IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos.26339, 26340 & 26342 of 2022
and Crl.M.P.Nos.16232, 16233, 16234, 16235, 16230 & 16231 of 2022

N.Radha Krishnan ... Petitioner in both OP's

Versus

1.The State
Rep by Inspector of Police,
CCIW Police,
Cuddalore.

2.The Deputy Registrar of Co-operative
Societies (Housing),
Cuddalore. ... Respondents in both OP's

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet dated 22.06.2015 in C.C.Nos.123, 122, 121 of 2015, respectively, on the file of Judicial Magistrate – I, Cuddalore, quash the same as illegal so far as the petitioner / A2 is concerned.

For Petitioners : Mr.M.S.Palaniswamy
in all OP's

For Respondents : Mr.S.Vinoth Kumar
in all OP's Govt. Advocate (Crl. Side)

COMMON ORDER

The petitioner has filed these petitions to quash the proceedings in C.C.Nos.123, 122, 121 of 2015, respectively, on the file of Judicial Magistrate – I, Cuddalore.

2. The brief facts of the case is as follows: The office bears and members of the Chidambaram Electricity board Employee and Public Workers Co-operative Housing Building Society, Cuddalore District, based on the complaint of the Deputy Registrar of Housing Society, Chidambaram , Cuddalore District, have committed grievous offence of breach of trust and misappropriation of funds of the the society to the tune of Rs.5,98,795 and a case has been registered in Crime No.2 of 2015 under Sections 403, 408, 409, 471, 477(A) 120(B) r/w 34 IPC was

registered on 23.03.2015 and the case has been taken up on the file of the Judicial Magistrate-I, Cuddalore, Cuddalore District in C.C.Nos. 104 to 123 of 2015.

3. The learned counsel for the petitioner submitted that during the tenure as the special officer additional charge of the said society Secretary P.Varadharaj / A1 was continuously absent for the period of 3 months. The petitioner was not even paid to his salary because he was not attending office during the petitioner's tenure as special officer of the Society. The petitioner came to know that after relived from the society on 14.06.2007 the successor A.R.Tamiloviyam joined as special officer in the society on 15.06.2007. A.R.Tamiloviyam, CSR / Special Officer passed a resolution on 23.08.2007 and approved the vouchers from April 2007 to July 2007 and passed a resolution. The petitioner has nothing to do with the commission of offence committed by A1. The 1st respondent without verification of the documents with malafide intention included the petitioner as an accused. The petitioner cannot be charged under this Section also. The charges under Section 477A of IPC is also fail because

there is no allegation that the petitioner wilful intention to de-fraud, falsify any valuable security or accounts belonging to the society.

4. The learned Government Advocate (Crl.Side) submitted that the charge sheet and final report has been filed as early as 22.06.2016 now the C.C.Nos.121 to 123 of 2015 are in the stage of trial. The petition to quash is not maintainable at this stage. He also submitted that the Deputy Registrar of Co-operative Housing Society, Chidambaram had conducted an enquiry under Section 81 of Tamil Nadu Co-operative Society Act 1983, forwarded an enquiry report to the Superintendent of Police, CCIW CID, Chennai-40. During investigation, the following persons were identified as accused namely viz. 1.A.R.Tamiloviyam, CSR/ Special Officer, 2.N.Radhakrishnan, Special Officer, 3.P.Varatharajan – Ex.Secretary, 4.R.Santhoshkumar, Clerk, 5.P.Nagarajan-Clerk, 6.D.Seethapathy- Clerk, 7.S.Balagangatharathilagar-Clerk. He further submitted that, after the completion of investigation, 20 Charge Sheets were filed before the learned Judicial Magistrate No.I, Cuddalore, dated 22.06.2015 and the same was taken on the file in C.C.Nos.104 to 123 of

2015 dated 28.10.2015 and the cases are pending trial before the Hon'ble Court. The enquiry has been conducted by the Investigation Officer, totally 31 witnesses were examined. The specific overt act against the petitioner is that he has colluded together and misappropriated the Society funds to the tune of Rs.23,500/- to given monetary benefit, created forged documents and swindled the Society funds. Hence he opposed to quash the proceedings against the petitioner.

5. Considering the facts and circumstances, there is no material ingredients against the petitioner to attract the miswear to cheat and misappropriate the funds belonging to the society. Therefore, the proceedings against him are vexatious and liable to be quashed. He allegedly signed the vouchers to assist A1 in misappropriating the funds of the society, amounting to around Rs. 23,500/-.

6. In reply, the learned counsel for the petitioner strongly denied that he signed those documents. He further submitted that the successor, on 23.08.2007, accepted the accounts found in the register, including the

vouchers. However, according to the prosecution, between 18.04.2007 and 07.06.2007, the alleged voucher contained particulars of a forged vehicle to include the trip sheet. Despite this, proceedings were initiated against the petitioner. The order passed by the Joint Director on 05.04.2017 clearly shows that the charges framed against the petitioner related to the fabrication of documents. During the alleged period, he was not working as Special Officer; Tamiloviyam was in charge of the society during that time. Accordingly, there was no loss to the society during the petitioner's period, and the charges against him have not been proved, leading to the proceedings being dropped.

7. The learned counsel for the petitioner also relied on the order passed in CMA (CS) No.28 of 2015, dated 26.02.2021, by the learned Principal District Judge, Cuddalore District, Cuddalore, which reveals that the surcharge proceeding against the petitioner was set aside as there was no proof that he caused loss to the society. Therefore, through these two documents, the petitioner is able to establish that he was not working during the alleged period, was not in charge of the relevant period, and

did not cause any loss to the society.

8. Now, considering the penal provisions under Sections 403, 408, 409, 471, 477(A), and 120(B) read with 34 IPC, the main ingredient is the dishonest intention to cheat. However, there is no basic ingredient on the side of the prosecution indicating that he acted with dishonest intention to assist A1 and misappropriate funds. Further, even if he had occupied the post during the relevant period, the charges against him are unsupported. Therefore, this Court is inclined to quash the proceedings against this petitioner alone in C.C.Nos.123, 122, and 121 of 2015, respectively, on the file of Judicial Magistrate – I, Cuddalore.

9. Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

04.03.2024

Index: Yes/No
Internet: Yes/No
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T.V.THAMILSELVI, J.

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To

1.The Judicial Magistrate – I, Cuddalore.

2.The Inspector of Police,
CCIW Police, Cuddalore.

3.The Deputy Registrar of Co-operative
Societies (Housing), Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

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