IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.Nos.918 & 1446 of 2017
and Crl.M.P.Nos.8668 & 14389 of 2017

M.Ramasamy ... Petitioner
in Crl.R.C.No.918 of 2017

G.Velayudham ... Petitioner
in Crl.R.C.No.1446 of 2017

vs.

The State Represented by
The Inspector of Police,
C.C.I.W. - C.I.D. Wing,
Krishnagiri District.
(Crime No.2 of 2009) ... Respondent
in both Crl.R.Cs

Prayer in Crl.R.C.No.918 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying against the order dated 11.01.2016 made in Crl.R.P. No.1 of 2015 on the file of the Principal District Judge, Krishnagiri, in reversing the order dated 28.10.2014 made in Crl.M.P.No.500 of 2013, in C.C.No.101 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Denkanikottai.

Prayer in Crl.R.C.No.1446 of 2017: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying against the common order passed by the the Principal District & Sessions Judge at Krishnagiri in dated Crl.R.C.No.2 of 2015 dated 11.01.2016 in reversing the well considering common order of discharge passed by the District Munsif cum Judicial Magistrate Court at Denkanikottai, in Crl.M.P.No.3656 of 2011 in C.C.No.101 of 2009 dated 28.10.2014 for the offence under Section 406, 408, 409, 465, 471, 477(A), r/2 120(B) of the Indian Penal Code.

For Petitioner in Crl.R.C.No.918 of 2017	: Mr.S.Sairaman
For Petitioner in Crl.R.C.No.1446 of 2017	: Mr.Ma.P.Thangavel
For Respondent in both cases	: Mr.L.Baskaran Government Advocate

ORDER

These criminal revision petitions have been filed by A6 and A1 respectively as against the order passed by the learned District and Sessions Judge, Krishnagiri in Crl.R.C.No.1 of 2015 and Crl.R.C.No.2 of 2015, dated 11.01.2016, reversing the order passed by the learned District Munsif-cum-Judicial Magistrate Court, Denkanikottai, discharging the petitioners through order dated 28.10.2014 from offence under Sections 120(b) r/w 406, 408, 409, 465, 471, 477(A) of IPC.

2.The petitioner (A6) in Crl.RC.No.918 of 2017 was working as a Field Manager in Dharmapuri District Central Co-operative Bank Limited. The petitioner (A1) in Crl.RC.No.1446 of 2017 was functioning as a Special Officer for the period from 23.06.2001 to 31.07.2001. The case of the prosecution is that for the period from 19.03.1996 to 14.07.2001, A1 to A37, who were the Employees/Board of Directors/Field Officers etc., colluded with each other and conspired and committed misappropriations to the tune of Rs.5,19,721/- (Rupees Five Lakhs Nineteen Thousand Seven Hundred and Twenty One only) with an intention to cheat the Co-operative Bank. According to the prosecution, they sanctioned crop loan to members, who were not even having agricultural lands, but however they made false entires and manufactured Certificates and sanctioned loans to persons, who were not entitled for the crop loan and thereby, caused loss to the Co-operative Bank.

3.Initially, an enquiry was conducted under Section 81 of the Co-operative Societies Act and a report came to be submitted by the Enquiry Officer on 28.04.2003. As per this report, the accused persons are said to have caused a loss of Rs.5,19,721/- (Rupees Five Lakhs Nineteen Thousand Seven Hundred and Twenty One only) to the Co-operative bank and they are said to have misappropriated this amount.

4.The above report that was submitted by the Enquiry Officer did not translate itself into surcharge proceedings under Section 87 of the Co-operative Societies Act. However, it ultimately became the basis for lodging a complaint in the year 2009 before the C.C.I.W. (C.I.D) in Crime No.2 of 2000. This FIR was taken up for investigation and it culminated into two final reports. One final report was taken cognizance in C.C.No.100 of 2009 and another final report was taken cognizance in C.C.No.101 of 2009. Both these final reports were taken cognizance by the District Munsif-cum-Judicial Magistrate, Denkanikottai.

5.For the sake of the present case, this Court is concerned with C.C.No.101 of 2009 and the petitioners have been ranked as A6 and A1 respectively in the final report. The specific allegation as against the petitioners is that they failed to properly discharge their duty while disbursing the loan amount and as a result, A7 and A8 were given excess loan to the tune of Rs.32,143/- (Rupees Thirty Two Thousand One Hundred and Forty Three only) and to that extent, the Co-operative Bank sustained loss.

