BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.08.2025

PRONOUNCED ON : 11.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.894 of 2025

and

CRL.M.P.(MD)No.9509 of 2025

Sundareshwari ... Petitioner

Vs.

State of Tamil Nadu,
through,
The Deputy Superintendent of Police,
C.C.I.W - C.I.D., Virudhunagar.
(Crime No.6 of 2017) ... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 438 and 442 of BNSS to call for the records pertaining to the judgment passed in Cr.M.P.No.1706 of 2018 in C.C.No.24 of 2018, dated 19.02.2024, on the file of Judicial Magistrate No.II, Virudhunagar and set aside the same and thus allow this Civil Revision Petition.

For Petitioner : Ms.Porkodi Karnan
for Mr.Iniyavan

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

The present Criminal Revision Petition is directed against the order dated 19.02.2024 in Cr.M.P.No.1706 of 2018 in C.C.No.24 of 2018 passed by the learned Judicial Magistrate No.II, Virudhunagar, whereby the discharge petition filed by the petitioner/accused No.2 under Section 239 Cr.P.C. came to be dismissed.

2. Factual Matrix:

The petitioner was serving as an Assistant in the Virudhunagar District Central Co-operative Bank, Regulating Marketing Branch. She was entrusted with the key and locker of Q-108, Amathur Primary Agricultural Co-operative Credit Society, along with one Nallaraj, under the double key locker system, during the period from 13.07.2011 to 04.05.2012. On the basis of a Special Report filed by the Inspection party pointing out irregularities in the Society during the period between 01.04.2010 and 31.08.2015, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was ordered by the Deputy Registrar, Aruppukottai. Based on the enquiry report, a complaint was lodged by the Deputy Registrar of Co-operative Societies, Ravindran, against the Secretary Nallaraj (A1), Salesman Sundaramahalingam (A3), and the present petitioner (A2). It was alleged that the Secretary, during his tenure, had closed certain jewel loans after redemption of jewels, but failed to bring such accounts in the Day Book of the Society, thereby misappropriating the amounts remitted by the loanees. The prosecution imputed liability on the petitioner for certain items enumerated in the enquiry report (Items 16(1), 16(3), and 16(6)), quantifying a total loss of Rs.3,25,185/-. In C.C.No.24/2018, as per final report, the petitioner was alleged to be jointly responsible with the Secretary for a misappropriated amount of Rs.1,82,485/-. In the final report, the petitioner was arrayed as second accused for the offences punishable under sections 408, 409, 468, 471, 477(A) r/w 120(B) IPC. However, the petitioner asserts that there is no material in the final report explaining her specific role in the alleged misappropriation or any reference to her involvement in the statements recorded under Section 161(3) Cr.P.C.

3. Discharge Petition and Impugned Order:

The petitioner filed a discharge petition in Cr.M.P.No.1706 of 2018 before the learned Judicial Magistrate-II, Virudhunagar, contending that she had merely been a joint key-holder and had no active role in the alleged misappropriation. It was further contended that the allegations in the final report were vague and lacked specific attribution of any act of criminal intent. The learned Magistrate, after perusal of the final report and accompanying documents, dismissed the discharge petition holding that *prima facie* materials were available against the petitioner and that her liability as a joint custodian of the locker could be decided only during trial.

4. Grounds of Revision:

Challenging the said dismissal, the petitioner has approached this Court on the following grounds:

(i) The impugned order is contrary to law, evidence, and probabilities of the case.

(ii) The surcharge proceedings and criminal proceedings arise from the same transaction and the petitioner has been exonerated in surcharge proceedings by the Principal District and Sessions Judge, Srivilliputhur in C.M.A.(CS) No.12 of 2017, dated 27.02.2023.

(iii) The final report does not specify the petitioner’s role or participation in the alleged misappropriation.

(iv) There is no prima facie material or statement implicating the petitioner.

(v) In the absence of mens rea, no offence under Sections 408, 409, 468, 471, 477(A) or 120(B) IPC can be made out.

(vi) Continuation of criminal prosecution despite exoneration in quasi-judicial proceedings amounts to abuse of process of law.

5. Submissions of the learned counsel for the petitioner:

(i) Pointing out the limited role of the petitioner, the learned counsel for the petitioner submitted that, the petitioner was holding additional charge of joint custodian of locker for a brief period of ten months and had no supervisory control over day-to-day affairs of the Society. The primary custody and control were with the Secretary (A1).

(ii) He further submitted that, the Principal District and Sessions Judge, Virudhunagar in C.M.A.(CS) No.12 of 2017, categorically held that there was no misappropriation or willful negligence attributable to the petitioner and that non-supervision does not amount to willful negligence since she derived no benefit, pertaining to the surcharge proceedings.

(iii) Insisting on the absence of *mens rea* on the part of the petitioner, the learned counsel contended that the only allegation against the petitioner is that she failed to verify the day book entries.

Such negligence, even if true, may attract only departmental or civil liability and cannot constitute criminal breach of trust.

