



W.P(MD)No.10949 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10949 of 2023

and

W.M.P.(MD)Nos.9588 and 9592 of 2023

1.M.K.Sridharan

2.N.Govindaraj

... Petitioners

Vs.

1.The Joint Registrar Cooperative Societies,
Tamil Nadu Cooperative Department,
Ramanathapuram District,
Ramanathapuram.

2.The Deputy Registrar Cooperative Societies,
Tamil Nadu Cooperative Department,
Paramakudi Circle,
Paramakudi,
Ramanathapuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 1st respondent in Na.Ka.6331/2019 sapa, dated 07.10.2020 and quash the same as illegal, as devoid of merits.



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For Petitioners : Mr.Raja.Karthikeyan

For Respondents : Mr.K.S.Selvaganesan,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The first petitioner is a retired Cooperative Sub-Registrar. He reached the age of superannuation on 31.05.2016. The second petitioner was the Secretary of a Cooperative Society. He reached the age of superannuation on 31.01.2018. The first respondent had given sanction on 07.10.2020 for initiating criminal prosecution against the petitioners herein. It was the outcome of the enquiry initiated under Section 81 of the Tamil Nadu Co-Operative Societies Act, 1983. The petitioners had earlier filed W.P.(MD)No.9105 of 2023 for restraining the respondents herein from initiating criminal prosecution. I dismissed the writ petition as not maintainable in view of Section 41(d) of the Specific Relief Act, 1963 which reads as follows :



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“An injunction cannot be granted -

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter.”

Undaunted by the setback, the petitioners have come before this Court again. Now they question the sanction given by the first respondent. The stand of the learned counsel for the petitioners is that the sanction order stands vitiated since the petitioners have not been given reasonable opportunity to represent their case. He relies on Section 164 (3) of the Tamil Nadu Co-Operative Societies Act, 1983 in support of his contention.

3.I am not persuaded by the submissions of the learned counsel for the petitioners. Section 164 (3) of the Tamil Nadu Co-Operative Societies Act, 1983 is as follow:-

“164. Cognizance of offences.

(1)

(2)

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be given without giving to the person concerned a reasonable opportunity to represent his case.”



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I wanted to know from the respondents if the petitioners are to be prosecuted only for the offences under the Tamil Nadu Co-operative Societies Act, 1983. It is submitted by the respondents that there is material to show that the petitioners have committed breach of trust and that therefore, complaint is to be given for the offence under Section 409 of IPC. In other words, the petitioners are proposed to be prosecuted for IPC offences. In these circumstances, the question arises if Section 164(3) of the Tamil Nadu Co-operative Societies Act can be pressed into service. The answer has to be necessarily in the negative. This is on account of the employment of the expression “instituted under this Act”. The expression “this” has been defined in Oxford Dictionary as follows :

“used to identify a specific person or thing close at hand, just mentioned”

In P.Ramanatha Aiyar's Advanced Law Lexicon, the words “under the Act” have been defined to refer only to those proceedings which are authorised by that act and there is no scope for extending the benefit of the words to any proceeding under any law other than that act (AIR 1957 Cal 274 (FB) (Rabindra Nath Mahapathra vs. Gour Mondal).



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4. When a similar argument was advanced before this Court in ***Crl OP No.5821 of 2007 (S.Jayakumar v. State)***, it was rejected vide order dated 27.08.2010 in the following terms :

“6. Banking on the provisions found in sub-clause (3) of Section 164 of the Tamil Nadu Co-operative Societies Act, 1983, the petitioner seems to have raised a plea that the prosecution launched against him has to be quashed. There is no substance in the above said contention of the petitioner for the simple reason that it is not a prosecution launched against him for any offence under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The offences alleged are one punishable under the provisions of [the Indian Penal Code](#). Therefore Sub-section (3) of Section 164 of the Tamil Nadu Co-operative Societies Act, 1983 is not attracted.”

In *G.Srinivasan v. State* (Crl OP No.23559 of 2007 dated 27.04.2010), the issue was answered in the following terms :

“8. The first contention of the learned counsel for the petitioner straightaway would have to be rejected since Section 164(3) of the Tamil Nadu Co-operative Societies Act would come into play in respect of prosecution for an offence under the particular Act. What is now complained of against the petitioner are offences under the Indian



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Penal Code. This Court is constrained to observe that the contentions raised on the strength of the provisions of the Tamil Nadu Co-operative Societies Act and relating to procedure therein are misplaced..... ”

Same view was taken in A.R Tamil Oviyam v. State (Crl OP No.9697 of 2016 dated 09.06.2016).

5.Chapter XVIII of the Act catalogues certain offences and penalties. Only in respect of prosecution initiated for the offences set out in Chapter XVIII of the Act, sanction under Section 164 of the Act is required. In such case, the person concerned must be given a reasonable opportunity to represent his case before sanction is accorded.

6.Since it has been clarified that the petitioners will face music only for IPC offences, there was no need whatsoever for obtaining sanction. The present practice of lodging FIR before CCIW only after getting prior sanction from the Joint Director of Cooperative Societies is unnecessary and superfluous. The question of giving opportunity to the petitioners does not arise in this case. No ground has been made out for



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granting relief. This writ petition is dismissed. I make it clear that I have not gone into the merits of the matter. The defences of the petitioners are left open. No costs. Consequently, connected miscellaneous petitions are closed.

02.06.2023

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

- 1.The Joint Registrar Cooperative Societies,
Tamil Nadu Cooperative Department,
Ramanathapuram District,
Ramanathapuram.
- 2.The Deputy Registrar Cooperative Societies,
Tamil Nadu Cooperative Department,
Paramakudi Circle, Paramakudi,
Ramanathauram.



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G.R.SWAMINATHAN, J.

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