

CRL RC(MD)No.702 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.702 of 2025

and

CRL MP(MD)No.7713 of 2025

Marichamy

... Petitioner/ Petitioner /
Accused

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
C.C.I.W – C.I.D.,
Virudhunagar.
(In crime No.2 of 2011)

... Respondent / Respondent /
Complainant

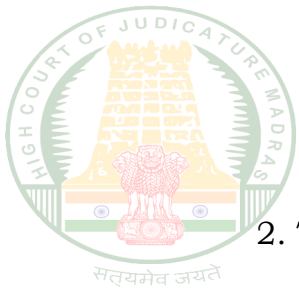
PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records pertaining to the impugned order dated 30.08.2024 in Cr.M.P.No.976 of 2019 in C.C.No.329 of 2012 on the file of the learned Judicial Magistrate No.II, Virudhunagar and set aside the same.

For Petitioner : Mr.I.Suthakaran

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl. side)

ORDER

Challenging the order passed by the learned Judicial Magistrate No.II, Virudhunagar, in Crl.M.P.No.976 of 2019 in C.C.No. 329 of 2012, dated 30.08.2024, this Criminal Revision case is filed.



2. The petitioner herein is the sole accused in C.C.No.329 of 2012. The petitioner filed an application under Section 239 of Cr.P.C., 1973, seeking to discharge him from C.C.No.329 of 2012.

3. *The crux of the petition filed by the petitioner before the learned Trial Court is as follows:*

3.1. The respondent / complainant has filed a charge sheet seeking to frame charge for offences under sections 408, 467, 468, 471, 477 (A) r/w. 204 IPC, 1860, for the alleged misappropriation of Rs.1,70,000/- in the account of 15 loan parties and Rs.75,000/- in the accounts of 23 parties totalling to Rs.2,45,000/- from the funds of RA 18 Thiruvengadapuram Primary Agricultural Cooperative Credit Society. The above said move of the respondent is absolutely groundless and not supported by concrete materials. Hence, there is no *Prima facie* case made out against the petitioner as per the materials available on records.

3.2. The petitioner was working as Secretary in the organisation during the disputed period. He has not committed any irregularities whatsoever as contended by the respondent. The petitioner has rendered his services properly for the business and benefits of the disputed organisation. The complaint has been filed by the Deputy Registrar as per his proceedings in R.C.No.4924/2006 Sa.Pa. to the Superintendent of Police, CCIW, Madras, and the same has been taken cognizance by the respondent herein on



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16.05.2011 in Cr.No.2/2011. Investigation has been made by the Inspector of police, CCIW Virudhunagar, and charge sheet has been filed against the petitioner and is pending for framing of charge. The Deputy Registrar, Srivilliputhur, has ordered an enquiry on 08.06.2006 and the enquiry officer after commencing the enquiry, on 15.03.2006, has completed the enquiry on 20.10.2006 and submitted his report to the Deputy Registrar on 27.10.2016. The above said Section 81 enquiry report and the report submitted by the enquiry officer is not at all maintainable.

3.3. The petitioner has filed a writ petition in W.P.No.5662/2006 and interim stay has been granted on 13.07.2006 directing the enquiry officer and Deputy Registrar not to pass any order and the said writ petition has been finally disposed of only on 05.03.2008 by dismissing the same on the ground of maintainability. Pending writ petition and pending order of stay, the enquiry officer continued enquiry and filed enquiry report on 27.10.2006 without considering the orders of this Court. Hence, the same is not maintainable in law.

3.4. The complaint given by the Deputy Registrar is not only on the basis of Section 81 Enquiry Report. Later, in the year 2011, also on the basis of the additional enquiry report submitted by the Enquiry Officer, dated 12.01.2011, the additional enquiry report has been filed without any statutory extension. Hence, it is not maintainable. Merely asking for the



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Additional Report by the Deputy Registrar through his letter dated 19.08.2010 is also without any specific statutory order and the Deputy Registrar has no powers at all to ask for Additional Report from 81 Enquiry Officer. Hence, the complaint itself is not maintainable. Taking cognizance on the basis of invalid complaint is also not maintainable. Therefore, the charge sheet laid before the Court is also not maintainable.

3.5. The contention of complainant in Item no.1 of the charge sheet, that a sum of Rs.1,70,000/- has been misappropriated in the account of 15 KCC loan parties is absolutely baseless, since the Special Officer who has passed resolution for the grant of loan of Rs.3,080/- alone has disbursed Rs. 4,78,000/- to the KCC loan party getting signature from the party in KCC loan disbursement register and the cash book has been written by the petitioner. So there is no irregularity as stated by the prosecution and the non production of the loan disbursement register would cut the very root of the prosecution case.

3.6. The KCC loan amount sanctioned to 23 members has been disbursed by the Special Officer of the society alone. The sanctioned amount is Rs.2,87,000/- but loan has been disbursed for Rs.3,62,000/- to the said members instead of the sanctioned amount. The special officer has sanctioned KCC loans to the loan parties to the tune of Rs.6,09,030/- to all



24 KCC loan parties by getting their signatures in the loan disbursement register and on producing the same and the loan Ledger entries, the cash book entry has been made by the petitioner. So there is no irregularity.

4. The learned Trial Court however proceeded to dismiss the discharge petition by recording that the question of discharge should be arrived only from the materials filed on the side of prosecution in terms of Section 239 of Cr.P.C., 1973, and not from the defence raised by the accused and hence as per the said provisions, the petition for discharge has to be filed before framing of charges and since in the present case, the copies are given to accused under Section 207 of Cr.P.C., 1973, as early as on 11.12.2012 and the charges were also framed as against the accused and the question was also made, discharge could not be considered after framing of charges and the learned Trial Court dismissed the discharge petition on 30.08.2024. Challenging the same, this Criminal Revision case came to be filed.

