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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.11.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.4718 of 2021
and
Crl.M.P. (MD) No.2671 of 2021

Gnanapandi ... Petitioner

Vs.

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Ramanathapuram.

2.Thangappan ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to Call for the records and to quash the Charge sheet filed by the Respondent Police in C.C.No.384 of 2018 on the file of the Judicial Magistrate Court No. 1, Ramanathapuram.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.A.Albert James
Government Advocate for R1

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O R D E R

This petition has been filed challenging the proceedings pending in C.C.No.384 of 2018 on the file of the learned Judicial Magistrate No.1, Ramanathapuram.

2.The Deputy Registrar of Cooperative Societies, Paramakudi, ordered for a statutory enquiry on the audit report of the society for the year 2015 – 2016 under Section 81 of the Tamil Nadu Cooperative Societies Act 1983, on 25.07.2017. The audit report has stated that there was misappropriation to the tune of Rs.19,05,450/- by A1 to A3. This misappropriation is said to have taken place from 12.05.2015. The period of the petitioner as incharge field manager in the society was from 31.12.2016 to 28.07.2017.

3.The enquiry report was submitted and it was stated that during the service period of the petitioner, the total misappropriation by A1 to A3 was to the tune of Rs.2,77,225/-. Hence, the main allegation against the petitioner is that the petitioner in his capacity as a Field

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Manager did not properly monitor the funds of the society and as a result, permitted A1 to A3 to commit misappropriation. Based on the enquiry report that was submitted, an FIR came to be registered in Crime No.5 of 2018. After investigation, the final report was filed before the learned Judicial Magistrate No.1, Ramanathapuram, as against four accused persons and the Court below took cognizance for offences under Sections 408, 409, 420, 468, 471, 477 read with Section 109 of IPC.

4.When the matter came up for hearing on 06.11.2024, this Court passed the following order:

> *"Heard Mr.Raja Karthikeyan, learned counsel for the petitioner and Mr.A.Albert James, learned Government Advocate appearing on behalf of the first respondent.*
>
> *2.The subject matter of challenge in the present petition pertains to the police report filed by the first respondent on completion of investigation which was taken on file by the learned Judicial Magistrate No.1, Ramanathapuram in C.C.No.384 of 2018, wherein the petitioner has been added as A4.*

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3.The specific allegation against the petitioner is that the petitioner was the Field Manager for the period from 31.12.2016 to 28.07.2017 which comes within the check period of 12.05.2015 to 13.09.2017 and that he had abetted the commission of crime by the President, Secretary and Clerk of the Society. Hence, the main charge against the petitioner is under Section 109 of IPC read with the other offences under Sections 408, 409, 420, 465, 468, 471, 477A of IPC.

4.The learned counsel for the petitioner brought to the notice of this Court that the petitioner underwent disciplinary proceedings on the very same set of charges and an enquiry report was submitted by the enquiry officer dated 21.12.2020 where it was concluded that the charges against the petitioner have not been proved. The learned counsel submitted that pursuant to this enquiry report, the disciplinary proceedings itself was closed.

5.If a person undergoes disciplinary proceedings and criminal proceedings on the same set of facts and he is exonerated in the disciplinary proceedings on the ground that the charges have not been made out, it will have a bearing in the criminal case. This is in view of the fact that the standard

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of proof in a disciplinary proceedings is preponderance of probabilities and whereas, the standard of proof for criminal proceedings is proof beyond reasonable doubt. Hence, if the charges have not been proved by applying the standard of preponderance of probabilities, it is next to impossible to prove the same charge by applying the higher degree of proof beyond reasonable doubt.

6.If the above facts are confirmed, the criminal proceedings as against the petitioner can be interfered on this ground alone.

7.The learned Government Advocate seeks for sometime to take instructions in this regard.

8.Post this case under the caption 'part-heard cases' on 13.11.2024."

5.The case was again listed for hearing on 20.11.2024 and the following order was passed by this Court:

"Pursuant to the earlier order passed by this Court, the learned Government Advocate (Crl.Side) has received written instructions from the Assistant General Manager of the Society

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to the effect that the disciplinary proceedings are pending against the petitioner.

