IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P Nos.2451 & 2478 of 2024
and CRL.M.P Nos.1746, 1747, 1779 & 1781 of 2024

R.Devakumaran ...Petitioner in both Crl.O.Ps

Vs.

1.State Rep. by: The Inspector of Police,
Commercial Crime Investigation Wing,
Cuddalore District.
(Crime No.1 of 2014)

2.The Deputy Registrar (Housing Board),
The O/o. the Deputy Registrar (Housing Board),
Manjakuppam,
Cuddalore District. ...Respondents in both Crl.O.Ps

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records and quash the same processing in C.C.Nos.56 & 63 of 2016 on the file of learned Judicial Magistrate No II, Panruti, Cuddalore District.

For Petitioner in both Crl.O.Ps : Mr.John Sathiyan Senior Counsel for Mr.Swamisubramanian

For Respondent in both Crl.O.Ps : Mr.A.Gopinath Government Advocate for R1

ORDER

The issue involved in both these cases are common and hence they are taken up together, heard and disposed of through this common order.

2.The case of the prosecution is that there was financial misappropriation in the Housing Society during the period 2000 to 2008 amounting to a sum of Rs.75,23,062/- The enquiry was initiated under Section 81 of the Co-operative Societies Act, 1983 (herein after referred to as "the Act"). The Enquiry Officer submitted a report to the effect that there was misappropriation to the tune of Rs.75,23,062/- for the period from 2000 to 2008. The further finding of the Enquiry Officer is that the accused persons had created bogus documents and bogus receipts as if loan amount was paid to the members of the Society and the recovery of the amount was also not made and thereby, a huge loss was caused to the Society.

3.The petitioner who was working as a Special Officer during the relevant point of time was added as an accused. Even though, a single FIR was registered in Crime No.1 of 2014, the final report was split for various periods. Crl.O.P.No.2451 of 2024 pertains to C.C.No.63 of 2016, wherein, there are five accused persons and the petitioner has been arrayed as A4. This final report pertains to the period from 2004 to 2006. Insofar as Crl.O.P.No.2478 of 2024, it pertains to C.C.No.56 of 2016, in which there are two accused persons and it pertains to the period 2007.

4.When the matter came up for hearing on 12.02.2024, this Court passed the following order:

The learned Senior counsel appearing on behalf of the petitioner submitted that the petitioner in both the cases was the Special Officer during the relevant point of time and that surcharge proceedings that were initiated under Section 87 of the Co-operative Societies Act, also ended in favour of the petitioner. The learned Senior Counsel therefore submitted that the standard of proof that is required in a criminal case is proof beyond reasonable doubt and whereas, the petitioner has been exonerated in proceedings where the standard of proof that is required is only preponderance of probabilities. Therefore, it was contended that the continuation of the criminal proceedings as against the petitioner must be interfered.

2. The learned Additional Public Prosecutor submitted that charges have been framed and the trial has commenced in both the cases. The learned Senior Counsel seeks for some time to take instructions.

3. Post this case under the same caption on 14.02.2024.

5.The case was thereafter listed on 15.03.2024 and this Court passed the following order:

When the matter came up for hearing on 12.02.2024, this Court passed the following order :-

The learned Senior counsel appearing on behalf of the petitioner submitted that the petitioner in both the cases was the Special Officer during the relevant point of time and that surcharge proceedings that were initiated under Section 87 of the Co-operative Societies Act, also ended in favour of the petitioner. The learned Senior Counsel therefore submitted that the standard of proof that is required in a criminal case is proof beyond reasonable doubt and whereas, the petitioner has been exonerated in proceedings where the standard of proof that is required is only preponderance of probabilities. Therefore, it was contended that the continuation of the criminal proceedings as against the petitioner must be interfered.

2. The learned Additional Public Prosecutor submitted that charges have been framed and the trial has commenced in both the cases. The learned Senior Counsel seeks for some time to take instructions.

3. Post this case under the same caption on 14.02.2024.

2. The learned Senior counsel appearing on behalf of the petitioner submitted that the case is now at the stage of questioning. In view of the same, the presence of the petitioner is dispensed with in both the cases, pending disposal of this Criminal Original petition.

3. Post this case under the caption for orders on 18.03.2024.

6.Heard Mr.John Sathiyan, learned Senior Counsel appearing on behalf of the petitioner and Mr.A.Gopinath, learned Government Advocate appearing on behalf of the 1st respondent.

7.The only issue that arises for consideration in this case is as to whether the petitioner who was the Special Officer and who was exonerated from the proceedings initiated under Section 87 of the Act can be made to undergo the ordeal of facing the trial in this case.

8.The issue is squarely covered by the earlier orders passed by this Court in Crl.O.P.Nos.497, 507, 550, 554, 557 to 560, 562 & 564 of 2020, dated 18.09.2020 and the relevant portions are extracted hereunder:

> *7. After registration of FIR, the first respondent completed the investigation and filed final reports and the same have been taken cognizance and pending for trial. The only ground raised by the learned counsel appearing for the petitioner before this Court is that, once the surcharge proceeding initiated by the second respondent is set aside by the Cooperative Tribunal/District Court, Cuddalore, the criminal proceedings cannot be proceeded further as against the petitioner. In this regard, he relied upon the order passed by this Court in the similar issue in Crl.O.P.No.13330 of 2017 dated 05.11.2019, in the case of P.Parimaladevan Vs. State by The*

Inspector of Police, which reads as follows :-

"5. In the case of T.Elengo vs. State represented by the Inspector of Police, Commercial Crime Investigation Wing-CID, Cuddalore and another [Crl.O.P.Nos.1734 to 1737 and 19846 of 2017, dated 15.11.2017], this Court has held that an employee in a Supervisory capacity cannot be held responsible for criminal action. Relevant portion of the order reads 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 Cooperative Sub Registrar of 7 other societies. Insofar as the Nevyali Co-operaitve HousingSociety is concernd, the petitioner was employed as a Supervisor during the relevant period and deputed as incharge 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 ath 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 thepetitioner had conspired for the purpose of misappropriating the money or that he had the mens-rea to commit any of the other offences.

