



Crl.R.C.(MD).No.574 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). Nos.574, 576 and 579 of 2019
and
Crl.M.P(MD).No.7267, 7268 and 7269 of 2019

Crl.R.C.(MD).No.574 of 2019

Mariappan

... Petitioner

Vs.

The State of Tamilnadu,
The Inspector of Police,
Deputy Superintendent of Police,
CCIW, Tirunelveli.

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in C.M.P.No.7143 of 2017 in C.C.No.78 of 2009 on the file of the Judicial Magistrate No.II, Virudhunagar and set aside the impugned order dated 07.03.2019 and discharge the petitioner from the above C.C.No.78 of 2009.

For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor



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WEB **Crl.R.C.(MD).No.576 of 2019**

Mariappan

... Petitioner

Vs.

The State of Tamilnadu,
The Inspector of Police,
Deputy Superintendent of Police,
CCIW, Tirunelveli.

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in C.M.P.No.7144 of 2017 in C.C.No.79 of 2009 on the file of the Judicial Magistrate No.II, Virudhunagar and set aside the impugned order dated 07.03.2019 and discharge the petitioner from the above C.C.No.79 of 2009.

For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.E.Antony Sahaya Prabakar,
Additional Public Prosecutor

Crl.R.C.(MD).No.579 of 2019

Mariappan

... Petitioner

Vs.

The State of Tamilnadu,
The Inspector of Police,
Deputy Superintendent of Police,
CCIW, Tirunelveli.

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in C.M.P.No.7160 of 2012 in C.C.No.82 of 2009 on the file of the Judicial Magistrate No.II, Virudhunagar and set aside the



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impugned order dated 07.03.2019 and discharge the petitioner from the above C.C.No.82 of 2009.

For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

COMMON ORDER

The petitioner is the accused in C.C.Nos.78, 79 and 82 of 2009, on the file of the learned Judicial Magistrate No.II, Virudhunagar.

2. The case of the petitioner is that he was appointed as Junior Supervisor on 30.07.1964 in the erstwhile combined Ramanathapuram District Central Co-operative bank, Ltd., and subsequently, he was promoted to the post of Senior Supervisor and further promoted to the post of Manager in the year 1992 and he was deputed on foreign service to work as a secretary of Mamsapuram Primary Agricultural Co-operative Bank Ltd and he retired from service on 31.08.1998. Thereafter, in the year 2003-2004 an audit was conducted in the said society. During the course of the audit, it was found that there was a huge misappropriation funds from the year 1993 onwards. There was prima facie material to show such misappropriation. Therefore, the enquiry under Section 81 of the Co-operative Society Act, was initiated against the petitioner and the other



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persons and the same was completed and there after under Section 87 of Surcharge proceedings was initiated and final order was passed. Simultaneously, a criminal complaint was made to the respondent police and FIR was also registered in Crime No.11 of 2005 and after completion of the investigation, 8 final reports have been filed and the same was also taken on file in various C.C.Nos., including C.C.Nos.78, 79 and 82 of 2009 by the learned Judicial Magistrate No.II, Virudhunagar. The petitioner was arrayed as one of the accused in C.C.Nos.78, 79 and 82 of 2009. He filed the discharge petitions in Cr.M.P.Nos.7143 of 2017, 7144 of 2019 and 7160 of 2012 in C.C.Nos.78 of 2009, 79 of 2009 and 82 of 2009 and the same were dismissed by the learned Judicial Magistrate, Virudhunagar, by the impugned order even dated 07.03.2019. Challenging the same, the petitioner filed the above criminal revision cases.

3.In all the above cases, the learned counsel for the petitioner submitted that this petitioner has filed the writ petition in W.P.No.23032 of 2006, seeking the relief of issuance of writ of mandamus, forbearing the Co-operative societies authority from continuing the surcharge proceedings on the ground that the enquiry under Section 81 of the Tamilnadu Co-operative Societies Act (herein



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after called as “*Act*”), was not completed within the stipulated period mentioned in the said Act. This Court has allowed the writ petition in the following terms:

