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CRL.OP.(MD)No.10280 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.10.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.10280 of 2022

and

CRL.MP(MD).No. 6435 of 2022

1. M.Natarajan

2. M.Soundararajan : Petitioners/Accused 8 and 9

Vs.

1. The Inspector of Police,
Commercial Crime Investigation Wing,
Kaja Nagar, Tiruchirappalli.
(Crime No.2 of 2020)

: 1st Respondent/Complainant

2. The Deputy Registrar of Co-operative
Societies,
218/4, College Road, Elango Nagar,
Mela Vadugapatti, Musiri,
Tiruchirappalli District.

: 2nd Respondent/De-facto

Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash all further proceedings in pursuant to the impugned FIR in Cr.No.02 of 2020 on the file of the Inspector of Police, CCIW, Tiruchirappalli District in so far as the Petitioners are concerned.

For Petitioners

: Mr.S.Karthikeyan

For Respondents

: Mr.R.Sivakumar

Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to quash all further proceedings in pursuant to the impugned FIR in Cr.No.02 of 2020 on the file of the Inspector of Police, CCIW, Tiruchirappalli District.

2. The learned Counsel for the Petitioners submitted that the Petitioners are arrayed as A-8 and A-9 in connection with FIR in Cr.No.2 of 2020 on the file of the Inspector of Police, Commercial Crime Investigation Wing, Trichy.

3. It is the contention of the learned Counsel for the Petitioners that the Petitioner/A-8 had joined as Junior Inspector of Co-operative Societies with the Office of the Joint Registrar on 10.05.1987. Subsequently, he was promoted as Senior Co-operative Audit Officer, Assistant Director of Co-operative Audit and he retired on 31.05.2019 as Deputy Director of Co-operative Audit at Dharmapuri.

4. The Second Petitioner/Accused-9 had joined service on 11.07.1984 as Junior Inspector/Auditor of Co-operative Societies, Trichy. Then, he was promoted as Senior Co-operative Auditor and at the time of retirement, he



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was working as Assistant Director of Co-operative Audit Office at Karur.

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5. It is the contention of the learned Counsel for the Petitioners that the Petitioners/A-8 and A-9 had inspected Varadharajapuram Primary Agricultural Credit Society and found that forgery, cheating and criminal misappropriation took place to the tune of Rs.9,06,94,838.22/-. There was forgery, cheating and misappropriation by one Singaram, Secretary and one S.Saravanan, Former Secretary. Petitioner as A-9 had completed his audit on 30.08.2018 by which it came to light that there was misappropriation. The Petitioner/A-9 forwarded the same to the Co-operative Society for further follow up action. On that basis only an enquiry under Section 81 of Tamil Nadu Co-operative Societies Act was invoked. Further submitted that on 07.11.2018, Petitioner/A-9 sent a report to the Assistant Director of Co-operative Audit, Karur. Based on which enquiry was ordered under Section 81 of Tamil Nadu Co-operative Societies Act. After having initiated enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, the authorities had registered a case against the Petitioners as though the Petitioners herein had committed offences. They had performed their official duty based on which only enquiry was ordered.

6. Further the learned Counsel for the Petitioners submitted that as



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per the letter of the Director of Co-operative Audit, Chennai in his

Government Letter No.30362/CA/99-1 Fin (CA) Dept. dated 25.05.1999

has clearly observed that

“2. I am therefore to suggest the following to remedy the above situation.

(i) When an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983 is ordered there must be a direction to the enquiry Officer that in the event of the officer suggesting prosecution of the staff under the control of Registrar (Audit) (i.e., Director of Co-operative Audit) a copy of the above report should be sent to the Director of Co-operative Audit by Registered Post.

(ii) The Director of Co-op. Audit will take up the issue with the concerned Government Advocate and offer his remarks, if prosecution is agreed to, the DCA may issue Order according sanction in respect of those staff to whom the DCA can issue Order of dismissal/ removal in respect of other cases, Govt, may have to take a decision.

(iii) If the Government Advocate and the Director of Co-operative Audit differ on the issue the matter will be referred by the Director of Co-operative Audit to Government in Finance Departmental for orders.”

