IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.22561 of 2022
and Crl.M.P.No.14495 & 14496 of 2022

1.M.Senthilvelan

2.M.Selvakumar

3.V.Vijayan ... Petitioners

Vs.

1.The State Rep. by
The Inspector of Police,
C.C.I.W/C.I.D., Dharmapuri,
(Crime No.6 of 2003)

2.The Deputy Registrar of Co-op Societies,
Dharmapuri. ...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in C.C.No.234 of 2020 pending on the file of the Judicial Magistrate II, Dharmapuri so far as the petitioners concerned.

For Petitioner	:	Mr.S.Venkatraman
For Respondents	:	Mr.A.Damodaran Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the proceedings in C.C.No.234 of 2020 pending on the file of the learned Judicial Magistrate No.II, Dharmapuri.

2.The case of the prosecution is that several malpractices were done at Dharmapuri Town Co-operative Bank Limited, Dharmapuri and hence, an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act and the Enquiry Officer also submitted a detailed report in this regard on 09.12.2003. Based on the report, an FIR came to be registered on the complaint lodged by the Deputy Registrar of the Bank in Crime No.6 of 2003 on 21.07.2003 for offence under Sections 406, 408, 477A, 409 and 120B of IPC. There are totally 18 accused persons in this case and the petitioners have been arrayed as A14, A15 and A17.

3.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

4.The main ground that was raised by the learned counsel for the petitioners is that A14 and A15 were designated Cashiers and A17 was working in the clearing section and he was not even a Cashier at the relevant point of time. It was submitted that whenever the permanent incumbents went on leave, these petitioners were deputed on rotation basis to work as Cashiers. Thereby, the 1st petitioner has worked for 42 days, the 2nd petitioner has worked for 10 days and the 3rd petitioner has worked for three days. The learned counsel submitted that A18 who had also worked on a rotation basis for 25 days was also roped in as an accused and he filed a quash petition before this Court in Crl.O.P.No.22464 of 2013 and this Court quashed the proceedings insofar as A18 is concerned by an order dated 11.02.2020. The learned counsel submitted that the reasoning that was given by this Court for A18 will equally apply to the petitioners also.

5.The learned counsel further submitted that the report that was given by the Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act ultimately came to a conclusion that it was A1 who had swindled the entire amount and caused loss to the Society. That apart, even the report of the Reserve Bank of India came to a conclusion that it was A1 who was completely in control of the entire computerized accounts and the others were not even aware of the acts that were done by A1. The learned counsel also brought to the notice of this Court the order passed by this Court in CRP (NPD) Nos.614 etc., of 2022, dated 21.04.2022, wherein, this Court quashed the surcharge proceedings that were initiated against the petitioners on the ground that there was no case against the petitioners for any misappropriation of the funds belonging to the Society.

6.Per contra, the learned Additional Public Prosecutor by relying upon the counter affidavit filed by the Inspector of Police, Economic Offences Wing, Dharmapuri submitted that the case of A18 will not apply to the petitioners since they were directly involved in transacting the money. Insofar as A14 is concerned, it was submitted that he was working as a Cashier and he had recommended for the payment of the amount and thereby, he had caused a loss to the tune of Rs.4,55,850/- to the Bank. Similarly, insofar as A15 is concerned, he had caused a loss to the tune of Rs.3,85,900/- Similarly, A17 had caused a loss to the tune of Rs.24,34,275/- It was contended that all the petitioners had conspired with the other accused persons and they were very much part of the misappropriation of amounts. The learned counsel submitted that without the petitioners help, the main accused person could not have misappropriated such huge amounts of money and even as per the report of the Enquiry Officer, there was a proposal to initiate criminal prosecution against persons whom he had identified and the petitioners were also so identified by the Enquiry Officer.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The prosecution has specifically identified the loss that was caused to the Bank by each of the petitioners while passing the cheques that came to them even without verification and thereby, the petitioners have aided A1 to misappropriate large sums of money. This Court has to necessarily see as to what order was passed by this Court in the Civil Revision Petition that was filed by the petitioners challenging the surcharge proceedings. The findings rendered by this Court will have a lot of significance since if the petitioners have not even crossed the threshold to initiate surcharge proceedings, there is a higher threshold that has to be established by the prosecution to proceed against them for the alleged offence committed by them.

9.This Court while disposing of/allowing Civil Revision Petition filed by the petitioners and quashing the surcharge proceedings, rendered the following findings:

> *7.1 Allegation which the revision petitioners, including the one who died face is that their negligence had resulted in Bank losing about Rs.2.88 crores. The amount is no small amount but that cannot be the only determinative factor to fix liability. That these staff were found to be negligent on two aspects: (i) that they ignored the fact that no token numbers were given to the cheques drawn by Thangavel before they were passed; and (ii) that they did not peruse the ledger of the fraudster Thangavel.*

7.2 First, are they mere acts of negligence, or wilful negligence – something they omitted to ignore deliberately. Secondly, could they by themselves have prevented Thangavel from committing fraud.

