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Crl.O.P.No.22642 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.22642 of 2021

and

Crl.M.P.Nos.12318 & 12320 of 2021

Devi

...

Petitioner

Vs

1.State by its

Inspector of Police

CCIW Police Station,

Thiruvannamalai,

Thiruvannamalai District.

(Crime No.8 of 2015)

2.Saravanan

...

Respondents

Prayer: Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records relating to the case in C.C.No.293 of 2017 pending trial on the file of the learned judicial Magistrate No.II, Thiruvannamalai District and quash the same.

For Petitioner : Mr.K.G.Senthilkumar

For Respondent : Mr.V.J.Priyadarsana
No.1 Govt.Advocate (Crl.side)

For Respondent : No appearance
No.2



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ORDER

Challenging the case in C.C.No.293 of 2017 pending trial on the file of the learned judicial Magistrate No.II, Thiruvannamalai District, the present criminal original petition has been filed.

2.The learned counsel for the petitioner submitted that the petitioner is the third accused in C.C.No.293 of 2017 on the file of the learned Judicial Magistrate No.II, Thiruvannamalai. The petitioner is not an employee in C-1245 Agricultural Co-operative Society, Arni and she was engaged on contract basis and paid salary through Rainbow Security Service. The second respondent conducted an enquiry with regard to misappropriation of Rs.13,84,347/- in the Society and in the Sur-charge proceedings Tha.Thee.No.03 of 2015-2016 dated 27.11.2015, held that one T.Karunakaran and S. Kamalanathan are responsible for misappropriation of Rs.13,84,347/-. The petitioner being not an employee in the Co-operative society and not responsible for misappropriation of above said amount cannot be taken as an accused along with the persons causing loss to the Society. Continuing the



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criminal proceeding in C.C.No.293 of 2017 is inappropriate. Therefore, seeking to quash.

3.The learned Govt.Advocate (Crl.side) appearing for the first respondent submitted that in the sur-charge proceedings, the second respondent held that since the petitioner was not an employee in the Co-operative Society, one T.Karunakaran and S.Kamalanathan are the responsible persons for misappropriation of Rs.13,84,347/-.

4.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) appearing for the first respondent.

5.On verification of case records and materials, it reveals that based on the complaint given by one Saravanan, Deputy Registrar of Co-operatives, the respondent police registered a case against the accused persons in Crime No.8



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of 2015. After investigation, filed a final report against the accused persons for the offences punishable under Sections 408, 109, 477 A, 120B, 471 & 467 IPC and the case has been taken on file by the Judicial Magistrate No.II, Thiruvannamalai in C.C.No.293 of 2017. In the C.C.No.293 of 2017, the petitioner is the third accused and challenging the criminal proceedings on the ground that she is not an employee in C-1245 Agricultural Cooperative Society, Arni. It is not disputed that the petitioner is not an employee in C-1245 Agricultural Co-operative Society, Arni and she was engaged in the society through Rainbow Security service and paid salary also through it. Further, it is also not disputed that in the surcharge proceedings finally held that only Karunakaran and S.Kamalanathan are responsible for misappropriation of Rs.13,84,347/- to the society. Further, the surcharge proceedings, there is no finding against this petitioner for participation in creating any false document and for taking an amount from the society. Under such circumstances, a decision relied on by the Hon'ble Supreme Court *in Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI and ors* reported in (2020) 9 SCC 636 is taken into consideration



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of a case in *Radheshyam Kejriwal V. State of West Bengal and Anr* reported in (2011) 3 SCC 581, in which, it is held that

"26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the Appellant has been exonerated on the same allegation. The Appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (AIR p. 27)

... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or



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actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.

xxx xxx xxx

29. We do not have the slightest hesitation in accepting the broad submission of Mr. Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the Accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.

Thereafter, the Hon'ble Supreme Court, after referring to various judgments, held the following ratio;

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;



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(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where



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the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

6.In view of the above, the petitioner is not an employee and not responsible for the misappropriation of an amount of Rs.13,84,347/-. Further, there is no material against this petitioner for prosecuting the criminal case. Under these circumstances, continuing the criminal proceedings in C.C.No.293 of 2017 against this petitioner is inappropriate. Therefore, C.C.No.293 of 2017 on the file of the Judicial Magistrate No.II, Thiruvannamalai against this petitioner is hereby quashed. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Index: yes/no
Internet:yes/no
sms

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To

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1. Inspector of Police
CCIW Police Station,
Thiruvannamalai,
Thiruvannamalai District.
(Crime No.8 of 2015)
2. The learned judicial Magistrate No.II,
Thiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras.

V. SIVAGNANAM, J.



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