



Crl OP No. 31278 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **27.04.2023**
PRONOUNCED ON : **10.05.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 31278 of 2019
and
Crl.M.P. Nos. 17053 & 17054 of 2019

S.Lakshmanan ... Petitioner

Versus

1. The State of Tamil Nadu,
State Rep. by
Deputy Superintendent of Police,
Commercial Crime Investigation Wing, CID,
C-48, TNHB Complex, III Floor,
2nd Avenue, Anna Nagar, Chennai,
Crime No. 4 of 2015.
 2. The State of Tamil Nadu,
State Rep. by
Inspector of Police,
Commercial Crime Investigation Wing, CID,
C-48, TNHB Complex, III Floor,
2nd Avenue, Anna Nagar, Chennai,
Crime No. 4 of 2015.
 3. A.Muruganandham,
Deputy Registrar (Housing),
The Tamil Nadu Co-operatives Society,
Chennai Zone,
No. 18, Ramanathan Street,
T.Nagar, Chennai – 17.
- ... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the complaint in C.C. No. 2182 of 2019 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and Quash the said complaint as against the petitioner/accused.

For Petitioner : Mr. N.Manokaran
for Mr. K.S.Navin Balaji

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor
for R1 & R2.

No appearance for R3.

ORDER

The Petition is to quash the final report for the alleged offence under Sections 409 and 477-A of the Indian Penal Code.

2. It is alleged in the final report that the petitioner was working as Special Officer in Adayar Co-operative Society between the period from 05.12.2007 to 26.08.2008; and that he had misappropriated the funds of the Society by falsification of accounts and caused loss to the



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tune of Rs.1,95,85,455/- to the Society. It is further alleged in the final report that an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act' for the sake of convenience), and in the enquiry report dated 25.02.2013, it was found that the petitioner had committed misappropriation; that subsequently another enquiry report was submitted by the third respondent on 19.11.2014 and based on the two enquiry reports, the defacto complainant lodged the FIR in Crime No.4 of 2015 which culminated in the impugned final report. It is alleged that the petitioner had falsified the accounts to make it appear that the Society paid money to one Sankar for land development; that there was no voucher for the payment, and no money was in fact paid to the said Sankar.

3. (a) Mr. N. Manokaran, learned counsel for the petitioner, submitted that the first enquiry report resulted in a surcharge order dated 17.07.2014 which was challenged before this Court in W.P. No. 24331 of 2017. This Court, by the order dated 14.09.2017, quashed the surcharge order and remanded the matter back to the authorities concerned to pass orders afresh after affording an opportunity to the parties concerned. The second surcharge order was passed pursuant to the second enquiry report



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on 14.11.2018. The second surcharge order was challenged before the

Chief Judge, Small Causes Court, Special Tribunal for Co-operative Cases, Chennai in C.M.A. No. 2 of 2019. The said appeal was filed under Section 152(1) of the Act. The learned Judge found that the surcharge order dated 14.11.2018 was defective for non-compliance of Section 87 of the Act and hence remanded the matter back to the registry to conduct a denovo inquiry under section 87 of the Act by giving reasonable opportunity to the persons concerned and pass orders after following the due procedure contemplated under law as expeditiously as possible. Hence, the learned counsel submitted that the very basis for filing the final report does not exist as of date. It is not the case of the prosecution that they had independently conducted an investigation to conclude that the petitioner committed misappropriation. Admittedly, the impugned final report is only based on the enquiry reports under Section 81 of the Act.

(b) Further, the learned counsel submitted that the petitioner, as Special Officer, has been charged for the alleged offences in his supervisory capacity. This Court, in several decisions, quashed the proceedings by relying upon the circular issued by the Registrar of Co-



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operative Societies, Chennai, dated 11.12.1991, wherein it is stated that criminal action against the officers in supervisory posts shall not be initiated in a routine manner unless they are directly involved in the alleged offences. The learned counsel submitted that the other members employed in the Society had not been accused. The nature of the allegation is such that the offence could not have been committed individually by the petitioner, and hence the impugned prosecution is liable to be quashed.

(c) The learned counsel further submitted that the first enquiry report dated 25.02.2013 was found to be erroneous, and hence a fresh enquiry was ordered and on the conclusion of it, another report dated 19.01.2015 was given. The Act does not contemplate two enquiry reports. Hence prosecution based on two enquiry reports cannot be sustained.

(d) The learned counsel for the petitioner relied upon the following Judgments in support of the above submissions.

(i) Judgment of this Court in ***P.Parimaladevan Vs. State by Inspector of Police, CCIW CID, Vellore*** reported in ***2020 (1) MWN***



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(ii) Judgment of this Court in *M.Soundarajan and Another Vs. The Deputy Superintendent of Police and Others* reported in 2019 SCC OnLine Mad 32413.

(iii) Judgment of this Court in *Crl. O.P. No. 27616 of 2016* dated 23.07.2019 in *E.Kalpana and Others Vs. State by Inspector of Police, CCIW CID, Vellore*.

(iv) Judgment of this Court in *M.Karupannan Vs. The Deputy Registrar (Dairying), Erode Taluk and District* reported in 2012 (1) CWC 794.

