(1999) 08 MAD CK 0125

In the Madras High Court

Case No : Criminal O.P. No. 1623 of 1999 and Criminal M.P. No. 1023 of 1999

R. Gangatharan APPELLANT

Vs

The State and R. Govindan, Retd. Cooperative Sub Registrar (Package) Erode RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 408

Citation : (2001) 1 LW(Cri) 140

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : R. Karuppan, for the Appellant; N.R. Elango, Government Advocate (Crl. Side) on behalf of the Respondents 1 and 2, for the Respondent

Judgement

A. Ramamurthi, J.—Petitioner is the 12th accused in CCC No. 310 of 1995 on the file of learned Judicial Magistrate, IV, Coimbatore and filed the application u/s 482 of the Code of Criminal Procedure, to quash the proceedings so far as he is concerned.

2. The case is brief is as follows:

The Petitioner is charged as 12th accused u/s 109 read with 409, 408 and 477(A) of Indian Penal Code. He is currently working as Extension Officer Co-operation, Vadamadurai Panchayat Union, Dindigul District. The 2nd Respondent conducted a surprise check of Ayyaparapu Primary Agricultural Co-operative Bank on 14.12.88 and the cash balance was found to have been lent out by the Secretary to the Vice President. Thorough inspection was ordered. The next day on oral directions, the Petitioner was asked to visit the bank and conduct an inspection of the jewel loan. The Petitioner found that the officials were restraining the cash balance of the Bank and illegally lending it out. He gave a report and based on the same, the Secretary of the bank was suspended. Regarding the jewel loan, the register pertaining to the same was pursued and the accounts that were not closed was checked and the jewels relating to the borrowing was called for. They were produced by the officials and physically verified the same. He found discrepancy with regard to the weight and he entered the correct weight of the jewels in the loan ledger and the statement and affixed his signature. This was made on 15.12.88. Further inspection was conducted by the third Respondent on 10.4.89. He found out that accused 1 to 11 were guilty of cheating, misappropriation of the funds of bank. He unearthed fraud of a huge magnitude which was going on between 22.5.85 and 19.12.88. Regarding the jewels loans, he had detected that except for twenty borrowings, the jewels regarding sixty other transactions were missing. It was proved that the officials, without closing the said loan accounts used the money for personal lending. The third Respondent concluded the report charging accused 1 to 11. He wanted the Petitioner to give a statement as desired by him for the purpose of strengthening the case. He dictated the statement to the effect that he had not verified the bags containing about thirty jewels, and he signed the same under pressure. Now, it is stated that he had also colluded with the other accused by not verifying the other fifty bags containing jewels. This report was forwarded to the first Respondent and without any application of mind, straightaway case was also registered against him and he is also made as one of the accused. Even if it were true that he had only counted the jewels bags without verifying the existence of jewels, it cannot attract the offences cited in the charge sheet. The Petitioner, in fact, filed discharge petition before the court in CMP No. 715 of 1996 and the same is pending. He has not committed any overt act and no one has spoken against him in the course of complaint or statement. The Petitioner also conducted enquiry u/s 81 of the Tamil Nadu Co-operative Societies and submitted a report on 8.2.89 for prosecution against the 1st accused. There is no basis to come to the conclusion that he had colluded with other accused or abetted the commission of offences. Hence, the petition.

3. Learned Government Advocate opposed the application, stating that there is sufficient material to proceed further against the Petitioner. On 15.12.88 he had verified the jewels and while verifying, he had failed to physically verify about 50 bags containing jewels and signed the verification as if all the jewels are available. By this, he had intentionally aided or abetted the commission by the other accused, viz., accused 1 to 11 and as such, the petition has to be dismissed.

4. Heard the learned Counsel of both sides.

5. The Petitioner is accused No. 12 in the charge sheet and the charges levelled against him are under Sections 109 read with 409, 408 and 477A IPC. The Petitioner was asked to visit the bank and conduct an inspection of the jewel loan. He found out that the officials were retaining the cash balance of the Bank and illegally lending it out. Based on the report given by the Petitioner only, the Secretary of the Bank was suspended. Regarding the jewel loan, he had perused the registers and other accounts. He found out discrepancy with regard to the

weight and entered the correct weight of the jewels. According to him, accused 1 to 11 were guilty of cheating and misappropriation of funds.

6. Learned Counsel for the Petitioner mainly contended that the Petitioner never aided or abetted the commission of any offence. Even according to the charge sheet, so far as the Petitioner is concerned it is alleged that 12th accused, being the co-operative sub Registrar engaged with accused 1 to 5 in conspiracy and intentionally aided and abetted the commission of offence of criminal breach of trust by their act of illegal omission while carrying out the quarterly inspection, final audit stock verification and jewel loan verification. The period gathered is between 22.5.1985 and 19.12.88. Only on 15.12.88 the Petitioner has verified the jewels. There is also an averment in the charge sheet that he had not verified exactly 50 items of jewels kept in the bag. But, however, signed in the list and because of this only, it has been inferred that the Petitioner had also aided, or abetted the commission of offence with other accused. In face, he has been implicated only with the aid of Section 109 I.P.C.

7. Section 107 of the Indian Penal Code to abetment of a thing, According to Section 107 I.P.C. A person abets the doing of a thing, who intentionally aids, by any act or illegal omission, the doing of that tiling, will attract clause No. 3 Intentional aiding and active complicity is the gist of the offence of abetment. If the act of the Petitioner comes within Clause 3 of Section 107 IPC, then only it can be said that there is material to proceed further in the case. Petitioner is working as an Extension officer and he has been deputed to check the jewel items on a particular date viz. 15.12.88. It is not the case that the Petitioner was also working along with the other accused involved in the case and therefore, it can be presumed that there must be conspiracy. The only allegation is that he had actually failed to physically verify some of the items of jewellery. This would only indicate the carelessness and negligence on his part and apart from that material, there is nothing to infer that he has got any mens rea to commit the offence. The statements recorded during the investigation and other materials did not indicate that there was any intentional aiding or abetting on the part of the Petitioner. Further more, the enquiry conducted under the Co-operative Societies Act, gave a finding only in respect of the other accused. Under the circumstances, I am of the view that there is no prima facie material to proceed further against the Petitioner and even assuming that the entire averments are taken into consideration, there is remote possibility of the case ending in conviction against the Petitioner and in my view, it is only an exercise in futility and as such, the proceedings has to be quashed.

8. For the reasons mentioned above, the petition is allowed and the proceedings in CC No. 310 of 1995 on the file of learned Judicial Magistrate IV, Coimbatore is quashed so far as the Petitioner is concerned and the learned Magistrate is directed to proceed further against the remaining accused. Consequently, Crl.M.P. No. 1023/99 is closed.

