

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.64-66 OF 2015
(Arising out of SLP (Crl.) Nos.6289-6291 of 2011)

STATE REP.BY INSP.OF POLICE CCIW/CID
LLANT
DHARMAPURI UNIT

APPE

VERSUS

K.RAMESH, ETC. & ANR.
ONDENTS

RESP

O R D E R

Leave granted.

These appeals have been preferred by the appellant against the

order dated 3rd September, 2010 passed by the High Court of

Judicature at Madras in Crl. O.P. Nos. 3914/2007, 3915/2007 and

3916/2007.

By the impugned order, the High Court allowed the

petitions filed by the respondents under section 482 of Criminal

Procedure Code and quashed the final report and proceedings in

procee

C.C. Nos.254, 255 and 256 of 2003 on the file of District

Munsif-cum-Judicial Magistrate, Pochampalli inasmuch as it related

to the respondents.

The facts leading to the filing of the said Criminal Original Petitions are as follows:

K. Ramesh, the petitioner in Crl. O.P. No.3914 of 2007 as well as Crl.O.P. No.3915 of 2007 was appointed as Cashier in the Branch

Office of the Krishnagiri Taluk, Agricultural Producers Marketing

Signature Not Verified

Cooperative Society on 02.05.1990 and was holding the post till

Digitally signed by

Rajni Mukhi

Date: 2015.01.22

17:15:01 IST

10.03.2005.

Reason:

Similarly, R. Subramani, the petitioner in Crl.O.P.

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No.3916 of 2007 was appointed on 29.12.1994 as Cashier in the Head

Office of the Krishnagiri Taluk Agricultural Producers Marketing

Cooperative Society.

He worked there as Cashier upto 10.12.2006.

Sri Karthikeya Cotton Merchants, Kallavi and Selvanayagi Gin and Press Private Limited, Kolinchivadi, Tharapuram had transactions with the above said Co-operative Society.

Cotton was supplied by

the said Co-operative Society to the above said merchants on credit basis. However, both the merchants turned out

defaulters and despite such default, the Society continued to supply cotton to them on credit basis. The amounts due from the

said cotton merchants were not fully recovered. Hence

Registrar of Co-operative Societies ordered an enquiry into the

affairs of Krishnagiri Taluk Agricultural Producers Marketing

Cooperative Society under the provisions of the Tamil Nadu

Co-operative Societies Act, 1983. The Deputy Registrar

of Co-operative Societies, Krishnagiri conducted an enquiry

under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and submitted a report alleging certain irregularities, namely, supply of cotton on credit basis to the above said cotton merchants even after they proved to be defaulters. The report stated that loss was caused to the above said Co-operative Society by the default

committed by Sri Karthikeya Cotton Merchants, Kallavi

and Selvanayagi Gin and Press Private Limited, Kolinchivadi,

Dharapuram. It was also found out that cotton worth Rs.

17,67,078/- was supplied on credit to Sri Karthikeya Cotton

Merchants, Kallavi, even though the said merchant was already a

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defaulter and that entries were made in the books of the Society,

as if Sri Karthikeya Cotton Merchants, Kallavi sold back cotton

worth Rs.17,67,078/- and the said cotton was in turn sold to one

Ramasamy Chettiar.

It was also found out that despite the fact that Selvanayagi Gin and Press Private Limited was a defaulter,

repeatedly cotton was supplied on credit basis to the said cotton merchant to the tune of Rs.83,33,832/-, out of which a sum of Rs.29,74,089/- alone was recovered.