7. Under those circumstances, the Respondents having arrayed the Petitioners as A-8 and A-9, the FIR is unsustainable in the eyes of law as per the provisions of the Tamil Nadu Co-operative Societies Act. Also, the learned Counsel for the Petitioners submitted that this Court had allowed the Crl.O.P.(MD).Nos.859 & 983 of 2021 filed by the Officials who were arrayed as Accused in the very same case, in which the learned Judge relied on the case of **Baskaran Vs. State, Inspector of Police, CCIW CID, Trichy,**



the relevant portion is extracted hereunder:

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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. This Court is of the 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.

This Court is of the considered opinion that the judgment cited supra squarely applies to the case on hand. In such view of the matter, this petition is allowed and the entire proceedings in C.C.No.124 of 2013 on the file of the Judicial Magistrate No.III, Trichy, is quashed as against the petitioner alone. Consequently, connected Miscellaneous petition is closed."



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8. For the lapses committed by the Auditor, criminal action cannot be initiated against him. He can be proceeded departmentally. While so, based on the report of the Petitioners herein, only the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered. Based on the enquiry, the very same officers had been arrayed as Accused. The learned Single Judge of this Court had in Crl.O.P.(MD).No.12292 of 2021 quashed the FIR as against Accused-7, Supervisor of TDCC Bank, against Accused-6 Supervisor of TDCC Bank and Accused-10 who was working as Field Officer in TDCC Bank and Crl.O.P.(MD).Nos.859 and 983 of 2021, quashed the FIR as against him.

9. The learned Additional Public Prosecutor vehemently objected stating that there are incriminating materials available against the Petitioners. Investigation is still at the initial stage. In the light of the reported ruling of the Hon'ble Supreme Court in *AIR 1992 SC 604* in the case of *State of Haryana Vs. Ch. Bhajan Lal*, wherein this Court cannot consider quashing of the FIR leniently and the powers of the High Court has to be exercised only sparingly. Here, the Officials and the staff of the Co-operative Societies had indulged in creating fictitious documents and thereby causing loss to the Society to the tune of Rs.9,06,94,838.22/-.



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Therefore, this Petition is to be dismissed.

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10. Point for consideration:

Whether the FIR in Crime No.2 of 2020 on the file of the Inspector of Police, Commercial Crimes Investigation Wing, Thiruchirappalli District is to be quashed against the Petitioners herein who are arrayed as A-8 and A-9?

11. On consideration of the rival submissions and on perusal of the Order passed by the learned Single Judge of this Court in Crl.O.P. (MD).Nos.859 and 983 of 2021 and Co-operative Societies manual had been produced by the learned Counsel for the Petitioners, the Petitioners had conducted audit and filed report. Only based on the report of the Petitioners, the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered. Therefore, the Petitioners cannot be fastened with criminal liability for the act committed by the Staff who were in-charge of the day to day functioning of the Society based on the letter of the Director of Co-operative Audit. Also, there cannot be a criminal prosecution for the alleged negligence of the Senior Officials of the Co-operative Society Department. If at all any enquiry ordered and based on the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act,



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the erring Officials can be proceeded departmentally and not through criminal prosecution. The principle of vicarious liability is not attracted and is not applicable in criminal cases. Therefore, in the light of the Order passed by the learned Single Judge of this Court in Crl.O.P.(MD).No.12292 of 2021 and Crl.O.P.(MD).Nos.859 and 983 of 2021, this Petition is to be allowed.

12.In the light of the above discussions, the point for consideration is answered in favour of the Petitioners and against the Respondents. The FIR in Crime No.2 of 2020 on the file of the Inspector of Police, Commercial Crimes Investigation Wing, Thiruchirappalli District is to be quashed against the Petitioners herein who are arrayed as A-8 and A-9.

In the result, this ***Criminal Original Petition is allowed.*** The case in Cr.No.2 of 2020 on the file of the Inspector of Police, CCIW, Tiruchirappalli District is quashed in so far as the Petitioners are concerned. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh



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2. The Deputy Registrar of Co-operative
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3. The Public Prosecutor,
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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery order made in
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