

S.Antony Vs. State

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Court : Chennai

Decided On : Mar-21-2013

Judge : T.S.Sivagnanam

Appellant : S.Antony

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

21. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
Crl.R.C.No.437 of 2012 M.P.No.1 of 2012 S.Antony Jayaraj ... Petitioner Vs. State
by The Inspector of Police, CCIW CID, Coimbatore Rural Unit, Coimbatore.
Cr.No.6 of 2005 ... Respondent PRAYER : Criminal Revision is filed under
Sections 397 and 401 of Cr.P.C., to call for the entire records in so far relates to
the order passed in C.M.P.No.225 of 2008 in C.C.No.3 of 2006, dated 01.02.2011,
on the file of Judicial Magistrate-IV, Coimbatore, Coimbatore District and set-aside
the same in so far relates to the petitioner is concerned. For Petitioner :
Mr.C.Prakasam For Respondent : Mr.C.Balasubramaniam Additional Public
Prosecutor ***** O R D E R The short facts of the case are as follows:- The
revision petitioner herein / second accused has filed C.M.P.No.225 of 2008, on the
file of Judicial Magistrate not IV, Coimbatore to discharge him from the criminal
proceedings in C.C.No.3 of 2006, stating that he worked as an Extensive Officer of
the Co-operative Society for the entire block of Annur from 22.09.2001 to
19.11.2002. Then, by an order of Joint Registrar of Co-operative Societies, the

petitioner took additional charge as Special Officer from 03.04.2002 to 19.11.2004. The case of the prosecution was that during the alleged period from 01.01.2003 to 31.12.2003, the petitioner, along with the accused created false records and benami loans as if crop loans have been issued to the thirty members of the bank to the tune of Rs.15,85,440/- while the loans already issued to the said thirty members were still in due and not repaid by them and A-1 to A-5 misappropriated the amount out of the funds of the PACB. It was stated that the Secretary shall be the Chief Executive Officer of the bank and all the employees have been fixed with duties and responsibilities and liabilities. A-1 as the Secretary, has given confession statement before the enquiry officer and agreed to repay the alleged entire amount. The petitioner was not responsible for the day to day affairs of the bank. There was no materials to show that the petitioner has instigated any person to commit the offence or held up conspiracy to commit the offence. The petitioner has no entrustment and dominion over the property of the bank. Therefore, the petitioner has prayed before the learned Magistrate-IV, Coimbatore to discharge him from the proceedings.

2. The Inspector of Police, who is attached to the Central Crime Investigation Wing (CCIW CID), Coimbatore Rural Unit, had filed a counter statement and resisted the discharge petition. The respondent stated that on a complaint given by the Deputy Registrar of Co-operative Societies, dated 30.06.2005, the criminal case has been registered for the offence under Section 408, 477 (A) of IPC. The Annur P.A.C.B., which was registered under the Tamil Nadu Co-operative Societies Act, 1961, is administered by the board of President or Special Officer. From the records, it was evident that crop loans were sanctioned by the Central Co-operative Bank as per the recommendations given by the petitioner. The duties and responsibilities as fixed for the employees of the bank by resolution dated 03.04.2002 was a typed paper created belatedly and the petitioner had created the records. The petitioner has failed to supervise the vouchers, loan ledgers, loan applications etc and therefore, aided in the mis-appropriation of the alleged funds. The documents submitted on the side of the prosecution reveals prima-facie charge against the petitioner. The charge could be proved only after commencement of the trial. Therefore, the respondents have prayed to dismiss the said discharge petition.

3. After considering the averments of both parties, the learned Magistrate has framed an issue and on hearing the arguments of both parties and on considering the citations marked, the learned Magistrate dismissed the said discharge petition and had observed that the prosecution case clearly shows that there were sufficient records and documents available on the side of the prosecution to show prima-facie case against the petitioner. The learned Magistrate further observing that the in the present stage of the case no conclusions can be arrived at regarding the charges framed against the petitioner, without the commencement of the trial, dismissed the discharge petition.

4. Against the dismissal of the said discharge petition, the accused has filed the above revision.

5. The highly competent counsel for the revision petitioner has submitted that the defacto complainant, i.e., Deputy Registrar of Co-operative Societies lodged the complaint before the respondent police and in the said complaint, the petitioner had not been implicated and as such, there is no prima facie case, in order to proceed further with the criminal case against him. The learned counsel has further submitted that no recovery orders have been passed against the petitioner. The respondent police implicated the petitioner in the charge sheet, without any documentary evidence. The Deputy Registrar of Co-operative Societies has conducted enquiry, before levelling a complaint, before the Inspector of Police and his findings was that the Secretary of the Society had committed mis-appropriation of funds. There is absolutely no allegation against the revision petitioner herein. The learned counsel has cited an order passed in CrI.O.P.No.5747 of 1999, dated 10.01.2001, which is as follows:- "6. More over, as per the Circular dated 11.12.1991 by the Registrar of Co-op. Societies, Chennai, it is clear that though the Officers Incharge may have overall control, they cannot be held to be criminally liable merely because they failed to check and scrutinize the accounts for a particular period and that in those cases, no complaint should be filed against those officers with the police. The relevant portion of the circular is this:- 'Taking criminal action against the departmental officers holding Chief Executive or Administrative and the Supervisory posts on the Co-operatives who are involved vigorously has also been examined. The departmental officers, working or Foreign