2.In the instant case, the enquiry report was submitted by the enquiry officer as early as on 21.12.2020. It is almost five years since the enquiry report was submitted. If the disciplinary authority does not agree with the findings of the enquiry officer, he has to assign reasons and call for an explanation from the delinquent officer. It is not known whether this procedure was followed.

3.In view of the above, the documents that have been referred in Reference Nos.8, 9 and 10 shall be produced before this Court.

4.Post the matter on 27.11.2024 under the same caption."

6.Pursuant to the above order, the matter was listed for hearing today. At the time of hearing, the learned Government Advocate placed before this Court a show-cause notice dated 03.08.2021 that was issued by the Joint Registrar after the receipt of the enquiry report and the reply that was given by the petitioner for this show-cause notice

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dated 27.01.2022. The learned Government Advocate further submitted that the petitioner was asked to attend for enquiry from the year 2023 onwards and that the petitioner is not attending the same and therefore, there is no progress in the disciplinary proceedings.

7.Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the first respondent.

8.The sum and substance of the submissions made on either side revolves around the issue as to whether any offence has been made out against the petitioner on the allegations made in the final report and the materials that were relied upon by the prosecution.

9.The learned Government Advocate submitted that the prosecution has already examined L1 to L9 and none of these witnesses were cross examined on the side of the petitioner and the case is now posted for hearing on 17.12.2024 for cross examination of L1 to L3. The learned Government Advocate therefore submitted that since the trial has

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commenced, the petitioner can put forth al the defense before the trial Court and establish his innocence.

10.The power that is available to the High Court under Section 482 of Cr.P.C. is very wide and the restrictions are mostly self-imposed restrictions. The Apex Court has gone to the extent of saying that even in a case where the proceedings have commenced, if the Court finds that the continuation of the criminal proceedings will amount to abuse of process of law, the court can always exercise its jurisdiction. One such self-imposed restriction that is normally applied is in cases where the trial has already commenced and in such cases, the Court normally does not exercise its jurisdiction and leaves the parties to raise all the grounds before the trial Court.

11.In the case in hand, if this Court had found some *prima facie* material against the petitioner, this Court would have issued the same direction and made the petitioner undergo trial. However, on the entire materials placed before this Court, this Court finds that the best that can be put against the petitioner is that there was dereliction of duty

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on the part of the petitioner and as a result, A1 to A3 had committed misappropriation during the relevant point of time.

12.The over all materials placed before this Court shows that the petitioner during the period from 31.12.2016 to 28.07.2017 was In charge Field Manager of Mudhukulathur Circle. At that point of time, he was also a Field Manager of RDCC Bank. According to the final report, the total amount of misappropriation is Rs.19,05,450/-. However, as per the enquiry report which was the basis for the registration of FIR, the total amount of misappropriation during the period between 31.12.2016 and 28.07.2017 was Rs.2,77,225/-.

13.In the disciplinary proceedings that were initiated against the petitioner, charges were framed with similar allegations that have now been put against the petitioner in the criminal case. Each and every one of the charge was dealt with and the enquiry officer came to a conclusion that none of the charges are made out against the petitioner. Pursuant to the report submitted by the enquiry officer, the disciplinary authority has decided to proceed further against the petitioner mainly on

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the ground that there was dereliction of duty on the part of the petitioner in not properly managing the affairs of the society leading to the misappropriation committed by A1 to A3. This ground that has been put against the petitioner, by no stretch will amount to an offence of abatement of commission of crime by A1 to A3. To constitute criminal offence, the intention of the part of the petitioner plays a major role. Dereliction of duty can never constitute any of the ingredients of the offence under Section 109 of IPC. In the absence of this charge against the petitioner, all the other charges pertains to specific overt act on the part of A1 to A3.

14.In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner will result in abuse of process of law requiring the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Accordingly, the proceedings in C.C.No.384 of 2018 on the file of the learned Judicial Magistrate No. 1, Ramanathapuram, is hereby quashed insofar as the petitioner is concerned. The Court below shall proceed further as against A1 to A3 and the proceedings shall be concluded within a period of six months

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from the date of receipt of a copy of this order.

15.In the result, this Criminal Original Petition is allowed with the above direction. Consequently, connected miscellaneous petition is closed.

27.11.2024

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

1.The Inspector of Police,
Commercial Crime Investigation Wing,
Ramanathapuram.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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