6.Initially, apart from the petitioners (A6 and A1), A2 had also filed a discharge petition before the Trial Court on the ground that no offence has been made out against him even as per the materials that have been relied by the prosecution.

7.The trial Court took up all the three discharge petitions together and dealt with the same and by a common order dated 28.10.2014, A1, A2 and A6 were discharged from all charges. Aggrieved by the same, the prosecution filed Criminal Revision Petition Nos.1, 2 and 3 of 2015 before the learned Principal Sessions Court, Krishnagiri. The learned Sessions Judge by a common order dated 11.01.2016, allowed all the three revision petitions and set aside the discharge orders passed by the Trial Court.

8.Aggrieved by the above order, A2 filed Crl.RC.No.992 of 2016 before this Court and this Court by an order dated 17.10.2016, allowed the Criminal Revision and set aside the order passed by the Sessions Court and thereby, restored the original discharge order passed by the Trial Court. This order has become final and A2 has already been discharged from this case.

9.As against the same order passed by the learned Sessions Judge, A6 and A1 have filed these Criminal Revision Petitions.

10.Heard Mr.S.Sairaman, learned counsel appearing on behalf of the petitioner in Crl.R.C.No.918 of 2017, Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the petitioner in in Crl.R.C.No.1446 of 2017 and Mr.L.Baskaran, learned Government Advocate appearing on behalf of the respondent.

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

12.The learned Government Advocate appearing on behalf of the respondent police submitted that merely because this Court had allowed the revision petition filed by A2, that by itself will not enure to the benefit of the petitioners, since there are specific allegations made against them with supporting materials. The learned Government Advocate submitted that A1 in his capacity as a Special Officer had colluded with the other accused persons and committed misappropriation of the funds of the Society. It was further submitted that A1 had approved the Certificates issued by A5 for the crop loan that was extended to A7 and A8, wherein, an excess loan to the tune of Rs.32,143/- (Rupees Thirty Two Thousand One Hundred and Forty Three only) was paid to A7 and A8. To that extent, the Bank had suffered a loss and hence, A1 has to face the trial. It was similarly submitted that A6 was working as a Field Manager and he had also failed in his duty in making a filed visit to the agricultural land and he should have verified the documents furnished along with the loan applications and since this accused colluded with other accused persons, A7 and A8 were extended excess loan amount which resulted in the Co-operative Bank sustaining loss. The learned Government Advocate submitted that strong *prima facie* materials are available as against A1 and A6 and there are absolutely no grounds to interfere with the order passed by the learned Sessions Judge and sought for the dismissal of these criminal revision petitions.

13.The main charge that has been attributed as against the petitioners (A6 and A1) is the charge of criminal conspiracy. The allegations made and the materials available on record do not attribute any specific overt act as against the petitioners. Hence, if there are materials to rope in the petitioners for the charge of criminal conspiracy, the petitioners will have to necessarily face the trial before the Court below.

14.In the first instance, even as per the enquiry report that was submitted by the Enquiry Officer under Section 81 of the Co-operative Societies Act, the name of A1 was nowhere roped in to make him liable for the excess loan amount sanctioned to A7 and A8. The enquiry report is completely silent with regard to the part played by A1. This report was submitted in the year 2003. All of a sudden, in the year 2009, an FIR came to be registered. Even when the FIR was registered, the name of A1 was not added. For the first time, the name of A1 was roped in when the second final report came to be filed in C.C.No.101 of 2009.

15.The specific allegation that has been made in the final report as against A1 is that he was holding the charge of Special Officer for the period from 23.06.2001 to 31.07.2001 and that he conspired along with the Secretary (A2) and as a result, loan amounts were sanctioned to A7 and A8 in excess of their entitlement and thereby, the Co-operative Bank suffered loss to the tune of Rs.32,143/- (Rupees Thirty Two Thousand One Hundred and Forty Three only).

16.It is to be borne in mind that the loan amount that was sanctioned in favour of A7 and A8 later came to be repaid back and the same is evident from the letter dated 05.11.2011, where it is found that the entire amount has been repaid with interest.

