P.Arumugam Vs. the State.

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Court : Chennai

Decided On : Mar-13-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC), - Section 397, 401; Indian Penal Code (45 of 1860) - Section 409, 468, 477, 34, 408, 477(A), 34; Tamil Nadu Cooperative Societies Act, 1983 - Section 81, 176

Appeal No. : CRL.R.C(MD)No.93 of 2012 and M.P(MD)Nos.1 and 2 of 2012

Appellant : P.Arumugam.

Respondent : The State.

Advocate for Pet/Ap. : Ms.J.Nisha Banu, Adv.

Judgement :

Prayer

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C., praying this Court to call for the records relating to the order dated 22.07.2011, passed in Crl.M.P.No.639 of 2011 in C.C.No.3 of 2011, on the file of the Judicial Magistrate No.II, Tirunelveli and to set aside the same as illegal and discharge the petitioner from the criminal charges levelled against him.

ORDER

1. This Criminal Revision Case has been filed questioning the correctness and legality of the order, dated 22.07.2011 made in Crl.M.P.No.639 of 2011 in C.C.No. 3 of 2011, on the file of the Court of learned Judicial Magistrate NO.II, Tirunelveli.

2. The said case was taken on file based on the final report submitted by the Investigating Officer in Cr.No.1 of 2010, registered on the file of C.C.I.W., C.I.D, Tirunelveli, for alleged offences punishable under Sections 409, 468, 477(A) r/w Section 34 of I.P.C. based on the complaint of the Deputy Registrar of Co-operative Societies, a case was registered on the file of the respondent-police as Crime No.1 of 2010, for alleged offences under punishable Sections 408, 477(A) of I.P.C against one Srinivasan, the then Secretary of the Tamil Nadu Government Transport Employees Cooperative Thrift and Credit Society(herein after referred to as Society) alleging that a sum of Rs.3,24,528/- had been misappropriated by him by raising loans in the name of three members, who had resigned their membership. After completing investigation, the Investigating Officer submitted a final report against the said Srinivasan showing him as the first accused and the petitioner herein arraigning him as the second accused for prosecuting them for offences punishable under Sections 408, 467, 468, 467(A) of I.P.C., committed by the first accused and for offences punishable under Sections 166, 409, 467, 468 and 477(A) r/w Section 34 of I.P.C allegedly committed by the petitioner herein/second accused.

3. The said final report was taken on file by the court below as C.C.No.3 of 2011. On appearance, the petitioner, who figures as the second accused, filed a petition under Section 239 Cr.P.C., praying for an order of discharge contending that there was no sufficient material to proceed against the petitioner in the said Calendar Case. The learned Judicial Magistrate No.II, Tirunelveli, after hearing both sides, came to the conclusion that there were sufficient materials for proceeding against the petitioner herein and dismissed the petition, by the impugned order dated 22.07.2011. The correctness of the said order is questioned in the present revision.

4. This Court heard the submissions made by Mrs.J.Nisha Banu, learned counsel for the revision petitioner and perused the grounds of revision, copy of the order

and other documents produced in the form of typed-set of papers.

5. It is the contention of the learned counsel for the petitioner that the petitioner could not be prosecuted for any offence which is said to have been committed after the petitioner had left the service of the society as its Special Officer. The learned counsel for the petitioner submits that since the misappropriation was allegedly committed by the first accused/Srinivasan on 17.09.2008 and nearly six months prior to the said date, the petitioner had been transferred from the post of Special Officer of the said society, the petitioner cannot be held liable for any act that might have been committed by the then Secretary-Srinivasan, who has been arrayed as the first accused.

