BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.3571 of 2020
and
Crl.M.P.(MD)No.1922 of 2020

M.Kaliyamoorthy ...Petitioner

Vs

1.The Deputy Superintendent of Police,
Commercial Crime Investigation Wing,
Vilupuram (In charge),
Thanjavur Sub Division.
2.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
(Ref.Crime No.1 of 2014)
3.K.Athmanathan ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to quash the charge sheet in C.C.No. 105 of 2016 on the file of the learned Judicial Magistrate, Musiri, Trichy.

For Petitioners : Mr.V.R.Venkatesan
For Respondents 1 & 2 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)
For 3rd Respondent : No Appearance

ORDER

This petition is filed to quash the charge sheet in C.C.No.105 of 2016 on the file of the learned Judicial Magistrate, Musiri, Trichy.

2.According to the petitioner, the third respondent filed complaint before the second respondent and based on the complaint, FIR has been registered in Crime No.1 of 2014 for the offence under Sections 408, 465, 467, 468, 471, 477(A) & 120(B) r/w. 34 of IPC. The first respondent police investigated the case and filed final report. Based on the final report, the learned Magistrate has taken cognizance in C.C.No.105 of 2016 before the learned Judicial Magistrate, Musiri.

3.1.The prosecution case is that A1 and A2 have committed misappropriation of funds in Thuliaiyanatham Primary Agricultural Co-operative Credit Society and the occurrence took place from 25.07.2007 to 05.09.2007. During that period, A1 and A2 by misusing the powers, cheated the Society and obtained crop loan in the name of other farmers who have not availed loan and thereby, they created forged documents. A4 to A6 were also joined and conspired with them and thereby, caused loss to Society for a sum of Rs.5,16,500/-. This petitioner has been arrayed as A6 in the said case. In fact this petitioner was deputed to the petition Society, which could be treated as foreign service from 06.10.2005 to 09.02.2010. Apart from that he was holding the post of Circle Supervisor for another five Societies. The name of the petitioner does not find place in the FIR and during the investigation, only the petitioner and three others were included. The second respondent also not given any complaint against this petitioner. The petitioner is nothing to do with the alleged occurrence took place during the periods from April 2007 to October 2013.

3.2.On 20.10.2014, the petitioner issued with charge memo vide No. 2839/05 C3 by the Managing Director/Joint Registrar of the Co operative Societies. In the entire charge memo, the charges were framed to the effect that the petitioner has committed dereliction of the duty and no where it has been mentioned that the petitioner is connived and colluded with the erring official in the Thulaiyanatham Primary Agricultural Co-operative Credit Society. Further audit was also conducted but they have not brought this big scandal to the knowledge of the higher authorities. Without conducting proper investigation, the first respondent filed charge sheet by including the name of this petitioner and the same is liable to be quashed.

3.3.Already enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was conducted by the Deputy Registrar of Cooperative Societies, Musiri Circle, Musiri on the basis of the complaint given by one Vanathan to the President of Thulaiyanantham Primary Agricultural

Cooperative Credit Society. Thereafter, the same was brought to the knowledge of the second respondent by the Cooperative Auditor. The Cooperative Auditor has verified the records and accounts and relevant documents and thereafter, he detected certain irregularities committed by the Secretary of the Society. The Enquiry Officer who conducted an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, has submitted his report on 02.09.2014 and no signature was obtained in Disbursement Register from the petitioner and other items of loan namely 16,17,18 and 19 have not come under the purview of the petitioner. The funds in respect of items 16 to 19 belong to ICDB Funds which is controlled by Nabard Bank and therefore, the petitioner is nothing to do with these items of loans. With regard to time barred debts and non initiation of legal proceedings for recovery of the said loans have been already mentioned in the quarterly report are concerned, the entire liabilities are fixed on the Secretary of the petition Society and the liability on the petitioner is restricted only to non initiation of legal proceedings on the recovery of loan by the concerned employee and time barred loans to the knowledge of the Special Officer and Secretary of the Petition Society and there ends the duty of the petitioner and therefore, the dereliction of duty in this regard also does not at all arise. Further there is no proceedings initiated against the petitioner under Section 87 of Tamil Nadu Cooperative Societies Act.

