BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.03.2023

Delivered on : **17.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.3628 of 2020
and
Crl.M.P.(MD)Nos.1970 & 1972 of 2020

M.Kathiresan ... Petitioner/Accused No.3

Vs.

1. State through
The Inspector of Police,
District Crime Branch,
Tuticorin, Tuticorin District. ... 1st respondent / Complainant

2.S.Karnan ... 2nd respondent /defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.9 of 2020, on the file of the Judicial Magistrate No.IV, Tuticorin, Tuticorin District and to quash the charge sheet in C.C.No.9 of 2020.

For Petitioner : Mr.Ka.Ramakrishnan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side) for R1

: No appearance for R2

ORDER

This petition is filed to quash the proceedings in C.C.No.9 of 2020, on the file of the Judicial Magistrate No.IV, Tuticorin, Tuticorin District

2. The case against the petitioner is that the petitioner is one of the Co-ordinator for New Life Scheme for Pudhur Union, Tuticorin. A1 was the Secretary of Village Poverty Abolition Association. A2 was the Team leader. A1 and A2 were entrusted with funds that belonged to 13 women wing, they misappropriated the funds. The allegation against the petitioner is that he failed to conduct regular meetings. A case was registered in Crime No.39 of 2015, for the offences under Sections 408, 420, 468, 471, 477-S, 120B and 109 of I.P.C. An enquiry was conducted by the Secretary, District Panchayat, Tuticorin, a report was submitted to the District Collector, on 20.07.2016. Based on the enquiry report, the first respondent filed a charge sheet against the petitioner and others before the Judicial Magistrate No.IV, Tuticorin, for the offences under Sections 408, 420, 468, 471, 477A, 120B and 109 of I.P.C and the case was taken on file as C.C.No.9 of 2020.

3. On the side of the petitioner, it is stated that no offence is made out against the petitioner under Sections 468 and 471 of I.P.C., nowhere in the final report it is stated that the petitioner created a forged document or participated in creating forged document and hence, the offence under Sections 468 and 471 of I.P.C. will not be applicable. No where in the final report, it is stated that the accused was the custodian of any money or accounts or that he created false account or willfully evaded to give any accounts to the Department and hence, an offence under Section 477-A of I.P.C is not made out. There was no dishonest intention as alleged against the petitioner and hence Section 420 of I.P.C is not made out. The petitioner and others have not misappropriated any funds. The alleged confession is not maintainable under Section 27 of the Evidence Act, as it does not lead to any recovery. There is no allegation that this petitioner had aided A1 and A2 in misappropriating the money. The petitioner was not entrusted with any money, no amount was recovered from the petitioner. A1 has given an undertaking that she will repay the entire misappropriated amount. There was no agreement of minds for hatching a plot under Section 120 B of I.P.C. There was no piece of evidence or documents available to connect the petitioner with the offence. No action was taken against the earlier officials. The duty of

the petitioner is to supervise and to conduct meeting. The complaint was only against A1 and A2 alone. No allegation was raised against the petitioner, either in the complaint or in the 161 statements.

4. On the side of the petitioner, a judgment of this Court made in Crl.O.P.No.1734 to 1737 of 2017, dated 15.11.2017 is cited, wherein, it is stated as follows:-

> *" 7.The main ground on which the petitioner is implicated is that he had not properly supervised and administered the entire collection and therefore, he is liable for the criminal offences. It is not in dispute that the amounts alleged to have been misappropriated were collected from the depositors by the first accused and the same was remitted to the society even before the FIR was filed. It is further not in dispute that the period of misappropriation as per the investigation is between 1998 and 2008, during which period the petitioner herein was in-charge as a Supervisor of the society between 10.10.2002 and 31.10.2004. Even during the relevant period, the petitioner was also working as Special Officer of 8 societies and was the supervising Co-operative Sub Registrar of 7 other societies. Insofar as the Nevyeli Co-operative Housing Society is concerned, the petitioner was employed as a Supervisor during the relevant period and deputed as in-charge of the Society as additional charge.*

On a perusal of the FIR and charge sheet, it is seen that the basic ingredients for the alleged offences are conspicuously absent. Apart from that I am unable to comprehend as to how any loss could have occurred to the society, in view of the fact that the first accused had remitted the entire amount to the society even before the FIR came to be registered. At the most, the petitioner can be implicated for negligence and as such, it cannot be said that the petitioner had conspired for the purpose of misappropriating the money or that he had the mens-rea to commit any of the other offences."

5. On the side of the petitioner, another judgment of this Court reported in ***2020-1-LW-(Crl.)281 (P.Parimaladevan V. State by the Inspector of Police)*** is cited, wherein, it is stated as follows:-

"6. ... From the aforesaid provision, it is clear that if the officers who have been posted to supervise the societies failed to discharge their duty properly such officers will not fasten criminal liability unless prima facie shows that such officers with malafide criminal intention committed criminal breach of trust or criminal misappropriation or aided and abetted such criminal offences by the supporting staff."

6. On the side of the petitioner, it is stated that the confession of co-accused cannot be taken against the petitioner and even the confession of A1 was not maintainable under Section 27 of the Evidence Act.

7. On the side of the prosecution, it is stated that under the original New Life Scheme and Poverty plan scheme, Seven Bank accounts were opened for providing funds for the self help groups. After the receipt of the funds, A1 to A4 failed to deposit the amount and they failed to give the amount to the public. The money involved is Rs. 10,77,000/-. The petitioner gave a confession statement infront of the Village Administrative Officer and the Village Assistant and the statement amounts to extra judicial confession, public funds are misappropriated by the petitioner and others and the case is a fit for trial. The confession of the petitioner is sufficient enough to proceed with the case.

8. On the side of the petitioner,by way of reply, it is stated that the funds given by the Government was distributed to the self help groups. Originally, the complaint was only against A1 and A2. A1 has

admitted his guilty. If the confession statement is removed, there is no case made out against the petitioner. That confession was not maintainable under Section 27 of the Indian Evidence Act as the confession was not leading to any recovery.

9. It is seen that the duty of the petitioner is to supervise, whether the amount was spent in the proper manner. The allegation in the complaint and in the charge sheet against the petitioner is that he helped the other accused to commit the offence. Whether the confession statement alleged to have been given against the petitioner is valid or not cannot be decided at this stage. The money involved is public fund, whether the petitioner was conspiring with the other accused, whether the petitioner helped the other accused cannot be decided at this stage and a detail trial is necessary. Hence, this Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

17.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

R.THARANI. J.

Ls

To

1.The Judicial Magistrate No.IV,
Tuticorin, Tuticorin District.

2. The Inspector of Police,
District Crime Branch,
Tuticorin, Tuticorin District.

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

Crl.O.P.(MD)No.3628 of 2020

17.04.2023