(v) Judgment of this Court in *H.Rajasekar and Others Vs. The Deputy Registrar of Cooperative Societies, Krishnagiri Circle, Krishnagiri District and Others* reported in 2009 4 LW 427.

(vi) Judgment of the Division Bench of this Court in *S.Ramadevi Vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and Others* reported in 2016 4 LW 452.

(vii) Judgment of the Division Bench of this Court in *S.V.K.Sahasramam Vs. Deputy Registrar of Co-op. Societies,*



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Tiruvannamalai Circle, Tiruvannamalai and Others reported in (2008)

8 MLJ 231.

(viii) Judgment of the Hon'ble Supreme Court in ***Pollachi Cooperative Marketing Society Vs. K.N.Valuswami and Others*** reported in ***1994 Supp (3) SCC 134.***

(ix) Judgment of this Court in ***Crl. O.P. (MD) Nos. 20309 to 20320 of 2016*** dated ***20.07.2018*** in ***Anbalagan Vs. State Rep. by The Inspector of Police, C.C.I.W.,C.I.D., Thiruchirapalli and Other***

(x) Judgment of this Court in ***Crl. R.C. Nos. 11 and 40 of 2015*** dated ***01.10.2021*** in ***Sundaramurthy Vs. State Rep.by Inspector of Police, CCI/WCID, Thiruvallur.***

4.(a) The learned Additional Public Prosecutor submitted that it is true that the surcharge order dated 17.07.2014 based on the first enquiry report was set aside by this Court in W.P. No. 24331 of 2017. Further, the Deputy Registrar (Housing) *suo motu* directed a fresh enquiry by the order dated 19.11.2014. In the second enquiry, it was found that the misappropriation committed by the petitioner was Rs.1,95,85,455/- and



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not Rs.2,97,00,455/-(the misappropriated amount as per the first enquiry report). The second enquiry was conducted since it was found that the first enquiry report was not accurate. The second enquiry report was in favour of the petitioner, and he cannot complain about it. In any event, the respondent, after investigation, found that the petitioner was guilty of misappropriation.

(b) The learned Additional Public Prosecutor submitted that surcharge proceedings were initiated once again and an order came to be passed on 14.11.2018. That was challenged by the petitioner in C.M.A. No. 2 of 2019 before the Special Tribunal for Co-operative Cases, Chennai. The Tribunal set aside the order since some vital witnesses were not examined during the proceedings. The learned Additional Public Prosecutor, therefore, submitted that the Tribunal did not exonerate the petitioner but only ordered a denovo enquiry due to certain procedural lapses. In such circumstances, the petitioners cannot rely upon the said order to pray for the quashing of the final report.

(c) The learned Additional Public Prosecutor further submitted



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that in all the Judgments relied upon by the learned counsel for the petitioner, the accused were exonerated in the surcharge proceedings.

Those cases will have no application to the facts of the instant case. That apart, it cannot be said that the petitioner had a supervisory role and was not directly involved in the misappropriation. In the instant case, the allegation is specific that the petitioner had created false accounts to make it appear that money was disbursed to one Shankar who has been cited as a witness.

5. This Court finds that the first main submission of the learned counsel for the petitioner is that the impugned proceedings are based on two enquiry reports; and that the act does not contemplate two enquiry reports and hence the prosecution based on those two enquiry reports cannot be sustained. I am afraid that this Court cannot accept the said submission. The basis for lodging the FIR are the enquiry reports, which may or may not be correct. However, the respondents had conducted an investigation and found on the materials collected during the investigation that the petitioner had committed the offence. The materials collected during the investigation have to be tested only during the trial. As to whether the respondents have collected sufficient materials to establish



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the crime or their final report is based only on the enquiry reports is a matter for adjudication before the trial Court. This Court cannot entertain such a plea in this petition.

6. The other submission of the learned counsel for the petitioner is that this Court has uniformly taken the view that people holding supervisory posts against whom there is no charge of direct involvement in the offence should not be prosecuted in a routine manner. There cannot be any dispute with the above proposition of law. However, in the instant case, it is alleged that the petitioner was directly responsible for the falsification of accounts and misappropriation of the funds of the Society. He has not been prosecuted because of his negligence of duty in the supervisory capacity. Therefore, this Court is of the view that the Judgments relied upon by the learned counsel for the petitioner are not applicable to the facts of the instant case. Whether the allegation is true or not is for the trial Court to consider.

7. The next submission of the learned counsel for the petitioner is that the alleged offence could not have taken place only due to the alleged act of the petitioner and that the petitioner not only acted as the special



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officer for this Society but for several other societies and hence had no role in the misappropriation cannot be gone into in this quash petition.

The question of whether other accused were involved in the offence and the petitioner has been singled out without any basis has to be adjudicated only during trial.

8. Hence, this Court is of the view that the submissions made are factual in nature and has to be adjudicated only during the trial. This Court, in exercise of the power under Section 482 of the Criminal Procedure Code, cannot conduct a mini-trial to find out as to which of the versions is probable. Hence, this Court is not inclined to entertain the quash petition. However, it is open to the petitioner to raise all his points before the trial Court.

9. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

10.05.2023



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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SUNDER MOHAN, J

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4. The XI Metropolitan Magistrate,
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5. The Additional Public Prosecutor,
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