6. The learned counsel for the petitioner would submit further that the report of the Enquiry Officer under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983(hereinafter referred to as the Act) does not contain any reference to the petitioner as a person having played any part in the alleged misappropriation and that therefore, the prosecution launched against the petitioner is not maintainable and on that ground alone, the petitioner is entitled to be discharged. Yet another contention raised on behalf of the learned counsel for the petitioner is that there was no misappropriation, whatsoever, at all, either by the petitioner or by the above said Srinivasan/first accused; that the loan application submitted by the erstwhile members before their resignation came to be processed and orders sanctioning the loan came to be passed before their resignation,but, actually writing of the cheque was made subsequent to their resignation; that because of the same, the cheque issued in their names were to be encashed by the society itself and that only a book adjustment was made. With the above said submission, the learned counsel for the petitioner wants to show that there was no misappropriation at all either by the petitioner or by the then Secretary of the society namely, the first accused/Srinivasan insofar as the final report itself contains a statement that the amount allegedly misappropriated was remitted back on the very same day. It is the further contention of the learned counsel for the petitioner that the petitioner is entitled to the protection under Section 176 of the 'Act'. On the basis of the above said submissions, the learned counsel for the petitioner contends that the Court below has committed a grave error in dismissing

the petition for discharge and the error committed by the Court below has to be corrected by the High Court in exercise of its revisional power.

7. This Court paid its anxious consideration to the above said submissions made by the learned counsel for the petitioner and comes to the conclusion that the said contentions are liable to be rejected as untenable.

8. Regarding the first contention of the learned counsel for the petitioner that the petitioner could not be prosecuted for the alleged misappropriation committed by the first accused, the then Secretary of the society, after the petitioner had left the post of Special Officer of the co- operative society concerned, it is pointed out that though the petitioner had left the post of Special Officer of the concerned society nearly six months prior to the date of alleged misappropriation, as per prosecution version, cheques were drawn in the names of the erstwhile members on 17.09.2008 and the said cheques had been signed by the petitioner herein. The fact that the cheques dated six months subsequent to the date on which the petitioner left the post of Special Officer contain the signatures of the revision petitioner signed as the Special Officer of the society is projected as an act in aid of the alleged misappropriation committed by the Secretary of the society, namely the first accused. The explanation sought to be offered by the learned counsel for the petitioner that the Special Officer had signed blank cheques and the same could have been subsequently filled up with subsequent dates and for the said act on the part of the petitioner, the petitioner could not be prosecuted for a criminal offence. The question as to when the cheque was prepared and what was the date on which the cheque was signed by the petitioner, cannot be decided on the basis of the present contention of the petitioner that the signatures of the petitioner had been affixed while the petitioner was in the post of Special Officer and the cheque leaves had been later on filled up with subsequent dates. It has got to be decided based on the evidence to be adduced in the trial. Therefore this Court is of the considered view that the above said contention raised on behalf of the petitioner cannot be countenanced.

9. The second contention raised on behalf of the petitioner is that there was no misappropriation, whatsoever, at all, either by the petitioner or by the first accused

and that there was only a book adjustment also cannot be accepted as a ground for discharge, since the said aspect has to be considered in the light of evidence to be adduced in trial. The fact that the final report contains a reference to the remittance of the amount allegedly misappropriated on the very same day, has emboldened the petitioner to put forth the above said contention that there was no misappropriation either by the petitioner or by the first accused/Srinivasan. There are materials to show that cheques were drawn in the names of the erstwhile members and they were encashed and while encashing the cheques, signatures of such erstwhile members were found on the reverse side of the cheques and that the said amount was temporarily misappropriated and the same was later on remitted into the account of the society on the very same day. The report of the Enquiry Officer submitted under Section 81 of the 'Act' contains a clear reference to the alleged misappropriation committed by the Secretary, who has been arrayed as the first accused. Only based on the said report, complaint was made and the First Information Report came to be registered. The report under Section 81 of the 'Act' contains not only a reference to the temporary misappropriation, but also the fact that the misappropriated amount, barring Rs.30/-, had been remitted by the Secretary. Therefore, we cannot, now, come to a definite conclusion as to whether there was temporary misappropriation as projected by the prosecution. Evidence has been collected by the Investigating Officer and based on the materials collected during investigation, the Investigating Officer has submitted a final report to the effect that there had been misappropriation of the funds of the society. It cannot be said that there is absence of sufficient material to support the prosecution case regarding the alleged misappropriation. The evidentiary value, reliability or the demeanor of the witnesses examined by the Investigating Officer, cannot be considered at the stage of framing of charge or considering the question whether the accused can be proceeded with or not? No attempt of evaluation of evidence shall be made.

