A preliminary enquiry was conducted by the company against the respondents 2 and 3 for their role in putting their signatures in the cheques, which were placed before them by the petitioner's Firms after their verification of the provident fund loan application and other particulars as per the work order. It is a clear case of misappropriation made by the accused in getting the signatures of the respondents 2 and 3 in the cheques and defrauded them and swindled huge amount. Even though a criminal complaint was given by the company against the respondents 2 and 3, the Chartered Accountant Firms and its employees, the complaint was subsequently closed after the amount was remitted by the respondents 2 and 3 under protest.

7.4. The respondents 2 and 3 out of their own efforts found out the fraud committed by the first accused (Sindhuja) and the second accused contract Firms and other employees of the second accused in the Provident Fund Trust loan application transactions. The first accused has given a memorandum of declaration by admitting the guilt and in which the petitioner has stood as a witness. Only during investigation, the involvement of the petitioner can be brought out and hence, the F.I.R. cannot be quashed against the petitioner. In support of his above contentions, the learned counsel for the respondents 2 and 3 cited the decision of the Hon'ble Supreme Court in ***Inder Mohan Goswami vs. State of Uttaranchal*** reported in ***(2008) 1 SCC (Cri.) 259***.

8. The petitioner is the partner of M/s.Venkat & Rangaa and M/s.Vimala & Pankaj, with whom SRCL has got contract to undertake the statutory services adopted to the Provident Fund Trust of the companies. The respondents 2 and 3 were working in SRCL as Senior Manager and AGM (Personnel and Administration). The complaint has been filed under Section 156(3) Cr.P.C. before the learned Judicial Magistrate No.II, Salem, seeking for a direction to register F.I.R. The respondents 2 and 3 have stated that because of the fraud committed by the petitioner and one Sindhuja in processing the papers for the Provident Fund loans, the respondents 2 and 3 and yet another staff of the company was put under pressure by the then AGM (F&A) of SRCL to make out the loss suffered by the Provident Fund Trust account of SRCL. The respondents 2 and 3 have jointly given one complaint and on which F.I.R. has been registered.

9. In fact, one of the respondents ought to have given the complaint and other respondent should have stood as a witness. But contrary to the usual practise two persons have jointly given one complaint. Anyway the grievance of the respondents 2 and 3 is that by leaving the real culprits, who caused the loss by misappropriating the funds of the Trust, the respondents 2 and 3 were made as scape goats to pay the misappropriated money to the Provident Fund Trust account of the company. Both the petitioner and the respondents 2 and 3 have agreed to pay an amount of Rs.32,38,488/- which was found to have been misappropriated by adopting malpractices in processing the loan applications.

10. It is seen from the complaint that the petitioner's partnership Firms by name M/s.Venkat & Rangaa and M/s.Vimala & Pankaj had entered into a contract with SRCL for the period between March 2017 and September 2017 and from October 2017 to till date, for rendering the statutory services adopted to disburse the Provident Fund loans to the employees. The company has Provident Fund Trust and the members of the Trust would manage the provident fund of the employees. For undertaking the financial activities of the Provident Fund Trust including the processing the loan applications by scrutinising them, granting of loans to the employees, preparation and issuing of loans. Cheques were handed over to the professional Chartered Accountant Firms like the petitioner's Firms.

11. From the allegations of the complaint and the materials produced, it is seen that one Sindhuja, who was the employee of the petitioner's Firms had been deputed to undertake the statutory services / contractual services relating to the Provident Fund Account of the company by the petitioner's Firms. The said staff would do the process of Provident Fund loan applications and do the services in order to enable the seamless sanction and disbursement of the Provident Fund loans to the employees. The said Sindhuja made it convenient to create loan applications, even without the applications submitted by the employees and processed the same by getting the signatures of the respondents 2 and 3 on the cheques by adopting such a practice a huge sum was misappropriated. According to the petitioner, the misappropriation was unearthed by him while conducting the audit of the accounts and in this regard, he has written a letter to the company on 18.12.2018.

12. The learned counsel for the respondents 2 and 3 submitted that the services of the petitioner's Firms were required only to do certain job works and not for supplying any manpower. It is not the claim of the second accused that the Firms have omitted to supply manpower to SRCL. As a matter of convenience, one of the staffs of the petitioner's Firms was directly sent to the premises of SRCL and SRCL has accommodated her in the office along with computers and other staff members for the purpose of processing papers relating to the Provident Fund accounts.

