



Crl.O.P(MD).No.3543 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2023

Pronounced on : 03.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.3543 of 2020

M.R.Janarthanan

...Petitioner

Vs

1. The Inspector of Police
C.C.I.W(C.I.D) Ramnad
Crime No.2 of 2016

2. K. Shenbaraj
Joint Registrar of Co-operative Societies
Paramakudi,
Ramanathapuram District
Ramanathauram

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to C.C.No.13 of 2018 on the file of the learned Judicial Magistrate No.I, Ramanathapuram and quash the same as illegal as far as the petitioner is concerned in connection with Crime No.02 of 2016 on the file of the respondent.

For Petitioner : Mr.J. William Christopher

For R-1 : Mr.M.Sakthikumar
Government Advocate(Crl.Side)



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.13 of 2018 on the file of the learned Judicial Magistrate No.I, Ramanathapuram

2. According to the petitioner the respondent police filed final report as against this petitioner who is arrayed as A2 for the offences under Sections 408,409,420,467,468,471,477(A),201 r/w. 120(B) of IPC and the same was taken on file in C.C.No.13 of 2018 by the learned Judicial Magistrate No.I , Ramanathapuram and the same is pending. As per the final report there are two accused in this case and this petitioner is arrayed as A2. A1/Muruganantham was the Secretary of Bogalur Primary Agricultural Co-operative Credit Society from 15.07.2009 to 29.08.2013 at Sathirakudi, Paramakudi, Ramanathapuram District and this petitioner was the Senior Inspector/Special Officer (Incharge) for the Bogalur Primary Agricultural Co-operative Credit Society from 09.09.2011 to 08.05.2013. According to the prosecution Deputy Registrar of Paramakudi, Ramanathapuram was directed to conduct an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act,1983 at Bogalur Primary Agricultural Co-operative Credit Society by the Joint Registrar of Ramanathapuram through his proceedings in Na.Ka. No. 2661/13 dated 14.08.2013 and the report was submitted on 10.04.2014.



A criminal proceedings was lodged against this petitioner and A1 by the Deputy Registrar, Paramakudi through his proceedings in Na.Ka.No.2988/2013 dated 09.06.2016 based on which a case has been registered by the first respondent in Crime No.2 of 2016. According to the prosecution the said commission of offence was detected through the enquiry that during the period 2011-2012, 2012-2013 and 2013-2014 for a total sum of Rs.1,22,12,739/-alleged to have been misappropriated by A1 under 10 heads of accounts by manipulating the accounts, fabricating false documents, cheating by non disbursal of the agricultural loan to the members and replacing the fake jewels in the jewel loans. Out of 10 heads of accounts, this petitioner alleged to have conspired together with A1 in three heads of accounts and alleged to have facilitated the crime. This petitioner is innocent and he is no way connected with the above said crime. Further even according to the report submitted by the Enquiry Officer the petitioner is not liable for the loss caused to the society. Therefore the proceedings in C.C.No.13 of 2018 on the file of the learned Judicial Magistrate No.I, Ramanathapuram is liable to be quashed.

3. No counter was filed by the respondents

4. The learned counsel appearing for the petitioner contended that the petitioner has been falsely implicated in this case and based on



the complaint given by the second respondent the first respondent registered a case in Crime No.02 of 2016 for the offences under Sections 408,409,420,467,468,471,477(A),201 r/w. 120(B) of IPC as against this petitioner and one Muruganantham. Infact the entire allegations are against the said Muruganantham and this petitioner is no way connected with the crime. Infact this petitioner was only incharge of Bogalur Primary Agricultural Cooperative Bank and according to the Enquiry Report filed under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (herein after referred to as ' the Act') this petitioner is not liable for any loss caused to the Society. Thereafter the Joint Registrar has issued proceedings under Section 87 of the Act as against this petitioner. Though there is no findings as against him and the same was challenged before this Court in W.P(MD) No.11585 of 2015 and the same was quashed by this Court. Now the second respondent gave complaint before the police and they registered the First Information Report and after completion of investigation filed final report and even according to the final report no *prima facie* materials available as against this petitioner and thereby charge sheet is liable to be quashed.