3.4.In the enquiry report, the Enquiry Officer observed that the Circle Supervisor who is the petitioner herein has committed dereliction of duty and only departmental action is recommended against the petitioner for committing the act of dereliction of duty. Pursuant to the recommendation of the Enquiry Officer, the departmental action was initiated against the petitioner by issuing the charge memo dated 20.10.2014 and punishment was also awarded with stoppage of increment for two years without cumulative effect. Thereafter the said order was challenged by the petitioner and the said punishment was modified on 19.06.2017. Therefore, the petitioner is no way connected with the aforesaid loss caused to the bank and he has not committed any offence as alleged in the charge sheet. Therefore, the pending charge sheet is liable to be quashed.

4.1.The first respondent has filed counter stating that the third respondent herein has preferred a complaint along with report of the Registrar, Co-operative Societies, Trichy District. Based on the complaint, FIR has been registered in Crime No.1 of 2014 under Sections 403, 406, 408, 409, 420, 468, 471, 477(A), 120(B) r/w. 34 of IPC. Thereafter, he investigated the case and examined the witnesses. Originally 11 persons were arrayed as accused in the FIR and after investigation 16 persons were arrayed as accused in the charge sheet. Based on the final report filed by the petitioners, the trial Court has taken cognizance in C.C.Nos.98 of 2016 to 115 of 2016 dated 28.06.2016 on the file of the learned Judicial Magistrate, Musiri, Trichy District. This petitioner was charged in C.C.Nos.104 of 2016, 105 of 2016 and 106 of 2016 on the file of the learned Judicial Magistrate, Musiri.

4.2.This petitioner was worked as Field Officer during the period between 29.09.2005 to 18.05.2010 and he was in the responsibilities of checking of all the registers I.e., entries of income and expenses and if any fraudulent activities are found, he has to inform the same to his superiors. However, he did not fulfil his duty and colluded other accused and incurred loss to Society to the tune of Rs.15,91,069/-. Though disciplinary action was initiated against the petitioner herein, Section 81 report clearly shows that the petitioner colluded with other accused persons and committed the offence and investigation also proved the offence committed by the petitioner. As far as the duties and responsibilities of the petitioner, he only verified the request made by the each Societies and after the approval, the central Co-operative Bank sanctioned the amount and even after sanctioned the amount, the petitioner only to verify the disbursement of the loan amount to the individual and also to verify the concerned entries made in the concerned ledgers. The petitioner did not discharge his duties in accordance with law. Already

Soundararajan, Sunthanthiramani, Surendran, Saravanan and Anbalagan were filed quash petition before this Court and this Court allowed the quash petitions. As per investigation, there are prima facie materials available and thereby, this petition is liable to be dismissed.

5.The learned counsel appearing for the petitioner would contend that based on the complaint given by the third respondent, the second respondent has registered a case in Crime No.1 of 2014 as against the Officials of Cooperative Society and this petitioner's name does not fine place in the complaint and FIR and even in the Section 81 of Act enquiry proceedings also, the name of the petitioner was not included and surcharge proceedings was also not initiated against the petitioner. While so during the investigation, the first respondent police has included the name of the petitioner and four others. Already the disciplinary proceedings were initiated against the petitioner that there is a dereliction of duty and punishment was also awarded. There is a findings in the enquiry report as against this petitioner for the dereliction of duty and hence, the criminal proceedings cannot be initiated. But the first respondent without investigating the case in a proper manner, wrongly included the petitioner's name in the charge sheet. Therefore, the pending charge sheet is liable to be quashed.