(iv) Placing reliance on ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***[1], the learned counsel elaborated the law on discharge, wherein the Supreme Court held that discharge must be ordered if, upon consideration of the police report and documents, the allegations do not *prima facie* disclose the ingredients of an offence.

(v) The learned counsel further relied upon ***Gunasekaran v. State of Tamil Nadu***[2], where this Court held that mere negligence or dereliction of duty may entail civil consequences but cannot fasten vicarious criminal liability unless supported by proof of dishonest intention.

(vi) He further relied upon the Judgment in ***Radheshyam Kejriwal v. State of West Bengal***[3], in which, the Supreme Court held that where an accused has been exonerated on merits in adjudication proceedings on identical facts, continuation of criminal prosecution would amount to abuse of process of law. Pointing out the similar view

1 (2019) 16 SCC 547

2 (2015) 4 MLJ (Crl) 497

3(2011) 3 SCC 581

taken in ***Videocon Industries Ltd. v. State of Maharashtra***[4], the learned counsel pressed upon the proposition that the petitioner should be given with the benefit of having been exonerated in surcharge proceedings in C.M.A.(CS)No.12 of 2017 by the Principal District and Sessions Judge, Srivilliputhur and sought to allow the Revision Petition, by setting aside the impugned order of dismissal and that she be discharged from the proceedings in C.C.No.24 of 2018.

6. Submissions on Behalf of the Respondent:

The Learned Additional Public Prosecutor contended that the petitioner, being a joint key-holder of the Society locker, had equal responsibility in ensuring the safety of pledged jewels and the integrity of jewel loans. The allegations involve offence under Section 120-B IPC (criminal conspiracy), which can be proved only during trial after evaluating oral and documentary evidence. The trial court rightly found *prima facie* materials to proceed, and no interference is warranted at the discharge stage.

4 (2016) 12 SCC 315

7. Points for Consideration:

The core issue to be determined in this revision is, whether the impugned order dismissing the petitioner's discharge petition under Section 239 Cr.P.C. warrants interference by this Court?

8. Analysis:

Upon careful consideration of rival submissions and perusal of the records, the following aspects emerge:

(a) Under Section 239 Cr.P.C., the Magistrate shall discharge the accused if, upon considering the police report and documents, the charge is found to be groundless. The provision mandates limited scrutiny, that is, whether the uncontroverted allegations, if taken at face value, disclose commission of the offence alleged. The defence of the accused cannot be considered in depth at this stage.

(b) In the instant case, the petitioner's name appears in the final report as A2, having joint custody of the locker during the relevant period. However, there is no explicit material to show her active participation, dishonest intention, or receipt of any pecuniary benefit.

The final report and statements do not attribute any specific overt act of misappropriation. The alleged omission to verify day books or ledgers, at best, constitutes administrative negligence, insufficient to invoke criminal provisions under Sections 408 or 409 IPC.

(c) It is an undisputed fact that surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act were set aside by the Principal District and Sessions Judge, Virudhunagar, in C.M.A.(CS) No.12 of 2017, with a categorical finding that there was no willful negligence or misappropriation by the petitioner. When quasi-judicial findings exonerate an individual on merits after full enquiry, continuation of criminal prosecution based on identical facts amounts to abuse of process of law, as laid down in ***Radheshyam Kejriwal v. State of West Bengal***[5].

(d) I am of the considered view that, the offences under Sections 408 and 409 IPC require proof of dishonest intention or misappropriation of entrusted property. In the absence of allegations of deliberate participation or benefit, the essential ingredient of *mens rea* is missing. The Hon'ble Supreme Court in ***Gunasekaran v. State of Tamil Nadu***[6] held that negligence or non-supervision cannot constitute criminal breach of trust.

5 Supra 3
6 Supra 2

(e) It is pertinent to state that, merely being a joint key-holder does not automatically translate into criminal liability unless there is a material showing active participation in misappropriation. Departmental lapses are distinct from criminal misconduct.

9. In the facts and circumstances of the instant case, I am of the considered opinion that, from the materials on record, it is evident that:

(i) The petitioner was only an Assistant and joint custodian of the locker for a limited period;

(ii) No direct act of misappropriation or falsification of records has been attributed to her;

(iii) The surcharge proceedings on identical allegations have culminated in her exoneration;

(iv) The continuation of prosecution without fresh incriminating material would cause unwarranted harassment and amount to abuse of process of law.

(v) Hence, the order of the learned Judicial Magistrate dismissing the discharge petition suffers from legal infirmity and warrants interference.

10. Accordingly, the Criminal Revision Case is allowed. The order dated 19.02.2024 passed by the learned Judicial Magistrate No.II, Virudhunagar, in Cr.M.P.No.1706 of 2018 in C.C.No.24 of 2018 is set aside. The petitioner/Accused No.2 is hereby discharged from the criminal proceedings in C.C.No.24 of 2018 on the file of the said Court. Consequently, connected miscellaneous petition is closed.

11.11.2025

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

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To

1.The Judicial Magistrate No.II,
Virudhunagar.

2.The Deputy Superintendent of Police,
C.C.I.W - C.I.D., Virudhunagar.

L.VICTORIA GOWRI, J.,

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