17.It is true that mere repayment of the loan amount by A7 and A8 will not automatically result in discharge of the accused persons. However, this is only an additional factor that is being taken into consideration by this Court, since the said fact was also taking into consideration when the criminal revision petition filed by A2 was allowed by this Court.

18.This Court has already allowed the Criminal Revision Petition filed by A2 on the ground that there is absolutely no material to show that A2 had conspired with the other accused persons to cause loss to the Bank and had misappropriated the amount. This finding rendered by this Court has become final. If A2 has been held not to have indulged in the offence of criminal conspiracy, the charge against A1 for offence of criminal conspiracy would automatically fail. This is in view of the fact that the specific allegation of prosecution is that A1 conspired along with the Secretary and the same ultimately resulted in disbursing excess loan amount to A7 and A8.

19.In the considered view of this Court, there are absolutely no materials as against A1 in order to sustain the charge of criminal conspiracy and misappropriation of amount. Even assuming that A1 was not vigilant enough to stop the excess disbursement of loan amount, that by itself will not constitute a criminal offence. At the best, it can be construed as negligence. That is the reason why, A1 was not even made as an accused when the FIR was registered in the year 2009. Ultimately, A1 has been roped in as an accused only for the reason that he was holding the post of Special Officer during the relevant point of time. The holding of post of Special Officer by itself cannot result in an assumption that A1 was indulged in the offence of criminal conspiracy without there being any material against A1 and more particularly, when the discharge of A2 has already been confirmed by this Court.

20.This Court has to now go into the case of A6, who had been roped in this case on the ground that he was working as a Field Manager and he had colluded with other accused persons and committed misappropriation. Insofar as A6 is concerned, he was supposed to receive the crop loan applications, make the field visit and verify the genuineness of documents. According to the prosecution, A6 failed to properly perform this function, as a result of which A7 and A8 were disbursed with excess loan amount than what they were actually entitled.

21.The specific case of the prosecution is that A7 and A8 had managed to show excess extent of land by producing forged documents and certificate from the Village Administrative Officer and thereby, they were disbursed with excess loan amounts to the tune of Rs.32,143/- (Rupees Thirty Two Thousand One Hundred and Forty Three only). The learned counsel for the petitioner submitted that from the materials available on record, it can be seen that A6 was involved in the disbursement of loan amount for merely twelve days. A6 joined on 02.07.2001 and the loan payment took place on 14.07.2001. Hence, it was submitted that A6 was involved in scrutinizing documents of various applicants and there was no occasion for A6 to really go into the veracity of each and every claim that was made.

22.This accused person viz., A6 has also been roped in mainly on the ground of criminal conspiracy. If this Court has already dislodged the case of the prosecution on the ground of criminal conspiracy insofar as A2 is concerned, the benefit must automatically enure in favour of A6 also. No useful purpose will be served by making A6 undergo the trial in this case when there are no materials to support the case of the prosecution to sustain the charge of criminal conspiracy. This is apart from the fact that the entire amount has already been repaid back by A7 and A8 subsequently.

23.In the considered view of this Court, there are no materials available against the petitioners to make them undergo the ordeal of facing a trial before the

Court below. The reasons that were attributed in favour of A2 by this Court in Crl.RC.No.992 of 2016, will automatically enure in favour of these petitioners also, since the major charge against these petitioners is that they have entered into criminal conspiracy. At this length of time, continuing with the trial insofar as the petitioners are concerned, is like flogging a dead horse.

24.In the light of the above discussion, this Court has absolutely no hesitation to discharge the petitioners from the criminal case and accordingly, the order passed by the learned District and Sessions Judge, Krishnagiri in CRL.R.C.No.1 of 2015 and CRL.R.C.No.2 of 2015, dated 11.01.2016, are hereby set aside. The order passed by the trial Court stands restored.

25.As a result, both the criminal revision petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

21.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

1.The Principal District and Sessions Judge, Krishnagiri.

2.The District Munsif-cum-Judicial Magistrate Court, Denkanikottai.

3.The Inspector of Police,
C.C.I.W. - C.I.D. Wing,
Krishnagiri District.

N. ANAND VENKATESH, J.

ssr

Crl.R.C.Nos.918 & 1446 of 2017
and Crl.M.P.Nos.8668 & 14389 of 2017

21.02.2023