6.He further contended that already co accused who were originally not in the FIR and subsequently added as accused in the charge sheet, filed a quash petition and the same was also allowed and the case against them was closed. Therefore, this case is covered by the orders of this Court in Crl.O.P.(MD)Nos.13211 and 13212 of 2017.

7.The learned Government Advocate appearing for the first respondent would contend that the third respondent has given a complaint before the second respondent by enclosing the enquiry proceedings under Section 81 of Cooperative Societies Act and lodged a complaint before the second respondent and based on the complaint, they registered FIR as against 11 persons in Crime No.1 of 2014 for the offence under Sections 403, 406, 408, 409, 420, 468, 471, 477(A), 120(B) r/w. 34 of IPC. The aforesaid persons have committed serious misappropriation of the funds and thereby, caused loss to the Society to the tune of Rs.15,91,069/- and they created forged documents and obtained loan in the name of other persons but actually not obtained loan. Thereafter, the case was investigated by the first respondent and on investigation, first he found 11 persons committed the alleged offence and other five persons also involved in this case. Hence, he added them as accused in the charge sheet including this petitioner. Therefore, as per final report, there are prima facie materials available as against this petitioner. Already the case against some of the accused who were added later in the charge sheet were also quashed by this Court.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of the records, it is observed that this petitioner has been arrayed as accused in Crime No.1 of 2014 for the offence under Sections 403, 406, 408, 409, 420, 468, 471, 477(A), 120(B) r/w. 34 of IPC.

10.According to the petitioner, the petitioner's name does not find place in the FIR in Crime No.1 of 2014 as against the petitioner and this petitioner has no intention to commit any offence. As per the enquiry report, this petitioner failed to discharge his duty of supervising the Society transaction and thereby, there was dereliction of duty and for that, already disciplinary proceedings were initiated and he was awarded punishment of stoppage of increment of two years without cumulative effect. Thereafter, he preferred an appeal and the punishment was modified as one of censure, by order dated 19.06.2017. Already there is a finding by the Enquiry Officer that there is a dereliction of duty and no surcharge proceedings was initiated against the petitioner and already disciplinary proceedings was initiated and punishment was also awarded.

11.According to the first respondent, he already investigated the case and as per his investigation, this petitioner also involved in the occurrence and this petitioner colluded with other accused and committed offence. But on perusal of records, there is no material available as against the petitioner and the Investigating Officer only in the final report only stated that with the help of this petitioner, other accused have committed the offence. Apart from this, there is no other allegation against this petitioner. Already the matter was elaborately enquired by the Enquiry Officer. Based on the Enquiry, this petitioner had faced disciplinary proceedings and then he was punished. No findings in the Section 81 enquiry proceedings as against this petitioner and no name of the petitioner found in the FIR and no surcharge proceedings initiated under Section 87 of Act as against this petitioner. In the final report also merely the word mentioned that with the help of this petitioner only the other accused committed the offence.

12.In this context, the learned counsel appearing for the petitioner brought to the knowledge of this Court that already there is a circular issued by the Officers with regard to supervisor. In that circular, it is specifically stated that failure to discharge the duty properly or negligence and it may be dealt with through disciplinary proceedings. Hence, the Departmental Officers are not directly involved in the frauds or misappropriations need not be included as delinquents in a routine manner in the inquiry reports or complaints filed with the police. In the final report, the Investigating Officer also mentioned the time barred loans and non institution of proceedings with regard to time barred loans and the said acts would not constitute any offence and it is only dereliction of duty. Already disciplinary proceedings were initiated and the petitioner was awarded punishment in disciplinary proceedings.

