



Crl.O.P.No.1209 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.09.2024

Pronounced on :25.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.1209 of 2024
and
Crl.M.P.Nos.863 & 864 of 2024

G.Anandhan .. Petitioner/Accused No.2

/versus/

1.State by Inspector of Police,
EOW Police, Tiruvallur. .. Respondent/Complainant

2.A.Kathavarayan,
Deputy Registrar of Co-operative Societies,
Tiruvallur. .. Respondent/Defaco
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pending before the District Munsif cum Judicial Magistrate Court, Uthukkottai vide C.C.No.39 of 2023 and quash the same.



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For Petitioner :Mr.L.P.Shanmugasundaram
For Respondents :Mr.S.Udayakumar
Govt.Advocate (Crl.Side)

ORDER

On the complaint given by the second respondent, informing that in the course of enquiry conducted under Section 81 of the Co-operative Societies Act, it was found that in the course of LPG cylinders sales, a sum of Rs.19,88,294/- misappropriated by the President, Salesmen and Junior Assistant of the Tiruvallur District Consumer Co-operative Society, First Information Report was registered by Tiruvallur Police Station, CCIW Tiruvallur on 11.03.2022.

2. The allegations in the complaint was that, the petitioner Anandhan, the salesman between April 2013 to February 2014 had misappropriated a sum of Rs.6,377/-; another saleswomen S.Lakshmi between April 2014 to early 2017 misappropriated Rs.1,29,528/-. Junior Assistant, Ezhilarasan had misappropriated a sum of Rs.18,29,329/-. The



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president of the Society Kandasamy, who is responsible for the affairs of the society had in pursuance to the common intention to misappropriate in respect of sales money of LPG cylinders during the period between 01.03.2013 and 31.03.2017, permitted the other accused persons to falsify the accounts.

3. The First Information Report was registered in Crime No.1 of 2022 for offences under Sections 408 and 477(A) of IPC against Ezhilarasan, Anandan, Lakshmi and Kandasamy and taken up for investigation. Separate final reports were filed.

4. As against the petitioner Anandhan, final report was filed after altering the charges to Sections 408, 477A and 406 of IPC. As per the final report, Tiruvallur District Consumer Co-operative Society functioning from 1998 became a Primary Co-operative Society after enrolling all the Co-operative Societies in the District. From 14.07.2005, the agency for distribution of Bharath Gas Cylinders was entrusted to the Society in which the petitioner herein was appointed as Salesman on



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12.08.2000. He was put in-charge of Manager in the year 2012 and entrusted with all liabilities in respect of gas cylinders sale and maintenance of the records including stock and cash. During May 2013-February 2014, the petitioner had failed to maintain the records and stock registers properly and had fabricated accounts and misappropriated Rs.6,377/- by not recording the sales.

5. The petitioner is before this Court to quash the said final report, which has now been taken on file by the District Munsif-cum-Judicial Magistrate, Uttukottai in C.C.No.39 of 2023. According to the petitioner, the criminal complaint was registered on the information given by the Deputy Registrar of Co-operatives, with the delay of 9 years. Whereas, the sum of Rs.6,377/- alleged to have been misappropriated by the petitioner was paid on 18.05.2013 even before the surcharge proceedings initiated by the department. Except the delay of 13 days in remitting the amount, there is no fault on the part of the petitioner. For the delay of 13 days, he had paid interest of Rs.25/- and obtained a receipt on 03.06.2017. That apart, an additional sum of



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Rs.1203/- was collected from him by the Society based on the Audit Report on 21.03.2014. Therefore, the question of criminality or criminal intention of misappropriate does not arise.

6. The Learned Counsel for the Petitioner further submitted that the alleged offence have been committed while discharging the official duty and therefore, prior sanction for prosecution ought to have been obtained. Having failed to obtain pre-sanction to prosecute as contemplated under Section 197 of Cr.P.C., the prosecution is liable to be quashed. It is also contended that offence under Sections 406 and 408 of IPC are being compoundable, therefore, after the repayment of the alleged misappropriated money along with interest, the prosecution will not sustain.

7. The learned Government Advocate (Crl.Side) submitted that the petitioner was discharging his duty as Salesman and in-charge Manger of the LPG cylinders sale depot at Uthukkottai. He fabricated the records of stock register and sales register and misappropriated



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Rs.6,377/-. The breach of trust and misappropriation came to light during the audit inspection and departmental enquiry was initiated against him and others. Pending enquiry under Section 81 of Tami Nadu Co-operative Societies Act, the petitioner paid the money, he misappropriated.

8. The act of misappropriation is not a part of duty discharged by the petitioner to get protection under Section 197 of Cr.P.C. Further, he is not a public servant, who is removable by the sanction of the Government. The repayment of money misappropriated dishonestly will not exonerate the petitioner from his criminal liability.

9. The Final report against this petitioner is a part of a larger scheme of misappropriation by the salesmen and the Junior Assistant in connivance with the President of the Society. Investigation had revealed that about Rs.45 lakhs been misappropriated during the period between April 2013 to 2017. This petitioner, who was the salesman of the society during April 2013 to February 2014 had misappropriated Rs.6,377/- and



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repaid it only after initiating departmental proceedings against him. Two other final reports were filed and the same were taken on file in C.C.Nos.40 and 41 of 2023, wherein the misappropriation for the other period been charged against other accused persons involved in the crime. The reason for the belated payment stated by the petitioner is unacceptable and his repayment subsequently will prove that he is liable for temporary misappropriation.