10. On the other hand, in case no conviction is possible even if the materials placed before Court by the prosecution are accepted to be correct,then the Court can come to the conclusion that there is no sufficient ground of proceeding against the accused. In this case, we cannot arrive at such a conclusion because, the cheque had been drawn in the names of the persons who had resigned from their

memberships in the society. Apart from that as per the prosecution version, cheques were encashed in their names In addition, cheques bear dates which are subsequent to the transfer of the petitioner herein from the post of Special Officer of the society concerned. The explanation sought to be offered by the petitioner, at best, can be taken as a plea of defence and the same cannot be projected as a ground for seeking discharge. For the said reasons, this Court comes to the conclusion that the second contention also deserves to be rejected.

11. The learned counsel for the petitioner has relied on Section 176 of the 'Act' in support of her contention that the petitioner is entitled to the protection contemplated under the above said Section and hence, the prosecution launched against the petitioner is obnoxious. This Court wonders how the protection contemplated under Section 176 of the 'Act' can be extended to the petitioner, that too, in respect of the alleged act constituting the offence for which the petitioner is sought to be prosecuted. Section reads as follows:-

No suit, prosecution or other legal proceeding shall be against the Government or any officer or servant of the Government or the Registrar or any person authorised by him for anything which is in good faith done or intended to be done under this Act or any rule or by-law made thereunder.

The protection is available to the Government or any officer or servant of the Government or the Registrar or any person authorised by the Registrar for anything done in good faith. Though the petitioner can be said to be one of the persons referred to in the said Section, the protection shall be available only if the act alleged has been done in good faith. The case of the prosecution is that the petitioner, by affixing his signature in the cheque even after he left the post of Special Officer, had helped the first accused in his commission of misappropriation. Creation of false document has already been alleged. It cannot be said that the said allegations made on the side of the prosecution are baseless. There are materials. Whether they are reliable and whether the acts alleged on the part of the petitioner were committed in good faith or not- cannot be gone into now. It has to be taken as a plea of defence which shall be considered in the trial. Therefore, the said contention of the learned counsel for the petitioner also deserves to be rejected.

12. The learned counsel for the petitioner made yet another attempt to contend that the petitioner is entitled to discharge because no averment was found against the petitioner in the complaint forming the basis of the First Information Report. First Information Report is not an encyclopedia of criminal prosecution. It is nothing more than a document which sets the criminal law in motion. It is not necessary that the names of the accused should find a place in the First Information Report. It cannot be said that no person not named in the First Information Report can be charge-sheeted, if they are found to have committed the offence or offences. In this case, though the First Information Report was registered against the first accused/Srinivasan alone, during the course of investigation, the Investigating Officer came across the documents showing the alleged part played by the petitioner in the commission of the offences and hence chose to lay a charge-sheet against the person named in the First Information Report as well as the petitioner herein. The same cannot be found fault with.

13. The position at present is that it cannot be said that there is no sufficient material to presume that the petitioner has committed an offence, if not, the offence mentioned in the First Information Report or the Final Report. A person shall be entitled to discharge only if the materials do not make out a prima facie case for presuming that he has committed an offence. Otherwise, the Court has to frame a charge and proceeded with the trial. In this Case, the learned Judicial Magistrate No.II, Tirunelveli on proper application of the principle of law and without attempting at an appreciation of evidence, has arrived at the conclusion that there are sufficient materials to proceed against the petitioner and has chosen to dismiss the petition for discharge. This Court does not find any defect or infirmity in the order warranting interference by this Court. The revision deserves to be dismissed in limini.

14. Accordingly, the Criminal Revision case is dismissed. At the request of the petitioner, though not necessary, it is made clear that the trial Court shall decide the case on merits without being influenced by any of the observations made in this order. Consequently, connected Miscellaneous Petition is dismissed.