service terms in Co-operative organizations may not have the chance to scrutinize each and every transactions of the society. Though they may an over all control they cannot be hold criminally liable for all the criminal irregularities committed by the staff working under them. Though they fail to check and scrutinize the accounts etc., or exercise effective control over subordinate staff such failure may not deserve criminal action. On the other hand, the failure of this nature, will be failure to discharge their duties properly on negligence and this may be dealt with though officers who are not directly involved in the funds or misappropriations need not be included as delinquents, in a routine manner, in the inquire reports or complaints filed with the police.' 6. The learned counsel for the revision petitioner has further submitted that unfortunately, the petitioner who stands in a similar footing has been made as as second accused, along with the Secretary, who is arrayed as the main accused in this case. Under the circumstances, the inclusion of the petitioner's name in the charge sheet and taking cognizance for the offence under Section 109 r/w Section 408 IPC against the petitioner is not valid in law. Further, the trial Court has failed to consider the ingredients of Section 409 of IPC, which reads as follows:- "(i) A public servant or executive of a bank or merchant or broker or agent or acting in such capacity persons. (ii) Such persons were entrusted with certain property or such persons had dominion over certain property by entrustment or handover. (iii) Such person committed breach of trust for the said property." The learned counsel has submitted that none of the above said ingredients contained in the section is applicable to the petitioner herein, as per the documentary evidence.

7. The learned counsel has further pointed out that the essential ingredients of Section 477 (A) of IPC reads as follows:- "(i) A clerk, officer or employed or acting in such capacity. (ii) Such persons with purpose intention to defraud, destroy, alter or falsify any paper, book, writing, valuable security or account belongings to or in possession of, for behalf of the employer. (iii) Made or altered the making any false entry in or omitted or altered or abetted the omission or alternation of the material particular from or falsified notes or in any such book, paper, writing valuable security or account. " The learned counsel pointed out that the ingredients of this section listed above also are not attracted to the petitioner herein as per documentary evidence. As such, the charge sheet filed against the

petitioner is not maintainable. As per the Bye-law of the society, the Secretary of the Co-operative Bank, i.e., accused No.1, is maintaining the entire records, as per Section 84 of the Tamil Nadu Co-operative Societies Act. The learned counsel has further submitted that there was no entrustment on the petitioner. On the other hand, the entire transaction of the co-operative bank were entrusted to the employees of the bank, who are accused herein. Further, A-1 has clearly given his confessional statement of the alleged offences and has given assurance to repay the entire amount. The highly competent counsel vehemently argued that once the first accused has come forward to repay the entire misappropriated funds, then, the petitioner should be discharged from the criminal proceedings. As per the statement of the Secretary, the petitioner has no nexus or involvement in the said criminal case. Therefore, the learned counsel entreats the Court to allow the above revision. The learned counsel for the revision petitioner has further submitted that the petitioner is aged about 63 years and his health condition does not permit him to appear before the learned Magistrate, on each and every hearing.

8. The learned Additional Public Prosecutor of the State has submitted that the defacto complainant, viz., Deputy Registrar of Co-operative Societies had conducted enquiry on the basis of documentary facts and then has come to the conclusion that the Co-operative society funds were misappropriated by the Secretary and other accused, and that they had created false records and benami loans as if crop loans have been issued to the thirty members of the bank to the tune of Rs.15,85,440/- while the loans already issued to the said thirty members were still in due and not repaid by them and A-1 to A-5 misappropriated the amount out of the funds of the PACB. As such, all the accused are covered under Sections 409 and 477 (A) of I.P.C. The Deputy Registrar of Co-operative Societies had made prima facie case after lodging a complaint against the accused before the Inspector of Police, who is attached to the Central Crime Investigation Wing (CCIW, CID), Coimbatore. Initially, the criminal complaint has been registered in the year 2005, and thereafter necessary enquiry had been conducted by the Inspector of Police and charge sheet has been filed. Now, this case has now been taken on file as C.C.No.3 of 2006, on the file of Judicial Magistrate-IV, Coimbatore. In order to prove the said case, number of listed witnesses and documentary

evidence had been attached along with the charge sheet. Now, the case is ready for trial. The highly competent counsel has further submitted that the learned Magistrate, after well considering the averments of both the parties and on perusing the charge sheet and after scrutiny of the citations produced by the petitioner, observed that a prima facie case has been made out on the side of the prosecution. After five years, the discharge petition has been filed by the accused, only to create multiplicity of proceedings and in order to delay the criminal case. The learned counsel has further submitted that the prosecution case is a concrete one and that it has been filed against the accused on the basis of documentary facts.

9. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the learned Magistrate, this Court does not find any shortcomings in the said order. This court is of the further view that the prosecution case had been initiated on the basis of records maintained by the Co-operative society. This Court opines that the Deputy Registrar of Co-operative Society had conducted an enquiry, as per Section 81 of the Tamil Nadu Co-operative Societies Act and then had lodged the complaint against the accused persons. Therefore, trial is absolutely necessary in the instant case. Considering the submission made by the learned counsel for the petitioner that the petitioner is aged about 63 years and that his health condition has deteriorated, this Court dispenses with his appearance in the proceedings. However, he should appear in the proceedings, if directed by the learned Magistrate not IV, Coimbatore, as and whenever required.

10. In the result, the above revision is dismissed with the above observations. Consequently, the order passed in C.M.P.No.225 of 2008 in C.C.No.3 of 2006, on the file of Judicial Magistrate-IV, Coimbatore, dated 01.02.2011, is confirmed. Consequently, connected miscellaneous petition is closed. 21 / 03 / 2013 (2/3)
Index : Yes. Internet : Yes. r n s To 1. The Judicial Magistrate-IV, Coimbatore.

2. The Inspector of Police, CCIW CID, Coimbatore Rural Unit, Coimbatore. (Cr.No.6 of 2005) C.S.KARNAN, J.

r n s Pre Delivery order made in CrI.R.C.No.437 of 2012 & M.P.No.1 o

21. 03/2013 (2/3)

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