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Crl.O.P.No.23050 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.23050 of 2023
and Crl.M.P.Nos.16148 & 16149 of 2023

Palanisamy

... Petitioner

Vs.

1. State rep. by
The Inspector of Police,
Commercial Crime,
Investigation Wing (CCIW-CID)
Salem District.

2. The Deputy Registrar of
Co-operative Societies,
Sangagiri Circle,
Sangagiri,
Salem District.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to the charge sheet in C.C.No.128 of 2021 on the file of Judicial Magistrate No.IV, Salem and quash the same so far as petitioner is concern.

For Petitioner : Mr.Bala Ramesh
For Mr.R.Suryaprakash

For Respondents : Mr.R.Vinothraja
Government Advocate (Crl. Side)



Crl.O.P.No.23050 of 2023

ORDER

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This petition has been filed to quash the proceedings in C.C.No.128 of 2021, pending on the file of the learned Judicial Magistrate No.IV, Salem, thereby taken cognizance for offences under Sections 406, 408, 465, 468, 471, 477-A r/w 109, 120(B) & 34 of IPC, as against the petitioner.

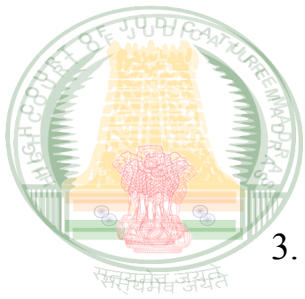
2. The case of the prosecution is that on the basis of the complaint by the second respondent to the Superintendent of Police, Commercial Crime Investigation Wing, Chennai, FIR had been registered by the first respondent, in Crime No.7 of 2012, for the offences under Sections 408, 464 & 477(A) IPC, alleging that there are certain irregularities in No.10606, Nedungulam Primary Agricultural Co-operative Society and an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. After completion of the enquiry, the Enquiry Officer recommended a criminal action against certain officers for their wrong doing. During the period from 25.04.2008 to 13.10.2010, without obtaining loan applications, loan documents, Turmeric bags as security for loan, records have been created as if a sum of Rs.99,61,263/- said to have been distributed to the members of the Co-operative Society without obtaining their signature, thumb impression etc., The then Secretary S.Ramasamy misappropriated a sum of Rs.5,00,000/-. He



Crl.O.P.No.23050 of 2023

has received this amount for disbursement of jewel loan. As many as 21 offences were noted under the first category. The details of the amount disbursed are as follows:-

S. No.	Name	Amount in (Rs.)
1.	P.Gopal	5,00,000/-
2.	Palanisamy	5,00,000/-
3.	R.Krishnan	5,00,000/-
4.	G.Saroja	5,00,000/-
5.	P.Vadivupalanisamy	5,00,000/-
6.	P.Venkatesh	5,00,000/-
7.	P.Nanjayammal	5,00,000/-
8.	Perumal Gounder	5,00,000/-
9.	P.Kumar	5,00,000/-
10.	S.Elangovan	3,00,000/-
11.	M.Vijayakumar	5,00,000/-
12.	R.Subramaniyan	5,00,000/-
13.	S.Subramaniyan	5,00,000/-
14.	A.Krishnamurthy	5,00,000/-
15.	Kuppusamy	5,00,000/-
16.	Ponnappan @ Sellappan	3,00,000/-
17.	M.Saravanan	3,00,000/-
18.	Sithaaye	3,00,000/-
19.	Muthusamy	3,00,000/-
20.	K.Rajaram	3,00,000/-
21.	G.Jayaprakash	5,00,000/-



Crl.O.P.No.23050 of 2023

3. The common mode of commission of the offence is that without getting proper loan application, loan documents and security i.e., 240 Turmeric bags, records have been created as if the aforesaid loan amounts had been disbursed to these persons. The accused Gopal acknowledged the receipt of the loan amount in the disbursement register, but he has not given the security of 240 Turmeric bags. The same is the case with the other accused. It is alleged that all the accused, especially the accused Ramasamy and Kandasamy, the then Secretary and Assistant Secretary, respectively, in connivance with the other accused have committed this offence and caused monetary loss to the Society. That apart, the accused Ramasamy and Kandasamy said to have disbursed a sum of Rs.3,00,000/- each to Kandasamy, Muthusamy and Bhagyam without any records. On the basis of this complaint, FIR was registered. After completion of investigation, the first respondent filed a final report against the accused for the offences under Sections 406, 408, 465, 468, 471, 477(A) r/w 109, 120(B) and 34 IPC.