10. Heard the learned counsels representing the petitioner and the respondents respectively.

11. On receipt of rampant misappropriation of the fund at Bharath Gas Agency, Uthukottai run by the District Co-operative Consumer Society, enquiry was ordered by the Assistant Registrar, Co-operative Society, Tiruvallur. The enquiry report of the Co-operative Sub Registrar/Superintendent of Co-operative Societies dated 13/03/2017, conducted under section 81 of the Tamilnadu Cooperative Societies Act, concluded that, misappropriation of society fund to a tune



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of Rs.19,88,294/- found proved and recommended for surcharge proceedings against Lakshmi (saleswoman) and the Kandasamy (President) for Rs.1,52,588/- and against Ezhilarasan (Junior Assistant) and Kandasamy (President) For Rs.18,29,329/-. Also recommended to initiate criminal prosecution against Anandan, Lakshmi, Ezhilarasan and Kandasamy. Since the petitioner had repaid the amount misappropriated, no surcharge proceedings was recommended against him.

12. Based on the recommendation, Surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act against Lakshmi, Ezhilarasan and Kandasamy was initiated. The sales particulars found in the BPCL portal and the sale register maintained by the petitioner, Anandan as Salesman during May 2013 to February 2014 had disclosed the omission of entering the sales in the sales register and diversion of the funds, temporarily and misappropriation of Rs.6,377/-. The other saleswoman Lakshmi had confessed her guilt of misappropriation to a tune of Rs.1,52,588/- and repaid it with interest. In respect of Ezhilarasan Junior Assistant of the Society, his explanation



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that for entire shortage, the President alone responsible not accepted and recovery of Rs.18,29,329/- with 13.5% interest ordered. As the as Kandasamy, action was dropped since no strong evidence is available to prove that he had received the money.

13. After conclusion of the surcharge proceedings against others, the criminal complaint in Crime No: 1/2022 was lodged by the Deputy Registrar.

14. According to the petitioner (Anandan), the enquiry officer had not recommended surcharge proceedings against him. The registration of criminal prosecution against him in the year 2022 is without any material to substantiate commission of offences under Sections 406, 408 and 477A of IPC. He, soon after the audit report, paid the difference amount of Rs.6,377/- into the society account. There is no element of breach of trust to attract offence under Section 406 or 408 of IPC. There is no incriminating material to charge the petitioner for offence under Section 477A IPC for altering the account to defraud.



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Further, to prosecute a public servant for any offence committed in the course of discharge of his duty, prior sanction under Section 197 Cr.P.C is required.

15. The above submission of the petitioner does not carry merit for the following reasons:-

The petitioner as Salesman and depot in-charge was responsible for maintaining the sales register. The LPG portal and sales register maintained by this petitioner, while he was in-charge of the depot between May 2013 and February 2014 proves the short entry of sale of 13 cylinders each cost Rs.398/- totally Rs.5174/ and 3 cylinders each cost Rs.401/- totally Rs.1203/-. The money is repaid with interest only after the initiation of the enquiry proceedings in the year 2017. Since the money misappropriated been repaid with interest, no surcharge proceedings initiated against him. However, for the false entry in the sales register and temporary misappropriation, the petitioner has to face prosecution. The repayment subsequently will only mitigate the sentence, if any, but will not exonerate him from prosecution.



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16. As far as the protection under Section 197 CrPC., the Courts have repeatedly held that this protection is for a public servant who is not removable from his office, save by or with the sanction of the Government and also the offence alleged to have been committed must be while discharge of his official duty.

17. In this case, the petitioner a salesman in the Co-operative Society is not a public servant removable from his office by the Government or with sanction of the Government. As per the Tamil Nadu Co-operative Societies Rules, salesmen are removable by the Deputy Registrar of Co-operative Societies.

18. The entrustment of LPG cylinders to the petitioner and the temporary misappropriation of the costs of totally 16 cylinders attracts offences under Sections 406 and 408 IPC. The case of the prosecution is *prima facie* made out from the material placed by the prosecution, in



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view of the fact that the responsibility of maintaining the sale register is directly vest with the petitioner. Hence, the wilful omission to make entry of the sales with intention to misappropriate the sale price attracts the ingredient of the offence punishable under Section 477 A of IPC.

19. As a result, **this Criminal Original Petition to quash C.C.No.39 of 2023 as against the petitioner stands dismissed.** Consequently, connected Miscellaneous Petitions are closed.

25.09.2024

Index:yes

Neutral citation:yes/no

Speaking order/non speaking order

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To:

- 1.The District Munsif cum Judicial Magistrate Court, Uthukkottai.
- 2.The Inspector of Police, EOW Police, Tiruvallur.
3. The Deputy Registrar of Co-operative Societies, Tiruvallur.
- 4.The Public Prosecutor, High Court,Madras.



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DR.G.JAYACHANDRAN,J.

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