13. The learned counsel for the petitioner submitted that the companies Auditor had divulged about the certain irregularities even during August 2018 and only based on that, the Vigilance Department of SRCL had started to collect the information and found out the persons who had committed the fraudulent acts. In the complaint of respondents 2 and 3, it is stated that the audit report was submitted only during October 2018 wherein it was found that the fishy transaction had taken place. An enquiry has been initiated by the Chief Operating Officer / Disciplinary Authority on 08.06.2019 and in the end of which, the respondents 2 and 3 were found guilty for the malpractices along with the active participation of Sindhuja.

14. No doubt the petitioner's Firms has a contractual obligation to see the services given to them are done in a manner known to law and that it should not cause any loss or convenience to the Provident Fund account of SRCL. The respondents 2 and 3 have got grievances because disciplinary actions have been taken against them in connection with the alleged malpractice and they have been sent out from the company. As stated already, the respondents 2 and 3 were holding the positions of the Senior Manager and AGM (Personnel & Administration) of SRCL respectively. The respondents 2 and 3 are the unauthorised signatories of the cheques issued towards the Provident Fund loan to the employees. After the petitioner levelled the irregularities that had occurred in this regard the company itself has conducted an enquiry and found that the respondents 2 and 3 had acted hand in hand over the cheques with Sindhuja in order to misappropriate the funds illegally. Even before the initiation of the disciplinary proceedings, the respondents 2 and 3 were asked to refund the loss from their pockets and they have done the same.

15. The disciplinary proceedings which ended in termination of the respondents 2 and 3 is said to have been challenged by the respondents by way of preferring Writ Petitions. However, it is the stand of the respondents 2 and 3 that they agreed to refund the loss and they did not misappropriate the funds. The failure on their part to verify the records before signing the cheques would be an act of negligence on their part and that cannot be equated to misappropriation of funds. It is not known on what basis the company has arrived at a conclusion that the respondents 2 and 3 have also acted in tandem and swindled the money with Sindhuja.

16. It would have been true that the respondents 2 and 3 in their own interest had collected certain evidence, including the involvement of Sindhuja in the act of misappropriation. In fact, in the complaint itself, the declaration given by Sindhuja that she had misappropriated the funds of Provident Fund Trust in order to help the business of her father has been stated. It is further submitted that Sindhuja herself came forward and transferred a sum of Rs.5,00,000/- from her father's account to the personal account of the second respondent. It is also explained in the complaint that such transfer was made from the personal account to the second respondent, since the fund misappropriated from the Provident Fund Trust account has already been compensated by the respondents 2 and 3. The complaint has also stated about the involvement of one Murugan, who has played a role along with Sindhuja in swindling the money. Despite the said Murugan was mentioned in the complaint, he was not shown as one of the accused in the F.I.R. In fact, in the complaint the petitioner / second accused was not even shown as an accused. All that the respondents 2 and 3 wanted was to register a case and investigate to know who were behind the malpractice.

17. The order of the Magistrate was received by the first respondent on 14.03.2020 at about 11.00a.m. and the complaint has been registered at the same time. So the first respondent would not have got any time to conduct a preliminary enquiry before registering the F.I.R. to ascertain the names of the accused in order to show them under Column No.7 of the F.I.R. It is understandable, if the respondents 2 and 3 had made any open allegations against the petitioner and narrated about the overt act of the petitioner for implicating the petitioner as an accused.

18. Even according to the complainant, the very same companies by name M/s.Venkat & Rangaa and M/s.Vimala & Pankaj had been taking the work orders relating to the Provident Fund account from the year 2015.

As per the petitioner's letter dated 18.12.2008, the misappropriation was found to have occurred between the period from March 2017 to July 2018. In the letter of the petitioner it has been stated that during July 2018 itself, reconciliation of accounts was ordered to be done but the key staff deputed by the petitioner's Firms namely Sindhuja had wriggled out by resigning from the company. An undertaking dated 12.07.2019 is said to have given by Sindhuja narrating the issuance of 31 fraudulent cheques and consequently misappropriated the funds.

19. As per the job order, the petitioner's Chartered Accountant Firm is expected to maintain certain records and update them by filing annual returns. One of the essential functions attached to them is to scrutinise the Provident Fund loan applications and check whether the payments is on or before 21st of every month. Had the scrutiny been done in a responsible manner by the petitioner's Firms, the misappropriation could have been noticed at the earliest point of time. It cannot be said that there was no lapse on the part of the contractor Firms namely M/s.Venkat & Rangaa and M/s.Vimala & Pankaj which had undertaken the services relating to the Provident Fund loan account, but the material point is whether the lapses on the part of the contractor can be construed as criminal act of the misappropriation especially by the second respondent.

