



CRL RC(MD)Nos.18 to 20 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.08.2025

PRONOUNCED ON : 21.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)Nos.18 to 20 of 2023

and

CRL MP(MD)Nos.247, 248, 252, 253, 254 and 256 of 2023

P.Xaviour Raj

... Petitioner /Petitioner /
Accused No.2

Vs.

The State through,
The Inspector of Police,
Commercial Crimes Investigation Wing,
Nagercoil, Kanyakumari District.
(Crime No.1 of 2017)

... Respondent / Respondent /
Complainant

PRAYER in CRL RC(MD)No.18 of 2023: Criminal Revision Petition is filed under Section 397 r/w 401 Cr.P.C., 1973, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.II (CCIW – Special Court), Tirunelveli, in Cr.M.P.No.1414 of 2017 against C.C.No.02 of 2017 dated 16.09.2022 and set aside the same.

PRAYER in CRL RC(MD)No.19 of 2023: Criminal Revision Petition is filed under Section 397 r/w 401 Cr.P.C., 1973, to call for the entire records pertaining to the order passed by the learned Judicial



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Magistrate No.II (CCIW – Special Court), Tirunelveli, in Cr.M.P.No.1415 of 2017 against C.C.No.03 of 2017 dated 16.09.2022 and set aside the same.

PRAYER in CRL RC(MD)No.20 of 2023: Criminal Revision Petition is filed under Section 397 r/w 401 Cr.P.C., 1973, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.II (CCIW – Special Court), Tirunelveli, in Cr.M.P.No.1416 of 2017 against C.C.No.04 of 2017 dated 16.09.2022 and set aside the same.

For Petitioner : Mr.K.P.S.Palanivel Rajan,
Senior Counsel,
For Mr.M.Kannan

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

COMMON ORDER

Prologue:

These three Criminal Revision Petitions, viz., CrI.R.C.(MD) Nos. 18 to 20 of 2023, arise from a common First Information Report in Crime No. 1 of 2017, registered by the CCIW-CID Police, Tirunelveli, pursuant to an enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, by Mr. Tamilarasu, Enquiry Officer appointed by the Deputy Registrar of Co-operative Societies.



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2. The petitioner, Mr. Xavier Raj, then serving as Clerk of the Kolvel Primary Agricultural Co-operative Credit Society, stands charged for alleged irregularities committed during three accounting periods:

Calendar Case No.	Period of Alleged Offence	Relevant Revision
C.C. No. 2 of 2017	03.04.2009 – 02.04.2010	CrI.R.C.(MD) No. 18 of 2023
C.C. No. 3 of 2017	05.04.2010 – 04.04.2011	CrI.R.C.(MD) No. 19 of 2023
C.C. No. 4 of 2017	25.04.2011 – 24.04.2012	CrI.R.C.(MD) No. 20 of 2023

3. In all three charge-sheets, the petitioner is alleged to have committed offences under Sections 408, 467, 468, 471 and 477-A read with Section 34 IPC. The Joint Registrar of Co-operative Societies, Kanyakumari Zone, Nagercoil, while exercising revisional powers under Section 153 of the Tamil Nadu co-operative Societies Act, 1983, passed an order dated 27.07.2018 fully exonerating the petitioner. Nevertheless, the CCIW-CID Police proceeded with criminal prosecution. Hence, the petitioner filed the discharge petitions under Section 239 Cr.P.C., 1973, before the the learned Judicial Magistrate No. II (CCIW-Special Court), Tirunelveli. However, the same were dismissed by the



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learned Judicial Magistrate No. II (CCIW-Special Court), Tirunelveli.

Challenging the same, the present Criminal Revision Petitions came to be filed.

4. *Gist of the learned Trial Court Orders:*

The learned Judicial Magistrate, by separate but identical orders in C.C. Nos. 2, 3 and 4 of 2017, held that Section 81 enquiry and Section 153 of the Tamil Nadu co-operative Societies Act, 1983, held that exoneration are departmental in character. The criminal charges rest on independent penal liability. The *prima facie* materials exist justifying continuation of trial and that departmental exoneration cannot by itself warrant discharge. Accordingly, all three petitions for discharge were dismissed.

5. The petitioner has, therefore, directly invoked the revisional jurisdiction of this Court.



5.1. Common Grounds of Revision:

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Across all three revisions, the petitioner has urged a unified and consistent challenge to the impugned dismissal orders. It is contended that the very substratum of the criminal prosecution in C.C. Nos. 2, 3 and 4 of 2017 arises exclusively from the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and that the charges in the criminal cases are verbatim and intrinsically identical to those levelled in the disciplinary domain. The petitioner places strong reliance on the revisional order dated 27.07.2017 passed by the Joint Registrar of Co-operative Societies, Kanyakumari Zone, Nagercoil, under Section 153 of the Act, wherein, upon a detailed appreciation of records, documents, and evidences, the petitioner was fully, completely and honourably exonerated of all the allegations. It is further submitted that such exoneration has attained judicial finality by virtue of the order of this Court in W.P.(MD) No.18574 of 2018 dated 11.04.2022, wherein this Court has categorically recorded that the misappropriation stood admitted and repaid by the then Secretary of the Society, and that the petitioner, being only a salesman, had no role in any of the questioned transactions, particularly during the period of alleged defalcation, since he had already been transferred out in 2009 and had handed over charge long prior to the dates of alleged shortfalls in 2011. The petitioner asserts that continuance of criminal prosecution despite such



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conclusive departmental exoneration amounts to abuse of process, especially as the allegations in the criminal cases are inseparably rooted in the same set of facts, transactions and records forming the basis of the Section 81 enquiry. It is also contended that the materials collected by the prosecution do not disclose the ingredients of Sections 408, 467, 468, 471, 477-A or 34 IPC; that the chances of conviction are extremely remote. Continuation of the criminal trial on identical facts after exoneration on merits is impermissible. The petitioner therefore contends that the Trial Court mechanically rejected the discharge petitions without appreciating the effect of the unassailed departmental exoneration and the legal standards governing discharge under Section 239 Cr.P.C., thereby rendering the impugned orders erroneous, unsustainable and liable to be set aside.