Under such circumstances, based on the report, a complaint was preferred by the Deputy Registrar, Co-operative Societies, Krishnagiri and the same was registered as Crime No.1 of 2002 on the file of the respondent police against 13 persons for alleged offences punishable under Sections 408, 409 and 477-A I.P.C. The inspector of Police, CCIW/CID, Dharmapuri unit conducted the investigation and on completion of such investigation, three final reports in one and the same Crime Number viz., Crime No.1 of 2002 were submitted and the same were taken on file by the District Munsif-cum-Judicial Magistrate, Pochampalli as C.C. Nos. 255 of 2003, 256 of 2003 and 254 of 2003 respectively. The petitioner in Crl. O.P. Nos. 3914 and 3915 of 2007, viz., Ramesh has been implicated in C.C. Nos. 255 and 256 of 2007 for the alleged irregularities that took place in the Branch Office of Krishnagiri Taluk, Agricultural Producers Marketing Cooperative Society. Similarly, Subramani, the petitioner in Crl. O.P. No. 3916 of 2007 has been implicated in C.C. No. 254 of 2003 for the alleged irregularities found out in the Head Office of Krishnagiri Taluk, Agricultural Producers Marketing Cooperative Society. Since Ramesh and Subramani had signed the day books authenticating the entries therein as cashiers in the Branch Office and Head office respectively, they were arraigned as accused on the allegation that they had helped the Secretary and other accused in committing the irregularities of misappropriation, breach of trust and falsification of records. Though Ramesh and Subramani were not shown to be accused persons in the First Information Report, they arraigned as accused in the respective final reports on the

strength of the allegation that they abetted the commission of offences by the other officials of the Co-operative Society.

The High Court observed that the proceedings were sought to be quashed on the ground that there was no material to sustain prosecution against the original petitioners and that the prosecution itself had been launched on an assumption that the accused would have helped the Secretary and other officials of the Co-operative Society in committing the offences of misappropriation, breach of trust and falsification of records.

The High Court further observed that on the other hand the accused were sought to be held liable on the sole ground that the accused were the persons shouldering the responsibility to write the Day book and for every incorrect entry in the Day book regarding the sale bill, Delivery challan etc. they were accountable.

The learned counsel appearing on behalf of the appellant submitted that the accused respondent alongwith others in pursuance of the criminal conspiracy abetted the commission of offences aiding accused No.8 to take delivery of cotton without releasing the cotton sale amount as per the Bye-Laws and sale conditions of the Society for a number of times. Such submission was opposed on behalf of the learned counsel for the respondents on the ground that in the proceedings filed under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, no fault was found against the accused respondents.

We have heard the learned counsel for the parties and perused the record. From Charge Sheet No.II in CCIW/CID/Dharmapuri Unit in CR No.1/2002, we find that charges had been levelled under

sections 408,409,477-A, 420 r/w 120B and 109 of IPC against some of the respondent and other accused.

In Charge Sheet No.I name of respondent Subramani is mentioned for the offence u/s 408,477-A r/w 120B and 109 IPC.

In the said Charge Sheet the misappropriation of the fund of the Society by releasing the cotton without releasing the sale amount has been alleged, the part of the said Charge Sheet reads as follows:

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"That in pursuance of such a criminal conspiracy in between 6.2.97 and 17.4.97 the accused 1 to 9 dishonestly misappropriated the funds of the society by releasing the cotton without realizing the sale amount to the accused 7,8, and 9 when the accused 7, 8 and 9 did not pay the sale amount to the society for getting release of the cotton and thereby all the accused misappropriated to the tune of Rs. 17,67,078/- in that-
1. On 6.2.97 the accused 8 dishonestly took delivery of cotton worth Rs. 4,04,723/- (weight 18,346 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1 to 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1 to 6 and 8 misappropriated the funds of the society to the tune of Rs. 4,04,723/-.

2. On 13.2.97 the accused 8 dishonestly took delivery of cotton worth Rs. 3,58,415/- (weight 16,605 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5 6, 7 and 8 misappropriated the funds of the society the tune of Rs. 3,58,415/-.

3 On 22.2.97 the accused 8 dishonestly took delivery of cotton worth Rs. 1,68,648/- (weight 7,507) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 8 misappropriated the funds of the society to the tune of Rs. 1,68,648/-.

4 On 27.2.97 the accused 8 dishonestly took delivery of cotton worth Rs. 2,25,522/- (weight 10,295 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society,

Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the

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cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 8 misappropriated the funds of the society to the tune of Rs. 2,25,522/-.

