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Crl.O.P.(MD)No.21206 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of reserved : 19/12/2023

Date of pronounced : 14/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.OP (MD)No.21206 of 2023

and

CMP (MD)No.16600 and 16601 of 2023

A.Veerasingham : Petitioner/A2

Vs.

1.The State rep. by
The Inspector of Police,
CCIW CID,
Ramanathapuram District.
(Crime No.16 of 2001)

: 1st Respondent/
Complainant

2.Gnanaprakasam,
Deputy Registrar,
Paramakudi,
Ramanathapuram District.

: 2nd Respondent/
De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the charge sheet in CC No.125 of 2004 on the file of the Judicial Magistrate No.1, Ramanathapuram and quash the same as against the petitioner/A2 herein and pass such further or other orders.

For Petitioner : Mr.K.C.Ramalingam

For Respondents : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)



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O R D E R

This criminal original petition has been filed seeking quashment of the charge sheet in CC No.125 of 2004 on the file of the Judicial Magistrate No.1, Ramanathapuram.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that the second accused was working as Junior Inspector in the Office of the Deputy Registrar of Co-operative Society, Sivagangai. A complaint was registered on the basis of the statement given by one Raman, who was working as Auditor in the Ramanathapuram Co-operative Audit Department, Kamuthi. During the verification of the records for the year 1996-97 and 1997-98, when the petitioner/A2 was working as Junior Auditor, he failed to point out irregularities committed by the Secretary of the Keezhamaravathi Co-operative Bank, Ramanathapuram. He colluded with the Secretary and other employees and acted against the interest of the Society. One Muthuraman, who was working as Senior Auditor in the very same office was impleaded as A1. Originally, the FIR was not registered against him. During the course of the investigation, he was implicated as an accused. During



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the relevant period between 10/09/1997 and 22/07/1999, he verified all the records of Keezhamaravathi Co-operative Bank, Ramanathapuram and filed the audit report. Upon the above said occurrence, a case in Crime No.16 of 2001 was registered for the offences under sections 408, 409, 477(A), 420, 467 r/w 34 of IPC. After that, final report was filed and it was taken cognizance in CC No.125 of 2004 by the Judicial Magistrate No.1, Ramanathapuram.

3. Seeking quashment of the same, this petition is filed by A2 on the ground that during the relevant period, he was working as Junior Audit Officer, verified the records of the Primary Agricultural Co-operative Society and filed a report also; But later, another auditor was appointed, he found various irregularities committed by the Secretary and other employees; Since he was working as Auditor during the relevant period, no allegation of criminal conspiracy, misappropriation or cheating will lie against him.

4. On that account, this petition is filed. The case is filed in the year 2004. The petitioner has not approached this court immediately. He is waiting for a very long period of 20 years. All of a sudden, he filed a petition stating that he has been falsely implicated in this case.



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5.The learned counsel appearing for the petitioner would rely upon various orders passed by this court in respect of Cooperative Society matters, wherein the officers in the cadre of Auditor have been implicated.

6.No doubt that the officers in the cadre of Auditor are enjoying special privilege of supervisory cadre post. They are not taking part in the day today affairs of the society. The society is under the control of the Secretary and the Special Officer as the case may be. But here the problem lies on the question of delay.

7.A report is called for from the trial court as to the stage of the trial process. Report has been received stating that PW1 and PW2 were examined on the side of the prosecution.

8.When the trial process is in the half way, quashment of the case by exercising the power under section 482 of Cr.P.C may not be proper, that is the contention of the prosecution.

9.The main grievance of the petitioner is that he retired from the service, on 30/06/2009. Now 14 years lapsed. Even after the long delay, the retirement



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benefits are not settled to him because of the pendency of the trial process.

10. Even the report of the trial court does not indicate the reason for the long delay, speedy trial is a human right, which is available to an accused, as propounded by the Hon'ble Supreme Court in ***Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar (1979 AIR 1360)***.

11. Now it is well recognized. Even though the quashment of the criminal proceedings on the ground of long delay of the trial may not be appropriate, but as mentioned above, the petitioner was doing auditing work. Nowhere in the complaint or in the final report, the offence under section 120-B of IPC is mentioned.

12. Reading of the entire file does not even remotely indicate that only at the instance of this petitioner, misappropriation was committed by the employees of the Society. Department also initiated action against the employees. Wherein the charges were framed only against the employees and nowhere in the charge, it has been stated that only at the instance, abetment and instigation of this petitioner,



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misappropriation and cheating were committed by the employees. The allegations have been made against the Special Officer also. So it is seen that the Departmental action was not initiated against this petitioner, permitted to retire, but the benefits were not provided due to pendency of the trial process.

13.Repeatedly, it has been held by this court in various matters that the officers in the cadre of supervisory or auditing officials should not be harassed or criminally prosecuted.

14.Now let us go to the circular issued by the Registrar of Cooperative Societies, Chennai, in R.C.No. 228696/19/CPI, dated 11/12/1991. This Circular run like this:-

"3.Taking criminal action against the departmental officers holding chief executive or administrative and other supervisory posts in the Co-operatives 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 criminal liable, for all the criminal



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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 of misappropriations need not be included as delinquents, in a routine manner, in the inquiry reports or complaints filed with the police."

15.Following the above said circular and the Tamil Nadu Cooperative Societies Manual, in N.Baskaran Vs. The State represented by Inspector of Police, of C.C.I.W., CID, Trichy, criminal proceedings were quashed.

16.So narration of the above said facts clearly indicate that a person in the supervisory or auditing cadre should not be criminally prosecuted. If at all, they can be prosecuted only on the administrative side. Even as mentioned above, no such action was taken against him on the Department side also.



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17.Even though, the trial is in the part-heard stage, considering the above said position of this petitioner, I am of the considered view that continuation of the criminal prosecution will amount to a clear abuse of process of law.

18.On that sole ground, this criminal original petition is **allowed**. The case in CC No.125 of 2004 on the file of the Judicial Magistrate No.1, Ramanathapuram is quashed as against the petitioner. Consequently connected Miscellaneous Petitions are closed.

14/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.1,
Ramanathapuram.
- 2.The Inspector of Police,
CCIW CID,
Ramanathapuram District.
- 3.The Deputy Registrar,
Paramakudi,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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