20. As stated already, the respondents 2 and 3 are also equally responsible as they are the sanctioning authorities. Because the authority to issue cheques lies with them and they themselves have stated that they were negligent and there is dereliction on their part in not verifying the processing before issuing the cheques. Fixing civil liability on the petitioner's Firms in view of the criminal act committed by their staff and causing loss to SRCL is different from fixing the criminal liability on the Firms or its partners. There was no such malpractice found during the earlier orders when the petitioner's Firms were given with the very same contract for rendering the service. Only because of the goodwill enjoyed by the second respondent, the work order was continued to be given to the petitioner's Firms.

21. Though the petitioner has obligation to make good the loss sustained by the Companies, that alone cannot be the reason for fixing the criminal liability. When the materials produced and accepted by the respondents 2 and 3 themselves would show the active involvement of some named staffs of both the petitioner's Firms and SRCL, it is unnecessary to fasten the criminal liability upon the petitioner. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court in ***Sunil Bharti Mittal vs. Central Bureau of Investigation*** reported in ***(2015) 4 SCC 609***. In the said judgment, it is held that in the absence of any incriminating role against the Directors of the Company, no process for criminal action should be issued against them. It is relevant to extract paragraph Nos.42, 43 and 44 as under:-

> *"**42**. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*
>
> ***43**. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second*

situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. *When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada v. Godfather Travels & Tours (P) Ltd. [(2012) 5 SCC 661], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”*

22. It is an admitted fact that the case has not been registered for the offence contemplated under any Special Act which recognises the Doctrine of Vicarious Liability. The case has been registered under the provisions of Indian Penal Code which does not attract the doctrine of Vicarious Liability.

23. The learned counsel for the petitioner submitted that the powers under Section 482 Cr.P.C. has to be exercised cautiously and the Court should refrain from passing any orders if collection of evidence has not yet been done and the magnitude of the offence cannot be seen in its true perspective without materials. In support of the above submissions, he relied on the judgment of the Hon'ble Supreme Court in ***Inder Mohan Goswami vs. State of Uttaranchal*** reported in ***(2008) 1 SCC (Cri.) 259***, wherein in paragraph no.27 it is held as under:-

> *"27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power required great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court*

should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

24. The case in hand the respondents 2 and 3 themselves did not make out any specific allegations against the petitioner. They have stated that by their efforts they have found that Sindhuja, who was the staff of the petitioner's Firms has done the criminal acts of creating fake applications for Provident Fund loan. It is already stated about the negligence on the part of the respondents 2 and 3 in not verifying the records before issuing the cheques. There is a lapse on the part of the petitioner's Firms in omitting to scrutinise the Provident Fund loans for each and every month as stipulated in the work order.

25. Since the respondents 2 and 3 themselves have come up with the materials to show who had done the act of misappropriation, no criminal liability can be fastened against the petitioner and that too in the absence of ascribing any specific role in processing the loan applications and sanctioning the loans. An important stage of disbursal of loan is sanctioning the loan. The said sanction is not by the Chartered Accountant Firms but by the respondents 2 and 3. In fact, the petitioner, who had actively assisted in bringing out the irregularities by unearthing them and also asked for reconciliation of accounts. Despite the same the first respondent had hastily impleaded the petitioner without any basis. The materials on the face of it does not disclose any criminal liability on the petitioner, though vicarious liability can be attached due to the illegal actions done by the employee of the Chartered Accountant Firm in causing loss to the contracting companies.

26. In view of the above said reasons, I feel that it is appropriate to invoke the powers under Section 482 Cr.P.C. Even before the venture of collecting evidence is started, the materials available on records itself would show the involvement and the modes on which the misappropriation was done. In the said process, the petitioner / second accused does not play any role though he is responsible for the omissions and commissions done by his staff.

27. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.7 of 2020 pending on the file of the Inspector of Police, Central Crime Branch Police Station, Salem, is quashed as against this petitioner. Consequently, connected Miscellaneous Petition is closed.

31.03.2023

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

sri

To

1.The Judicial Magistrate No.II,
Salem.

2.The Inspector of Police,
Central Crime Branch,
Salem City Police, Salem.

3.The Public Prosecutor,
Madras High Court,
Chennai.

R.N.MANJULA, J.

sri

Pre-Delivery Order made in
Crl.O.P.No.11223 of 2021

31.03.2023