5 On 6.3.97 the accused 8 dishonestly took delivery of cotton worth Rs. 1,23,412/- (weight 5804 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5, and 6 in pursuance of the criminal conspiracy abetted the accused 8 the aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 8 misappropriated the funds of the society to the tune of Rs. 1,23,412/-.

6 On 13.3.97 the accused 8 dishonestly took delivery of cotton worth Rs. 1,46,316/- (weight 610 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 7 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 7 and 8 misappropriated the funds of the society to the tune of Rs. 1,46,316/-.

7. On 20.3.97 the accused 8 dishonestly took delivery of cotton worth Rs. 81,885/- (weight 3418 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 8 misappropriated the funds of the society to the tune of Rs. 81,885/-.

8. On 27.3.97 the accused 8 dishonestly took delivery of cotton worth Rs. 1,04,909/- (weight 4272 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton

without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the

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society and thereby the accused 1, 2, 4, 5, 6 and 8 misappropriated the funds of the society to the tune of Rs. 1,04,909/-.

9. On 3.4.97 the accused 8 dishonestly took delivery of cotton worth Rs. 1,10,208/- (weight 4638 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4 and 6 in pursuance of the criminal conspiracy abetted the accused 8 by aiding the permitting the accuse 8 to take delivery of the cotton

without realizing the cotton sale amount from the accused 8 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 6 and 8 misappropriated the funds of the society to the tune of Rs. 1,10,208/-.

10 On 10.4.97 the accused 9 dishonestly took delivery of cotton worth Rs. 5762/- (weight 229 kgs.) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 9 by aiding the permitting the accuse 9 to take delivery of the cotton without realizing the cotton sale amount from the accuse 9 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 9 misappropriated the funds of the society to the tune of Rs. 5,7,62/-.

11. On 17.4.97 the accused 9 dishonestly took delivery of cotton worth Rs. 37,278/- (weight 1692 kgs) from the S.495 Krishnagiri Taluk Co-Op. Marketing Society, Pochampalli without paying the sale amount to the society, the accused 1, 2, 4, 5 and 6 in pursuance of the criminal conspiracy abetted the accused 9 by aiding the permitting the accuse 9 to take delivery of the cotton without realizing the cotton sale amount from the accused 9 as per the By Law and sale conditions of the society and thereby the accused 1, 2, 4, 5, 6 and 9 misappropriated the funds of the society to the tune of Rs. 37.278/-."

In view of the specific allegation that has been made against respondents herein, we are of the view that it was not a fit case for the High Court to quash proceedings in question. In view of the aforesaid finding, we set aside the impugned order dated 3 rd September, 2010 passed by the High Court of Judicature at Madras in CrI.O.P. No.3914/3915/3916 of 2007 and direct the Trial Court

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to proceed in accordance with law.

The appeals are allowed with the aforesaid observations and directions.

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

.....J.
[N.V. RAMANA]

NEW DELHI;
JANUARY 12, 2015

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ITEM NO.203

COURT NO.4

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (Crl.)Nos. 6289-6291/2011

(Arising out of impugned final judgment and order dated 03/09/2010 in CRLOP No. 3914/2007, 3915/2007 and 3916/2007 passed by the High Court of Madras)

STATE REP.BY INSP.OF POLICE CCIW/CID Petitioner(s)
DHARMAPURI UNIT

VERSUS

K.RAMESH & ANR. Respondent(s)

(with office report)

Date : 12/01/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Subramonium Prasad, AAG
Mr. M. Yogesh Kanna, Adv.
Ms. S. Janani, Adv.

For Respondent(s) Mr. Nikhil Nayyar, Adv.
Mr. Dhananjay Baijal, Adv.
Ms. Akanksha, Adv.
Mr. N. Sai Vinod, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the Signed Order.

(Rajni Mukhi)
Sr. P.A.

(Suman Jain)
Court Master

(Signed Order is placed on the file)