5. The learned Government Advocate(Crl.Side) appearing for the first respondent would contend that based on the complaint given by the second respondent, the first respondent registered a case in Crime



No.02 of 2016 for the offences under Sections 408, 409, 420, 467, 468, 471,477(A),201 r/w. 120(B) of IPC. After investigation the first respondent filed final report as against the accused since *prima facie* materials available to proceed further and taken cognizance in C.C.No. 13 of 2018 by the learned Judicial Magistrate No.I , Ramanathapuram. As per the final report the petitioner also involved in the crime and also signed some of the documents.Though the petitioner is only Supervisor he has signed in some of the documents and thereby elaborate trial is required in this case. Further *prima facie* materials are available to prosecute as against the accused and therefore the petition is liable to be dismissed.

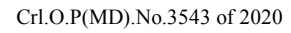
6. None appeared on behalf of the second respondent.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.Side) and perused the materials available on record.

8. On perusal of the record, it is observed that based on the complaint given by the second respondent, the first respondent registered a case in Crime No.02 of 2016 for the offences under Sections 408, 409, 420, 467, 468, 471,477(A),201 r/w. 120(B) of IPC.



After finding *prima facie* materials the first respondent had filed final report as against the accused and the same was taken on file in C.C.No.13 of 2018 by the learned Judicial Magistrate No.I , Ramanathapuram. The main contention of the petitioner is that Enquiry Report under Section 81 of the Act is not as against this petitioner and no liability is fixed as against this petitioner. Thereafter surcharge proceedings under Section 87 of the Act was also initiated by the Registrar of the Co-operative Societies and the same was also quashed by this Court. As far as enquiry under Section 81 of the Act is concerned it is only a fact finding report and it is not an absolute one. According to the report of the Sub Registrar/Enquiry Officer A1 alone is responsible for the loss to the tune of 2,08,14,842/- and there is no finding that this petitioner is responsible for the loss caused to the Society. Thereafter under Section 87 of the Tamil Nadu Cooperative Societies Act, the Deputy Registrar has issued notice by impleading this petitioner. Thereafter the said surcharge proceedings was also quashed by this Court by an order dated 04.08.2022 in W.P(MD) No.11585 of 2015. Though this Court quashed the proceeding under Section 87 of the above said Act on the ground that there is no finding as against this petitioner under the enquiry report it is only a fact finding report and no bar to take criminal action. Even this Court has quashed the proceedings under Section 87 of the Act, that *ipso facto* no bar to take criminal action, since the enquiry under Section 81 of the Act is a preliminary one to ascertain the loss caused to the Society. In the case



9. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgements:

17. It is a settled proportion of law that to constitute an offence, two basic elements are required, 1. 'actus reus' and 2. 'mens rea'. In the aforesaid decision of the Hon'ble Supreme Court, it is made clear that misbehaviour or misconduct leads to disciplinary proceedings, which would not be sufficient to be construed as guilty mind or 'mens rea' to initiate a criminal proceeding. It is an admitted fact that the petitioner herein was



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working in a supervising capacity as Field Manager of Central Co-operative Bank, hence, in the absence of conspiracy or any factor relating to conspiracy between the petitioner and the accused A1 to A3, who subsequently paid the amount, it cannot be decided that there was mens rea to initiate criminal proceeding against the petitioner / A7, apart from the findings of the departmental proceeding.

b) Anbalagan. vs. The Inspector of Police, C.C.I.W.C.I.D, Tiruchirapalli, wherein this Court has held as follows:

“23. In this case also, the prosecution has not produced any material to show that there was a close cohesion and collusion between all the accused persons which formed the subject matter of conspiracy. So, in view of the aforesaid decision, it is clear that the criminal proceedings cannot be initiated against the petitioner for his failure to discharge his duty properly. Such a negligence may create only a civil liability. In this case as already stated that the surcharge proceedings were set aside by this court. The charge memo issued in the disciplinary proceedings also quashed by this court. Therefore, for the same charges criminal proceedings cannot be initiated. ”

10. On a careful reading of the above said judgements it is clear that failure to supervise the work of the employees of the concerned Society and for that he cannot be prosecuted before the criminal Court at the most disciplinary proceedings can be initiated against him for the alleged dereliction of duty. In the case on hand the allegation is not only supervision but as per the final report, the petitioner also signed in some documents. Whiles, it is a matter for trial and the above said



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case laws will not be applicable to the present facts of the case and therefore this petition has no merits and it deserves to be dismissed.

11. Accordingly, this Criminal Original Petition stands dismissed

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NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1. The Judicial Magistrate No.I, Ramanathapuram
2. The Inspector of Police
C.C.I.W(C.I.D) Ramnad
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P. DHANABAL,J.

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