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Crl OP No. 33512 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **24.04.2023**
PRONOUNCED ON : **10.05.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 33512 of 2019
and

Crl.M.P. No. 18489 of 2019

T. Radhakrishnan

... Petitioner

Versus

1. State rep.,by
Inspector of Police,
C.C.I.W. C.I.D,
Villupuram District.
Cr.No.6 / 2019

2. The Deputy Registrar of Co-operative Society,
Thirukovillur,
Kallakurichi District. ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records of the FIR in Crime No. 6 of 2019 pending on the file of the first respondent police and quash the same.

For Petitioner : Mr. S. Sairaman.

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



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ORDER

The petition is to quash the FIR for the alleged offences under Sections 408, 468, 471, 477(A) of the Indian Penal Code.

2. It is alleged in the impugned FIR that the petitioner was working as Secretary of the Elementary Agricultural Co-operative Society, A. Kumaramangalam; that between 19.11.2012 and 18.12.2012 it was found that one Govindhan had stolen the signed cheques and filled up the names of his known persons to make it appear that they were beneficiaries of Dr.Muthulakshmi Reddy Maternity Benefit Scheme; that he deposited the cheques and misappropriated the funds of the Society; that the petitioner aided the said Govindhan and had deposited 68 cheques in the account of one Gopalakrishnan for a total value of Rs.4,08,000/- and thus committed criminal breach of trust and falsification of accounts.

3. The learned counsel for the petitioner submitted that there was an FIR against the said Govindhan in the year 2013 and it was alleged in the FIR that between 21.11.2012 and 04.01.2013, the said Govindhan



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had misused the cheques and committed misappropriation to the tune of Rs.7,44,000/-; that the said Govindhan admitted that he had committed misappropriation and had repaid the money to the Society. The said FIR culminated in the final report before the Judicial Magistrate, Tirukovilur and the petitioner was shown as a witness in the said final report. While so, the accused in the said final report died. Thereafter, the then Deputy Registrar directed disciplinary action against the petitioner. In the disciplinary proceedings, the petitioner was found guilty of certain lapses and a punishment of 'increment cut for six months' was imposed. Thereafter, the succeeding Deputy Registrar had ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. On enquiry it was found that the petitioner aided the said Govindhan in the misappropriation and a complaint was filed on the basis of the enquiry report. Impugned FIR was thus registered. He submitted that the alleged occurrence took place in the year 2012 and the impugned FIR was lodged in the year 2019 without any basis whatsoever. The departmental enquiry found that the petitioner was not guilty of misappropriation. For the same offence a final report was filed against the said Govindhan in which the petitioner was cited as a witness. The impugned FIR registered for the same offence against the petitioner is



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illegal and prayed that it may be quashed.

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4. The learned Additional Public Prosecutor appearing for the respondents submitted that it is true that an FIR was lodged against the said Govindhan and after investigation, a final report was filed against him before the Judicial Magistrate, Tirukovilur; that it is also true that the said Govindhan had made good the alleged loss caused to the Society; that the impugned FIR pertains to the very same transaction and was lodged because the petitioner was found guilty during the departmental enquiry and; that therefore the matter has to be investigated to ascertain whether the petitioner has committed the alleged offence. Hence, he prayed for the dismissal of the quash petition.

5. This Court, on perusal of the impugned FIR finds that the alleged occurrence is said to have taken place between 19.11.2012 and 18.12.2012; that the allegation is that the petitioner had violated the rules of the Society and deposited 68 cheques in the account of one Gopala Krishnan and thereby committed misappropriation. It is also an admitted fact that in respect of the same occurrence, a FIR was lodged against one



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Govindhan in the year 2013 in which a final report was filed and the petitioner was shown as a witness in the said final report. The petitioner faced a departmental enquiry and his increment was cut for six months as punishment for the lapses on his part. In the departmental proceedings, there was no allegation of misappropriation against the petitioner.

6. The impugned FIR is not sustainable. Firstly because there cannot be two FIRs in respect of the same offence. If it was the prosecution case that the petitioner abetted the said Govindhan for committing the offence of misappropriation, they ought to have made him an accused in the case filed against Govindhan. The impugned FIR makes it appear that the petitioner misappropriated the amount, which is contrary to their earlier case in C.C. No. 12 of 2015, is unsustainable and an abuse of the process of law. Secondly, it is seen that the alleged occurrence said to have been taken place in the year 2012, whereas the impugned FIR was lodged in 2019. Admittedly, the said Govindhan had repaid the money to the Society, and the departmental proceedings did not find that the petitioner had committed criminal misappropriation. Hence there is no loss caused to the Society.



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10.05.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
C.C.I.W. C.I.D,
Villupuram District.
2. The Deputy Registrar of Co-operative Society,
Thirukovillur,
Kallakurichi District.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated: 10.05.2023