
(2013) 07 KL CK 0129

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16492 of 2013

Mathai, M.M.

APPELLANT

Vs

Assistant Registrar of Co-operative Societies (General) and
Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 268 : (2013) 4 KLT 91

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : P.V. Baby and Sri A.N. Santhosh, for the Appellant; Rinny Stephen Chamaparambil, Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The question that is raised in this writ petition is whether the Joint Registrar of Co-operative Societies has the power to direct the Co-operative Society to initiate criminal action against a person. The short facts of the case are the following.

2. The petitioner is the President of the board of management of the Pothanicaad Farmers Co-operative Bank Ltd. No. 3510, a society registered under the provisions of the Kerala Co-operative Societies Act, 1969 (the "Act" for short) and the Kerala Co-operative Societies Rules, 1969 (the "Rules" for short). One Paily Elias who was working in the bank in the post of Peon was promoted to the post of Junior Clerk on 11-8-2012. The promotion was granted to him on the basis of a certificate produced by him showing that he had passed the Junior Diploma in Co-operation (JDC) examination that is being conducted by the State Co-operative Union. Later on, it turned out that the certificate produced by the said person was a fabricated one. Thereupon, as per Ext. P-1 the first respondent directed initiation of disciplinary proceedings against the delinquent employee. Accordingly proceedings were initiated, a domestic enquiry was conducted and as per Ext. P-2 proceedings, the employee was dismissed from service. It appears that in the meantime the third respondent had submitted a complaint to the

second respondent against the omission on the part of the petitioner to initiate criminal action against the delinquent employee. On the basis of the said complaint Ext. P-3 direction has been issued by the second respondent. By Ext. P-3, the petitioner has been directed to initiate criminal proceedings against Shri Paily Elias for having procured a promotion as Junior Clerk by producing a forged document

3. According to the counsel for the petitioner Adv. P.V. Baby the second respondent does not have the power to issue a direction as contained in Ext. P-3. The power of the second respondent according to the counsel is contained in Section 94 of the Act Sub-sections 8A and 8B are the provisions that are applicable to the present situation. Since the manner in which action for such offences are to be initiated and pursued have been set out in the said provisions, the present direction in Ext. P-3 is absolutely without any jurisdiction, it is contended. Reliance is also placed on Section 68A of the Act to contend that under the said provision, it is the Vigilance Officer who should conduct an enquiry on the orders of the Registrar. For the above reasons, it is contended that Ext. P-3 is liable to be set aside.

4. The Govt. Pleader who represents respondents 1 and 2 opposes the contentions of the counsel for the petitioner. According to the Govt. Pleader, Section 66A of the Act confers power on the second respondent to issue directions of a general nature. It is in exercise of the said powers that Ext. P-3 has been issued. Since the offence committed by the employee in the present case is forgery and falsification of a mark list on the basis of which he had managed to obtain a promotion, the offence is one that is punishable under the Indian Penal Code and therefore, initiation of appropriate proceedings under Sections 154 and 200 of the Code of Criminal Procedure is mandatory. It is only to comply with the said provisions of law that Ext. P-3 has been issued. For the said purpose, a separate or independent power is not necessary, it is contended.

5. The counsel for the petitioner has placed reliance on the decision reported in Mohammedkutty Vs. Secretary to Government, where a Division Bench of this Court has held that the Registrar has no power to direct a society to suspend its employee. The learned Government Pleader meets the said contention by pointing out that the power of suspension is contained in Section 66B of the Act what was involved in the said case was an extension of the period of suspension under Rule 198 of the Rules. The said situation does not arise in this case and therefore, the dictum in the said case has no application to the facts of this case.

6. Heard. A perusal of Section 94 of the Act shows that the said provision deals with certain acts that are treated as offences by the said provision. In fact, the said provision is part of Chapter XV of the Act, which deals with offences and penalties. Sub-sections 8A and 8B read as follows:

(8A) If any person dishonestly or fraudulently makes or executes or cause to make or execute, any false or improper document or valuation certificate or

project report or register or cause to register any fictitious company or firm or society in order to support any application for loan and thereby induces any society to deliver any loan to him or to any other person which causes loss to the society, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twice the amount of money involved in the offence.

(8B) If any officer, employee, member, agent or servant of a society or any other person abets, connives or conspires the commission of an offence punishable under sub-section (8A), he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twice the amount of money involved in the offence.

It is clear from the above provisions that they deal with a totally different set of circumstances. The offences contemplated by the said provisions relate to creating false or improper documents to register a fictitious company for which the punishment is also provided therein. However, sub-section (9) provides that the provisions of Section 94 shall be without prejudice to any action that may be taken under any other law that is in force. The said provision reads as follows:

(9) The provisions of this Section shall be without prejudice to any action that may be taken against the offenders under any other law for the time being in force.

Therefore, action under the general law is not excluded.

7. The above provisions do not contemplate a situation where an employee on the strength of a fabricated certificate with respect to the qualification prescribed, obtains a promotion. The act in the present case, that is of fabrication of a certificate, is certainly one that comes within the scope of the offence contemplated by Section 465 and/or Section 420 of the Indian Penal Code. Whenever it appears to the society or to any of the functionaries under the Act that a criminal offence has been committed it is incumbent on the said authority to set the criminal law in motion, as contemplated by Sections 154 and 200 of the Code of Criminal Procedure. The same is a solemn duty that is cast on every citizen of this country and the said mandate of the general law is not negated for the reason that certain enumerated powers are conferred on the authorities by a special enactment. For the above reasons, the petitioner should have on his own preferred a complaint against the delinquent employee before the Police authorities and set the criminal law in motion. It was the said omission that was brought to the notice of the second respondent by the third respondent, leading to the issue of the impugned proceedings Ext. P-3. Ext. P-3 is perfectly justified and is in terms of the mandate of the Code of Criminal Procedure. The decision relied on by the counsel for the petitioner reported in *Mohammedkutty v. Secretary to Government* (supra) deal with a direction to suspend an employee. The said power stands on a totally different footing. Therefore, I am of opinion that the dictum in the said case has no application to the facts of the

present case. For the foregoing reasons, I do not find any grounds to interfere with the impugned proceedings Ext. P-3 or to grant any of the reliefs sought for. The writ petition fails and is therefore dismissed.