7.3 Here comes the issue of computerisation of accounts, the free access and control Thangavel had to accounts and to the passwords. This Court now discusses something that had happened twenty years ago when most of those who belonged to the old school of banking were clueless to computerisation, the manner of its working, and to them men like Thangavel would be a God of automation. This was the state of affairs. Admittedly the fraud which now concerns this court is computer driven. Therefore, the nature of enquiry should be not about omission to comply with certain primitive precautionary steps in a pre-computerised world, and its relevance in the post computer world. The fraud had occurred during early days of switch over to computerisation. This should not be lost sight of. This has been the life's experience at that relevant point of time, and could not be ignored.

8. Therefore, the point therefore, is not whether the revision petitioners including the one who is now dead had been negligent in ignoring certain aspects which are perceived as safety aspects for preventing the fraud, but could the fraud have been prevented even if the two precautionary steps were followed. Here lies the answer, but the surcharge proceedings did not adequately focus on it. Here the enquiry *report of the RBI is relevant and its usefulness cannot be ignored. That the report is very neutral and it exposes the systematic flaw in the Bank's approach towards banking.*

9. Turning to the legal requirements for fastening the liability on the revision petitioners in the surcharge proceedings, it is not sufficient to prove that the staff were negligent, but must project the circumstances from which the Tribunal / the Court may reasonably infer that it was wilful negligence. At stage two it must be established that loss or deficiency of assets of the Co-operative Society must be the direct consequence of such acts or omission constituting wilful negligence. After all there is no case that the revision petitioners including the dead one had misappropriated the funds of the Society.

10. Given the totality of the circumstances, this Court does not consider that the liability could be fastened on the revision petitioners or on the estate of the deceased staff T.Maheswaran. All the revisions are allowed and the judgment and decree of the District Co-operative Tribunal, Dharmapuri/Principal District Court, Dharmapuri, dated 21.09/2011 made in CMA (Co-op Society) No.51 of 2008; CMA (Co-op Society) No.55 of 2008; CMA (Co-op Society) No.50 of 2008; CMA (Co-op Society) No.47 of 2008; and CMA (Co-op Society) No.53 of 2008 are set aside including the proceedings of the second respondent dated 11.03.2008. No costs. Connected miscellaneous petitions are closed.

10.On carefully going through the above findings, it is seen that there were only two acts of negligence that were put against the petitioners and they are:

(a) they ignored the fact that no token numbers were given to the cheques drawn by A1 before they were passed and

(b) they did not peruse the ledger of A1

11.On considering these two aspects, this Court then went into the next step of finding as to whether these are merely acts of negligence or there was willful negligence on the part of the petitioners. This Court also went into the issue as to whether the petitioners could have prevented A1 from committing the fraud. On considering the materials placed before the Court in detail, this Court came to a clear and categoric conclusion that there is no case against the petitioners for misappropriating the funds of the Society and hence, no liability can be fastened against the petitioners. On this ground, the surcharge proceedings came to be quashed. This order has also become final.

12.If a finding has already been rendered by this Court to the effect that the petitioners have not misappropriated the funds of the Society, the same will have a lot of bearing in the criminal case that is faced by the petitioners. The materials that have been relied upon is the same material based on which the surcharge proceedings were quashed against the petitioners. Therefore, there is no reason as to why the petitioners will have to go through the process of trial under such circumstances. In other words, if this Court has found that there was no willful negligence on the part of the petitioners, there is no reason as to why the petitioners must face the criminal prosecution where the standard of proof is much higher.

13.The reports given by the Enquiry Officer as well as the Reserve Bank of India also makes it clear that the kingpin in this case was A1 and he had manipulated the entire working of the Bank, since he was the only person who was well acquainted with the computer operations in the Bank. He had the complete access and control and he used the others to commit large scale misappropriations. The petitioners were merely deputed to work as Cashiers on rotation basis for a limited period and during that period, they had passed certain cheques and that by itself cannot result in fastening a criminal liability against the petitioners.

14.In the light of the above discussion, this Court finds that the continuation of the criminal proceedings against the petitioners will only lead to an abuse of process of Court and hence, it requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

15.Accordingly, proceedings in C.C.No.234 of 2020 pending on the file of the learned Judicial Magistrate No.II, Dharmapuri, is hereby quashed insofar as the petitioners are concerned.

16.In the result, this criminal original petition is allowed and there shall be a direction to the learned Judicial Magistrate No.II, Dharmapuri to proceed further with the case in C.C.No.234 of 2020 against other accused persons and dispose of the case, within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

30.08.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
ssr

To

1.The Judicial Magistrate II, Dharmapuri.

2.The Inspector of Police,
C.C.I.W/C.I.D., Dharmapuri,
(Crime No.6 of 2003)

3.The Deputy Registrar of Co-op Societies,
Dharmapuri.

4.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J

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