13.The learned counsel appearing for the petitioner also represented that this case already covered by the order of this Court in connected case in ***Saravanan v. The Deputy Superintendent of Police and others in Crl.O.P.(MD)No.13211 of 2017***, wherein this Court in para nos.15 to 18 reads as follows:-

> *"15. In N.Baskaran Vs. The State rep. by Inspector of Police, C.C.I.W., CID, Trichy (supra), after referring to the decision in S.Gunasekaran Vs. State represented by Inspector of Police (supra), has observed in paragraph Nos. 5 and 6 as follows:*
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> *"5.It is further submitted that in similar facts, this court in 2008 (1) Crimes 681 (Mad.) (S.Gunasekaran Vs. State rep. By*

Inspector of police), quashed the charge laid against the Special Officer categorically stating that criminal prosecution cannot be initiated for lapse/negligence in supervisory work, which is extracted below:-

"8. The learned Government Advocate (Crl.Side) would submit that as per a resolution passed in the society the petitioner was responsible for the day-to-day affairs of the society and to supervise the records and the transactions of the society. The learned Government Advocate (Crl.Side) would further submit that as per the materials available on record it is clear that he has failed to discharge his duties properly and the said acts of the accused would amount to offences as enumerated in the charge sheet.

9. In my considered opinion, such a negligence may create only a civil liability and there cannot be any vicarious liability in the criminal law. Even to initiate proceedings against the petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, the sine quo non is wilful negligence resulting in loss to the society and not a mere negligence. When that be so, a mere negligence to look into the records properly, in my considered opinion, would not satisfy any of the ingredient of the offences alleged against him.?

16.This Court had the occasion to deal with the nature of duties that are performed by a Special Officer in Co operative societies. After analyzing the same, this Court categorically found that if the Special Officers, who are posted to supervise the co-operative societies, failed to properly discharge their duties, the same will not fasten any criminal lability, unless there is a prima *facie material to show a criminal intention to commit criminal breach of trust or criminal misappropriation or to aid or abet the said crime.*

17.This Court has held that such dereliction of duty or negligence may create only a civil liability and the concept of vicarious liability cannot be applied in criminal law, unless the same is specifically provided by any special enactment. Even to initiate proceedings under Section 87 of the Co operative Societies Act, the test required is willful negligence and not mere negligence. When such is the requirement even for the recovery proceedings under Section 87 of the Co-operative Societies Act, the requirement to criminally prosecute a Special Officer is even more stringent and there must be materials to show his direct involvement in the crime, with a criminal intent. Negligence including willful negligence by itself will not constitute a crime.

18.In the present case, neither in the enquiry report nor in the first statement that was given to the police by the enquiry officer, there is any reference to the Special Officer. At the fag end of the investigation, by recording a further statement from the enquiry officer, the petitioner has been added as an accused on the allegation that he failed in his duty to stop the misappropriation and inform the same to the higher authorities. The petitioner has been added as an accused without any material whatsoever except the ipse dixit made in the further statement given by the enquiry officer."

14.On careful perusal of the said judgment, it is clear that if the Special Officers who are posted to supervise the Co-operative Society failed to properly discharge their duties, the same will not fasten any criminal liability, unless there is a prima facie material to show a criminal intention to commit criminal breach of trust or criminal misappropriation or to aid or abet the said crime. In the case on hand also, the petitioner A5 was incharge of supervision and no findings in Section 81 enquiry and no Section 87 surcharge proceedings and no materials to show the involvement of this petitioner in the occurrence.

15.In view of the aforesaid discussion and in view of the aforesaid judgments, this Court is of the considered view that the petitioner need not face the trial before the trial Court and the pending charge sheet as against the petitioner is abuse of process of law and the same requires to be interfered by this Court. The same is liable to be quashed.

16.Accordingly, this Criminal Original Petition is allowed and the pending charge sheet in C.C.No.105 of 2016 on the file of the learned Judicial

Magistrate, Musiri, Trichy District, is quashed as against this petitioner. Consequently, connected miscellaneous petition is closed.

29.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Judicial Magistrate, Musiri.

2.The Deputy Superintendent of Police,
Commercial Crime Investigation Wing,
Vilupuram (In charge),
Thanjavur Sub Division.

3.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

Mrn

Crl.O.P(MD).No.3571 of 2020

29.09.2023