



CrI.O.P.(MD)No.8438 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD)No.8438 of 2022
and CrI.M.P.(MD)No.5706 of 2022

N.Giritharan

... Petitioner

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
(Ref: Crime No.06/2005)

2.P.Nagaraj
Deputy Registrar of Cooperative Societies (Housing)
O/o.The Deputy Registrar of Cooperative Societies,
Tiruchirappalli-20.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.216 of 2008 on the file of the Judicial Magistrate No.II, Trichy and quash the charge sheet and consequential all further proceedings as against the petitioner.

For Petitioners : Mr.D.Shanmugaraja Sethupathi

For R1 : Mr.P.Kottaichamy,
Government Advocate (CrI. Side)

For R2 : No Appearance.



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ORDER

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This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.216 of 2008 on the file of the Judicial Magistrate No.II, Trichy.

2.The case of the prosecution is that a Society, namely R-15555, Viswakarma Nagar Cooperative Building Society is registered under the provisions of the Tamil Nadu Cooperative Societies Act. The main object of the society is to provide financial assistance to the members for construction of dwelling house. The second respondent has ordered to conduct enquiry under Section 81 of the Act in respect of the financial irregularities alleged to have been committed in the above society. The Enquiry Officer has found during enquiry that there are nine loan transactions which were found to be not genuine. The Special Officer, Clerk and other officials of the society ought to have inspected the process of construction periodically and they have to recommend for disbursement of loan amount to the members. When the members of the society has not constructed the building upto the level, the Special Officer and other officials of the society has falsely prepared report as if the building has been constructed as per terms and conditions of the loan



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and thereby, the Special Officer, Clerk and other officials of the society have committed irregularity and misappropriated the funds of the society.

Therefore, the second respondent, who is the Deputy Registrar of the society, lodged a complaint before the first respondent, based on which, a case in Cr.No.06 of 2005 has been registered for the offences punishable under Sections 408, 468, 471, 418, 477(A) r/w 34 and 109 IPC. Upon completion of investigation, the first respondent filed the final report, which was taken on file in C.C.No.216 of 2008 by the learned Judicial Magistrate No.II, Trichy. Challenging the same, the petitioner filed the present petition.

3.The learned counsel appearing for the petitioner submitted that the Enquiry Officer, in his report recommended for criminal prosecution as against 8 accused and he has not recommended criminal prosecution as against the petitioner herein. The petitioner herein was not arrayed as accused in the first information report and even during investigation, there is no allegation or material as against the petitioner. He further submitted that the Special Officer and Clerk in connivance with the members have fraudulently prepared the inspection report and forwarded the same, without knowledge of the petitioner. On the very reading of



the enquiry report, it is clear that the petitioner ought to have been listed as witness, instead of accused, however, the first respondent has implicated the pet as an accused with malafide intention. Accordingly, he prayed to quash the impugned charge sheet.

4.The learned Government Advocate(Crl.side) appearing for the first respondent submitted that the petitioner herein is the signatory of the loan applications and he has been implicated for six fraudulent loan transactions. For each loan transactions, separate charge sheet has been filed by the first respondent. He further submitted that first respondent has conducted a fair investigation and after examining the necessary witnesses and collecting all materials, he has filed the final report, which has been taken cognizance of by the court below. He also submitted that the grounds, which raised in this petition, are all triable issue and the same cannot be agitated before this Court under Section 428 Cr.P.C., and there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and hence, he would pray to dismiss the present petition.

5.Heard the learned counsel on either side and perused the materials available in the records.



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6.The learned counsel appearing for the petitioner argued the matter lengthily upon relying on the Section 81 Enquiry Report filed by the Enquiry Officer and he vehemently contended that the petitioner being Superintendent/Cooperative Sub Registrar, without his approval, the Special Officer and other accused persons committed the offence, for which, the petitioner is not responsible. In order to ascertain the fact that the prosecution as against the petitioner is malicious one or any materials to proceed the trial, this Court perused the entire charge sheet and on perusal of the same reveals that the petitioner herein is the signatory of the fraudulent loan applications and there was huge loss to the society and all those issues, which raised in the petition, are triable issue, which can be decided only under due trial.

7.Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426).***



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8.In the above circumstances, the trial court has rightly taken the case on file and this Court is of the considered view that no prejudice would be caused to the petitioner if he is subjected to due trial as sufficient opportunity would be given to the petitioner to put forth his defence. The petitioner cannot be let by quashing the charge framed against him as that would completely undermine the alleged acts, which is the subject matter of criminal trial pending against him.

9.For the reasons aforesaid, this Court finds no ground or scope to quash the charge sheet in C.C.No.216 of 2008 on the file of the Judicial Magistrate No.II, Trichy. Accordingly, this petition, being devoid of merits, is dismissed. Consequently, connected miscellaneous petition is closed.

28.02.2024

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

- 1.The Judicial Magistrate No.II, Trichy
- 2.The Inspector of Police,
Commercial Crime Investigation Wing,
Tiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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