4.Counter affidavit has been filed by the respondent wherein in paragraph No.10 it has been stated that during the period between 05.05.1993 and 31.03.1994. The petitioner being the secretary has falsified several S.B., accounts and misappropriated amount with the help and assistance of the cashier Sheetha and clerk Karunanithi and further again during the period between 03.04.1997 and 31.03.1998 the petitioner has falsified the SB accounts and misappropriated the amounts is connivance with other officials. Thus, the specific case of the respondent seems to be that the proceedings are initiated under Section 87 (1) of the Act, in respect of the irregularities committed between 05.05.1993 and 31.03.1994 and again from 09.04.1997 to 31.03.1998. If that be so, the respondents as per section 87(1) of the Act, cannot initiate action against the petitioner. Admittedly, the impugned proceedings of the first respondent dated 26.04.2006 is beyond seven years as contemplated under the proviso 1 to Section 87 of the Act. Hence, on this ground alone, the impugned notice of the second respondent is liable to be quashed and accordingly, the same is quashed.



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4.The learned counsel for the petitioner submitted that the complaint was given on the basis of Section 81 enquiry report and the further surcharge proceedings under Section 87 has been quashed by this Court and therefore, this Criminal Proceeding is liable to be quashed.

5. The learned Additional Public Prosecutor submitted that quashing the surcharge proceedings under Section 87 of the Act on the basis of the enquiry report under Section 81 of the Act on the ground of limitation is not a ground to quash the FIR and consequential filing of the final report. Section 81 of the enquiry report is just an information to the respondent police to register the case and investigate the matter relating to the misappropriation. Therefore, on the basis of the information, the investigation was conducted and final report was filed and the same was taken on file in C.C.Nos.78, 79 and 82 of 2009. Hence, the plea of the petitioner to discharge him from the criminal proceedings on the basis of the discharge in the disciplinary proceeding is not legally correct. He relied the judgment of the Hon'ble Supreme Court reported in 2012 9 SCC 685 and submitted that even after the discharge in the disciplinary proceedings, the criminal proceedings could be continued. Therefore, he seeks for dismissal of these petitions.



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6. This Court considered the rival submissions made on either side and perused the materials available on record.

7. The only contention raised by the petitioner is that under the Co-operative Societies Act, on the basis of the audit report, enquiry under Section 81 was initiated against the petitioner and concluded and the report was filed with finding that the misappropriation had taken place. On the basis of the report, the department initiated both surcharge proceedings under Section 87 of the Act and criminal prosecution simultaneously. Surcharge proceeding under Section 87 alone was quashed on the ground of limitation, but, the same is not a ground to quash the present criminal proceedings for the following reasons:

(i) to register the misappropriation case, there is no limitation either under the criminal procedure code or under co-operative societies Act.

(ii) the quashment of the disciplinary proceedings is not a ground to quash the criminal case as per the law laid down by the Hon'ble Supreme Court in 2012 9 SCC 685.

8. Therefore, this Court declines to accept the contention of the learned counsel for the petitioner to discharge the petitioner from the criminal



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prosecution on the ground of the quashment of surcharge proceedings under Section 87 that too on the ground of limitation.

9. At this stage, the learned counsel appearing for the petitioner seeks indulgence of this Court to raise this point before the learned trial Judge, during the trial and he seeks for the limited relief of dispense with the personal appearance of the petitioner before the trial Court.

10. Accordingly, this Court dispose of these Criminal Revision Cases in the following terms:

10.1. The petitioner is hereby permitted to raise all the points before the trial Court.

10.2. Considering the age of the petitioner and his health issues, the appearance of the petitioner is hereby dispensed with before the trial Court on all hearing dates except on the dates of,

- (i) furnishing copies under Section 207 Cr.P.C,
and initial questioning to answer the charges;
- (ii) questioning under Section 313 Cr.P.C; and
- (iii) On the date of Judgment.



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10.3. The petitioner is directed to give an undertaking in the form of affidavit that she will be duly represented by a counsel on all hearing dates.

(i) The petitioner shall not dispute the identity of the witnesses.

(ii) The petitioner shall appear before the Court whenever his presence is insisted by the trial judge for the purpose of identification.

10.4. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist for his appearance and to deal with the petitioner in accordance with the guidelines in judgment of the Hon'ble Supreme Court of India in ***State of Uttar Pradesh Vs. Shambunath Singh***, reported in ***2001(4) SCC 667***.

Consequently, connected criminal miscellaneous petitions are closed.

23.11.2023

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

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To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Inspector of Police,
Deputy Superintendent of Police,
CCIW, Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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