4. The learned counsel appearing for the petitioner submitted that there are totally 25 accused in which the petitioner is arrayed as A24, who is the salesman of the society. A1 & A2 are the Secretary and Assistant Secretary of the society. A3 to A23 are the beneficiaries. The crux of the allegations is



Crl.O.P.No.23050 of 2023

that A1, A2, A24 & A25 have fabricated the records to show that the beneficiaries have applied with different loans with the society. A3 to A23 have no connection with either the commodity loan or the disbursal of the amount. Though they have not received any amount, they were implicated as accused. The said illegality was brought to the notice of the second respondent and he ordered for enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, into the affairs of the society. After enquiry, the Enquiry Officer submitted report dated 02.06.2011, thereby concluded that A1 to A22 have committed various irregularities in the affairs of the society due to which, the society had suffered huge loss. The Enquiry Officer also recommended criminal prosecution as against the persons who cheated the society, and also for surcharge action and disciplinary proceedings.

4.1. As per the enquiry report, the Enquiry Officer did not recommend criminal prosecution or departmental action as against the petitioner, who arrayed as A24 and the Enquiry Officer recommended the second respondent to lodge complaint as against the persons, who arrayed as A1 to A22 except the petitioner. On the complaint, the first respondent registered the FIR in Crime No.7 of 2012 as against 22 accused persons for the offence punishable under Sections 408, 464, 477(A) of IPC. After completion of investigation, they filed



Crl.O.P.No.23050 of 2023

final report and the same has been taken cognizance by the trial Court in

C.C.No.128 of 2021.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On perusal of the charge sheet as well as the statements and materials produced along with the final report, it is revealed that the petitioner has been implicated as an accused without any documentary or oral evidence or any record to show that the petitioner's involvement in the charges. None of the witnesses had spoken about the overt-act of the petitioner, in order to attract any of the offences. As against the petitioner, the first respondent filed final report for the charges under Sections 465, 474, 477A of IPC. The petitioner was working as salesman in the co-operative society during the relevant point of time. The name of the petitioner has been added in the final report only. Even as per the charge sheet, on 25.04.2008, the loan ledger was returned back by the petitioner as directed by the second accused that too, without any supportive documents either oral or documentary evidence. Therefore, the petitioner has been implicated as an accused without any material to show except one line in the charge sheet. There is no findings as against the



Crl.O.P.No.23050 of 2023

petitioner in the enquiry report submitted by the Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act. There is no surcharge proceedings initiated as against the petitioner, since he is only salesman in the fair price shop conducted by the Nedungulam Primary Agricultural Co-operative Credit Society. Therefore, he was no way connected to the allegations leveled as against the other accused persons. His duties and responsibilities are that to maintain the ration shops and nothing to do with the allegations leveled as against the other accused persons.

7. On perusal of the counter and on the submissions made by the learned Government Advocate (Crl. Side), it is revealed that the petitioner had maintained the loan register and book of accounts and he had wrong entries in the account books. Further, he deposed before the Enquiry Officer that he had returned the loan register records on the instructions of the first and second accused. Therefore, even according to the first respondent, there is absolutely no evidence to prosecute the petitioner for the offences under Sections 465, 474, 477A of IPC. In fact, the petitioner was examined as witness in the enquiry conducted by the Enquiry Officer under Section 81 of the Tamil Nadu Cooperative Societies Act. Therefore, the petitioner cannot be directed to go an ordeal of trial when there is absolutely no substances to bring the charges to



Crl.O.P.No.23050 of 2023

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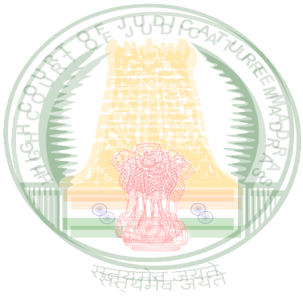
8. In view of the above discussions, the impugned proceedings cannot be sustained and liable to be quashed as against the petitioner. Accordingly, the proceedings in C.C.No.128 of 2021, on the file of the learned Judicial Magistrate No.IV, Salem, is hereby quashed as against the petitioner alone. The trial Court is directed to proceed with the trial as far as other accused persons are concerned.

9. In result, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

15.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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Crl.O.P.No.23050 of 2023

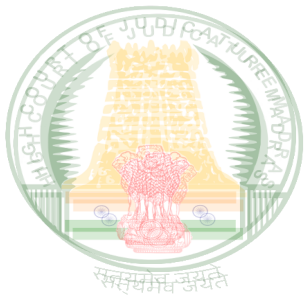
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2. The Inspector of Police,
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Salem District.

3. The Deputy Registrar of
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Sangagiri Circle,
Sangagiri,
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4. The Public Prosecutor,
Madras High Court,
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G.K.ILANTHIRAIYAN, J.

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