6. *Submissions:*

The petitioner contends that the criminal cases stem from the same enquiry report under Section 81, the Joint Registrar's order dated 27.07.2018 exonerating him should conclude the matter, continuing the prosecutions after exoneration amounts to double jeopardy and abuse of process. The learned Judicial Magistrate failed to appreciate that his duties were purely clerical.



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7. The learned senior counsel appearing for the petitioner argued that the order of exoneration under Section 153 of the Tamil Nadu co-operative Societies Act, 1983, being passed by the revisional authority after full consideration of the same records, ought to have been accepted as conclusive. He relied on ***Amit Kapoor vs Ramesh Chander and another***¹; and ***Vijayee Singh and others vs State of U.P***² , ***P.S.Rajya vs State of Bihar***³ , ***Ashoo Surendranath Tewari vs Deputy Superintendent of Police ,EOW,CBI and another***⁴.

8. It was further submitted that in C.C. No. 2 of 2017, 12 witnesses have been examined; in C.C. No. 3 of 2017, 12 witnesses; and in C.C. No. 4 of 2017, 14 witnesses, with only a few witnesses remaining indicating that the trial has nearly concluded and continued prosecution would serve no purpose.

10. The learned Government Advocate (Crl. Side) Mr.M.Shakthi Kumar submitted that departmental exoneration does not extinguish criminal liability, the two proceedings resting on different standards of

1 2012 (9)SCC 460

2 1990(3)SCC 190

3 1996(9)SCC 1

4 2020(9)SCC 636



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proof. He relied on **Ratilal Bhanji Mithani v. State of Maharashtra and Others**⁵ and **Bharat Parikh v. Central Bureau of Investigation and Another**⁶ in supporting his arguments.

11. He further relied on the decision of this Court in **State, Directorate of Vigilance and Anti-Corruption v. Suo Motu**⁷, in CrI.R.C. No. 1559 of 2023, decided on 26.02.2024,, reiterating that the power of discharge after framing of charge is nowhere mandated in the Code of Criminal Procedure, 1973, and that a Revisional Court cannot assume powers under Section 482 Cr.P.C., 1973. Hence, the revisions, being filed after commencement of trial, deserve dismissal.

12. Heard the learned counsels on either side and carefully perused the materials on record.

Analysis:

13. The factual matrix is undisputed. The same enquiry under Section 81 of the Act yielded multiple charge-sheets for different

⁵ (1979) SCC (Cri) 405

⁶ (2008) 3 SCC (Cri) 609

⁷ 2024 SCC online Mad 283



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financial years, and the petitioner was later exonerated departmentally.

Though the issue for consideration is whether an accused facing charges under Sections 408, 467, 468, 471 and 477-A r/w 34 IPC can claim discharge solely because of departmental exoneration, after commencement of trial, in the instant case, the point which arises for consideration is whether this Court standing in revision jurisdiction could step into analysing the merits of the case, when trial before the learned Trial Court is almost concluded.

14. As laid down in the case of **Ratilal Bhanji Mithani v. State of Maharashtra and Others**⁸ and reaffirmed in **Bharat Parikh v. Central Bureau of Investigation and Another**⁹ by the Hon'ble Apex Court, once the trial has commenced and charges are framed, the Code does not contemplate a fresh power of discharge. The proper course would be to seek relief under Section 482 Cr.P.C., 1973, not by way of revision. In the present case, the trials have progressed substantially, with more than a dozen witnesses examined in each. Interference at this stage would amount to truncating a nearly-completed trial.

⁸ (1979) SCC (Cri) 405

⁹ (2008) 3 SCC (Cri) 609



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15. Accordingly, I am not inclined to interfere with the impugned orders of the learned Judicial Magistrate No. II (CCIW-Special Court), Tirunelveli, which do not otherwise, suffer from any illegality or impropriety.

16. In the facts of the given case in hand, I am of the considered view that, the petitioner's plea for discharge based on departmental exoneration is not maintainable at this stage. The stage for discharge has long passed and the trial has nearly concluded. This Court, sitting in revision, cannot invoke powers under Section 482 Cr.P.C., 1973. However, liberty is reserved to the petitioner to work out his remedy in the manner known to law.

17. In fine, all these Criminal Revision Cases, viz., Crl.R.C.(MD) Nos. 18, to 20 of 2023, are dismissed. The orders of the Judicial Magistrate No. II (CCIW-Special Court), Tirunelveli, in C.C. Nos. 2 to 4 of 2017 respectively, are confirmed. It is, however, made clear that this dismissal shall not preclude the petitioner from working out his remedy in accordance with law before the appropriate forum, including the



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learned Trial Court. Leaving all questions of law open, the learned Trial Court is directed to proceed with the case, as expeditiously as possible, without being influenced by any observation in this case. Consequently, connected miscellaneous petitions are closed. No costs.

21.11.2025

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

To

- 1.The Judicial Magistrate No.II,
(CCIW – Special Court), Tirunelveli.
- 2.The Inspector of Police,
Commercial Crimes Investigation Wing,
Nagercoil, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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