



Crl.OP. No. 25122 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL OP No. 25122 of 2017
& CMP. Nos. 14465, 14466 of 2017

1. M. Mahalingam
2. S. Munusamy

... Petitioners

Vs

The State Represented by its.
Deputy Superintendent of Police,
Salem CCIW CID Unit,
Salem District.
Crime No. 6 of 2012

...Respondent

PRAYER : This petition has been filed under Section 482 of Cr.P.C., to call for records in C.C No. 87 of 2014 on the file of the learned Judicial Magistrate No.II, Mettur, Salem District and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.R. karthikeyan

For respondent : Mr. V. Meganathan,

Government Advocate(Crl. side)

ORDER



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This petition has been filed to call for records in C.C No. 87 of 2014 on the file of the learned Judicial Magistrate No.II, Mettur, Salem District and quash the same in so far as the petitioners are concerned.

2. The case of the prosecution is that the first accused/Visvanathan is the Temporary Secretary of Mettur Co-operative Employees Co-operative Housing Board Society from 16.02.1998 and later promoted as Secretary from 05.04.1999 and made permanent from 01.04.2000. The first petitioner herein/A5 was the Special officer of the said society for the period from 23.02.2004 to 09.10.2005, during the said period the first petitioner had granted loan to five members, as a special officer the petitioner had signed the cheque, which caused loss to the society to the tune of Rs.9,14,830/-. The allegation against the second petitioner is that he was special officer of the said society from 23.02.2007 to 20.09.2007, had granted loan to the four members as a special officer he had signed the cheque and thus caused loss to the society to the tune of Rs.15,90,000/-.

3. The learned counsel for the petitioners submitted that the



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petitioners as a special officers, who were incharge of the said society at the relevant point of time and as per departmental enquiry, the enquiry officer found that the petitioners were not liable for the said loss. Though the said proceeding was totally differs from the penal proceedings, the criminal complaint was lodged against the petitioners. They were falsely implicated in this case as A5 and A6, who were no way connected with the alleged loan sanctioned by the Secretary. Further, the petitioners were took charge as special officers even after the loan was sanctioned. As a special officer the petitioners were signed on the reverse side of the cheque along with Secretary. Even, the enquiry was conducted under Section 81 by the Supervisor/ Housing Omalur, in which, they were not implicated. They were appointed as additional incharge of the society there is a probability for misappropriation of funds of the society but other members of the society who said to have obtained the loan and misappropriated the same. Thereafter, on conclusion of enquiry proceedings , the enquiry officer not rendered any penal action against these petitioners and also found that they were not liable for the lapses in the society and Secretary of the society who maintained the accounts of the society was responsible for the said act and Secretary who signed all the registers has disbursed the loans as such there is



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no prime facie material against these petitioners. Further, there is a circular in respect of initiation of criminal proceedings who are on deputation, in which it is mentioned that unless the inquiry, inspection or investigation officer finds it prime facie that such officers with malafide criminal intention committed criminal breach of trust and or criminal misappropriation and or aided and abetted such criminal offenses by the subordinate staff will not fasten criminal liability on such officers. In the present case, the inquiry officer under the Co-operative society act and the departmental enquiry officer has not found any culpability on the part of the petitioners that they did the same with criminal intention and in view of the same, the proceedings are liable to be set aside. Eventually, the Registrar of Co-operative society in his letter dated 05.06.2012 had permitted prosecution against the former Secretary and the members of the Co-operative society but did not recommend any criminal prosecution against these petitioners. Further, the surcharge order passed on the petitioners was set aside by this Court vide order dated 29.11.2021. Hence, there is no material against these petitioners to show that they were conspired or fabricated the records along with the other accused persons and also there was no entrustment of property with the petitioners therefore Section 409 and 467 IPC would not out made



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against the petitioners.

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5. The learned counsel for the petitioners pointed out that A9 one of the special officer has already filed Crl.OP. No. 9970 of 2024, wherein this Court quashed the proceedings against him and the said order is still in force. Further, the petitioners had attained superannuation, due to the pendency of the case they are not permitting to retire, which put too much hardship to the petitioners. Hence, he prayed to allow this petition.



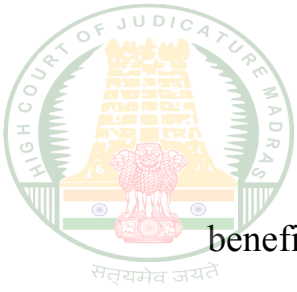
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6. The learned Government Advocate (Crl. side) submitted that

though they are the special officers they are equally responsible for the crime as they were the incharge of the society at the relevant point of time. Further, due to their negligence it caused loss to the society.

7. Heard both sides.

8. Considering the facts and circumstances of the case, and perused materials available on record. The learned counsel for the petitioners pointed out that allegation against these petitioners that they were signed along with the Secretary in the cheque during the relevant point of time but the loan was sanctioned even before they took charge as special officer. Further, the loan amount was sanctioned to one Selvi in the year 2004 which proves that the petitioners were not sanctioned the loan. So, there is necessity on the side of the petitioners to go into the papers of the said loan documents. Now, the said loan was repaid with interest by the first accused and it is the duty of the secretary to hand over the cheque to the beneficiaries and after due identification, signed in the reverse side of the cheque as necessary for the bank to disburse the amount. Therefore, these petitioners signed in the cheque on the reverse side except that there is no specific allegations against them. Admittedly, the Secretary/A1 was identified the



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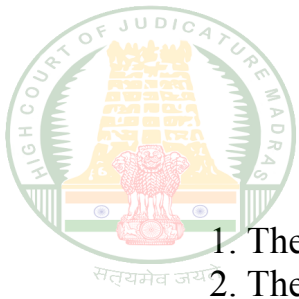
beneficiaries before disbursing the loan. Therefore, there is no prime facie

material on the side of the prosecution that these petitioners in *mens rea* with intention to misappropriate the funds of the society signed on the reverse side of the cheque. Furthermore, they have not committed any manipulation of records in the society only Secretary who was in charge of the Society was responsible. Therefore, there is no basic ingredients against the petitioners to attract Section 120B IPC. There is no wilful negligence on the side of the petitioners nor there is prime facie material to show that intentionally they conspired with the other accused caused loss to the society. Therefore, the proceedings against the petitioners in C.C No. 87 of 2014 on the file of the Judicial Magistrate No.II, Mettur, Salem District is hereby quashed. Accordingly, this petition is allowed. Consequentially, pending petition(s), if any, is/are closed.

11.03.2025

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To



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1. The Judicial Magistrate No.II, Mettur, Salem District
2. The Deputy Superintendent of Police,
Salem CCIW CID Unit,
Salem District
3. The Section Officer,
V.R Section, High Court, Madras.



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T.V.THAMILSELVI,J.

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