5. The learned counsel appearing for the petitioner submitted that, contrary to the respondent police's claim of having served copies on 06.12.2012, the petitioner actually received them only on 27.12.2018. Although the Trial Court asserted that charges were framed as early as 11.12.2012, the petitioner could not prepare a discharge petition without receiving the necessary documents. It was only after the copies were provided on 27.12.2018 that the petitioner was able to act promptly. The



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next hearing was on 03.01.2019, and at the subsequent hearing on 31.01.2019, he diligently filed the discharge application. However, without considering the significant delay in serving copies of the charge sheet dated 31.10.2012, which was for a period of six years, the Trial Court dismissed the discharge petition without addressing the merits of the case. The petitioner therefore seeks that this Criminal Revision be allowed.

6. Per contra, the learned Government Advocate appearing for the respondent categorically contended that the charges were framed as early as on 11.12.2012 and on 30.01.2012, the charge sheet was filed before the learned Trial Court and thereafter copies were duly furnished on 06.12.2012, and they were also questioned for which the accused had pleaded not guilty and thereafter the learned Trial Court proceeded to frame charges and the non furnishing of copies from 11.12.2012 to 27.12.2018 is only because of the absence of the accused himself before the learned Trial Court and in his absence there is no way out for the learned Trial Court for furnishing the copies at all and hence the submission made by the petitioner's counsel cannot be sustainable. At this point, the learned counsel for the petitioner, seriously objected that the claim of the learned Government Advocate that he was absent in all those hearings for six long years, for which, this Court required the learned Trial Court to send the entire records of the case pending before the case in C.C.No.329 of 2012 and the records were received today, i.e., on 06.08.2025 and I carefully perused



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7. As rightly pointed out by the learned Government Advocate on 06.12.2012, the learned Judicial Magistrate had furnished the copy, thereafter on 11.12.2012, the charges were also framed, before which the petitioner who is the accused herein was present and he was also questioned for the offence under Section 408, 465, 467, 468, 471 and 471(a) of IPC and it was explained and however, the petitioner had pleaded not guilty and then charges were also framed and as from 08.05.2014 till 27.12.2018, the accused remained absent.

8. Interesting point is that, having submitted the copies as early as on 06.12.2012, the posting has been maintained as accused absent for furnishing copies for all those 6 long years and thereafter on 27.12.2018, when the accused was present, copies were again furnished to him for further proceedings and thereafter on 03.01.2019 the accused remained absent and on 31.01.2019, he had filed this CrI.M.P.No.976 of 2019 before the learned Trial Court.

9. Heard the learned counsels on either sides and carefully perused the materials available on record.

10. Having carefully gone through the records, I don't find any merit



in the claim of the learned counsel for the petitioner. Though the Court had furnished the copies as early as on 06.12.2012 and had questioned the petitioner herein on 11.12.2012 and thereafter framed the charges having known that the charges were already framed, the petitioner had continuously remained absent for six long years till 20.12.2018 before the learned Trial Court. Having known the fact that the charges were framed now and making use of the inadvertence of the entries in the diary made by the learned Trial Court for having posted with the case for furnishing copies, the petitioner herein without disclosing the fact that the copies were already received by him as early as on 06.12.2012, he silently received the copies afresh again on 27.12.2018 and making use of that taking the same as a ground for seeking discharge from the offences for which he has been charged, he has filed a discharge petition on 31.01.2019. Thereafter, the said application was disposed after the lapse of almost five years from the date of filing on 30.08.2024, by the learned Trial Court. As rightly pointed out by the learned Government Advocate (Crl. side) even thereafter only after the lapse of eight months, he preferred a criminal revision case before this Court with a delay of eight months, just duly condoned by this Court and now the matter is before me. Section 114 of the Indian Evidence Act, 1872, is extracted as follows:

“114. Court may presume existence of certain facts.

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of



*natural events, human conduct and public and private business, in
their relation to the facts of the particular case.*

Illustrations

The Court may presume -

.....

(e) that the judicial and official acts have been regularly performed;

.....”

11. Illustration (e) would make it clear that all the judicial and official acts have been regularly performed. Taking cue from the illustration (e) of Section 114 of the Indian Evidence Act, 1872, I am satisfied that the copies were furnished to the petitioner on 06.12.2012 and thereafter on questioning him on 11.12.2012 that the accused feeling not guilty and the charges were also framed on 11.12.2012, However, on 14.02.2013 inadvertently, the Court proceedings was endorsed by the Court clerk on which day the accused was present. On 02.05.2013, 16.05.2013, 30.05.2013, 13.06.2013, 27.06.2013, 25.07.2013 and 22.08.2013, the accused was present one Crl.M.P.No.1522 of 2013 was also allowed.

12. Inadvertently, the learned Trial Judge on 25.07.2013 had written for furnishing copies. The accused despite being present, had remained quiet without disclosing that he had received the copies on 06.12.2012. It is understood that from 25.07.2013, the next judicial officer who took office



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had inadvertently written for furnishing copies on which circumstances, the counsel for the petitioner before the learned Trial Court remained silent and thereafter from 22.08.2013 till 20.12.2018, the accused remained absent and in a mechanical way, the learned Trial Court had completely erred in posting the case again and again for furnishing the copies. However, after receiving the copies again on 27.12.2018, all these dramatic applications have been made by the petitioner and the learned Trial Court had rightly dealt with it and dismissed the same. I don't find any infirmity in the same.

13. Accordingly, this Criminal Revision case fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06.08.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

Sml

To

1.The Judicial Magistrate No.II,
Virudhunagar.

2.The Inspector of Police,
C.C.I.W – C.I.D.,
Virudhunagar.

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



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L.VICTORIA GOWRI, J.,

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