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9.The same proposition has beentaken by another judgment in G.Selvakumar v. State through Inspector of Police, C.C.I.W.CID, Tirunelveli reported in 2011 (2) MLJ (Crl.) 608. Following is the extract of the said proposition:- 7.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 working in a supervising capacity as Field Manager of Central Cooperative 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 were mens rea to initiate criminal proceeding against the petitioner/A8, apart from the findings of the departmental proceeding.*

10.In the light of the aforesaid judgments and by correlating the case of the second respondent that there was lapses on the part of the petitioner in his capacity as a supervisor, I am constrained to hold that there could be no conspiracy between the petitioner and the other accused or mens-rea to commit the offences.'

6. Likewise, this Court, in a batch of cases, in the case of Anbalagan vs. State represented by the Inspector of Police, C.C.I.W., CID., Thiruchirappalli and another, [Crl.O.P.(MD)Nos.20309 to 20320 of 2016 and 20309 to 20320 of 2016, dated 20.07.2018] held so in the following manner: '12. Clause 8 of the Tamil Nadu Cooperative Manual deals with the prosecution against the Departmental Officers which reads thus: Prosecution against the Departmental Officers:- ''Departmental Officers are working on foreign service in Co-operative organisation as Chief Executive Officers or otherwise and at times in additions to their regular government post, they are also holding additional charge of the post of Special Officers in more than one co-operative society and functioning as such. They are holding supervisory posts also over such institution. The Act or the Bylaw of the society do not differentiate a regular or additional charge

Chief Executive Officer / Special Officer and both are the same in the eyes of law. These officers either in a regular capacity and more so in the additional capacity or in a supervisory capacity may not have the chance to scruitinise each and every transactions of the society. They would have failed to check and scruitinise the accounts and or excercise effective control over the subordinate staff resulting in the criminal irregularities, frauds and offences under IPC committed by the staff. Failure of such nature ie., failure to discharge their duties properly or negligence, or omissions, unless the inquiry, inspection or investigation officer finds it prima facie, that such officers with malafide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offences by the subordinate staff, will not fasten criminal liability on such officers. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence the departmental officers who are not directly involved in the frauds or misappropriations need not be included as deliquents, in a routine manner, in the inquiry reports or complaints filed with the police." 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.*

13. In the circular issued by the Registrar of Cooperative Societies, Chennai in R.C.No.228696/19/CP1 dated 11.12.1991 also, the same thing reiterated. For proper appreciation, the relevant portions of the said letter are extracted here under: "3. Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the Cooperatives who are involved vicariously has also been examined. The departmental officers, working have no chance to scrutinize each and every transactions of the society. Though they may have an overall control, they cannot be held criminally liable, for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinize the accounts etc., or exercise effective control over subordinate staff such failure may not deserve criminal action. On the other hand, the failure of this nature, will be failure to discharge their duties properly or negligence and this may be dealt with through disciplinary proceedings. Hence it is informed that the departmental officers who are not directly involved in the frauds or misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police." 14. In S.Gunasekaran Vs. State represented by the Inspector of Police (supra), this

Court has quashed the Criminal proceedings against the Special Officer stating that the Criminal prosecution cannot be initiated for lapse / negligence in supervising 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. In my 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 ingredients of the offences alleged against him."

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16. From the aforesaid decisions, it is clear that negligence may create only the civil liability and there cannot be any vicarious liability in the criminal law. Further, mere negligence to look into the records properly would not *satisfy any of the ingredient of the offences alleged against the petitioner herein.'*

7. The aforesaid decisions are self explanatory and the same principle has been reiterated in various other decisions of this Court as well. As such, the over all legal position is that when an employee of the Society is found liable for Supervisory lapse, the same will not constitute any criminal action against him. Likewise, if such an employee has been exonerated in the proceedings under Section 87 of the said Act, it has to necessarily be implied that he had neither misappropriated nor fraudulently retained the money or other property, nor is guilty of breach of trust or willful negligence. The offences for which the petitioner has now been charged with, are in effect, the very same overt acts for which he has been exonerated in the enquiry under Section 87 of the said Act."

9.It is clear from the above that where the concerned officer has been exonerated from the charges in the departmental proceedings, there is no question of making that officer to undergo the criminal trial, since the standard of proof in a criminal case is proof beyond reasonable doubt. If the petitioner was not found delinquent by applying the principles of preponderance of probabilities, there is no question of making the petitioner undergo the criminal case which requires proof beyond reasonable doubt. The above order is squarely covered the facts of the present case.

10.In the light of the above discussion, the proceedings in C.C.Nos.56 & 63 of 2016 on the file of learned Judicial Magistrate No II, Panruti, Cuddalore District, are hereby quashed insofar as the petitioner is concerned and accordingly, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

19.03.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

To

1.The Judicial Magistrate No II, Panruti, Cuddalore District.

2.The Inspector of Police,
Commercial Crime Investigation Wing,
Cuddalore District.

3.The Deputy Registrar (Housing Board),
The O/o. the Deputy Registrar (Housing Board),
Manjakuppam,
Cuddalore District.

4.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J

ssr

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