HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1668 of 2014

ORDER:

The criminal revision case is filed under Sections 397 & 401 Cr.P.C. by the petitioner/A.11 against an order refusing to discharge him in C.C.No.42 of 2010 on the file of Special Judge for SPE and ACB Cases, Vijayawada. A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 468, 471, 409, 420, 120-B r/w 34 of IPC and Section 13(1)(c) r/w 13(2) of P.C. Act.

The allegations in the charge sheet are as under:

It is alleged that some of the employees of Machilipatnam Municipality in collusion with the employees of District Treasury Office (DTO), Machilipatnam, fraudulently and dishonestly misappropriated Municipal General Funds to a tune of (1) Rs.21,98,248/- relating to daily chitta amount, (2) an amount of Rs.18,901/-, which is 85% of library cess, (3) an amount of Rs.1,81,448/- relating to employees GIS amount by not depositing the earnest money to a tune of Rs.9,500/- and (4) by excess drawl of LOC amount in the form of 2 LOCs to a tune of Rs.2,74,880/-. Thus, the amount alleged to have been misappropriated in the present C.C. was around Rs.26,82,977/-. Initially, a case in crime No.25/2005 came to be registered at Robertsonpet Police Station, thereafter, the CID took over further investigation and filed three different charge sheets vide C.C.No.42 of 2010 for the period covering from 23.08.2002 to 22.08.2003, C.C.No.43 of 2010 for the period 23.08.2003 to 22.08.2004 and C.C.No.44 of 2010 for the period 23.08.2004 to 27.10.2004.

In the instant case, the petitioner herein worked as District Treasury Officer at Machilipatnam from 08.05.2003 to 11.04.2005. It is the case of the prosecution that the present petitioner in connivance with other accused who fabricated and forged challans, falsified the accounts of Municipality and District Treasury Office, Machilipatnam and later passed them. In substance, it is alleged that the petitioner misappropriated an amount to a tune of Rs.49,00,000/- by clearing fabricated and forged challans.

After filing charge sheet, the petitioner herein filed Crl.M.P.No.393 of 2012 under Sections 227, 239 and 245 of Cr.P.C. seeking discharge. By an order dated 30.01.2014, the learned Special Judge for SPE & ACB Cases, Vijayawada, rejected the said application. Aggrieved by the same, the present revision is filed.

The learned counsel for the petitioner mainly submits that as per the Office Order No.11 of 2003 dated 18.10.2003 of DTO, Krishna District, the Accountant and Treasury Officer are responsible for preparation of Bank list, scrolls, verification, challan enfacement, maintenance of budget control register, reconciliation. In view of the above, it is urged that the petitioner, who is working in the office of DTO, is in no way responsible for the commission of the offence. Placing reliance on the statement of witnesses recorded by the police during the course of investigation, it is contended that there is no iota of material connecting the petitioner with the crime. He relied up on the statement of LW.35 to show the procedure that being followed for clearing the challans and payments made. He submits that even as per the statement of LW.35, the role of the petitioner was to forward the challans put up before him and it is practically impossible to check the genuineness and authenticity of every challan, which is placed before him. He also placed reliance on the enquiry report in support of his plea.

Per contra, the learned Public Prosecutor opposed the present revision contending that the allegations made in the charge sheet do prima facie make out a case against the accused. He submits that though the witnesses do reveal the role of the petitioner in the commission of the offence, and it is for the petitioner to explain under what circumstance, he has passed the challans which are fake and fabricated. Since, there is no dispute with regard to passing of the fake challans by the petitioner, it is urged that the question whether he has intentionally passed them or whether the challans were passed by him in a routine manner are matters which can be gone into during the course of trial.

In fact, the statement of LW.35, which is relied upon heavily by the learned counsel for the petitioner, refers only to the procedure, which is followed in the department. As per the statement, whenever the Municipal authorities approach the Treasury with a letter of credit (LOC) requisition along with duplicate challans, the DTO/ATO will initial the letter and send it to accountant who will verify the LOC requisition particulars with entries in the PD Account ledger maintained in the Treasury and prepare a note in PD account ledger showing issuance of LOC after being satisfied about the availability of balance as per the receipts attested in the account. The Sub Treasury Office will then verify the LOC requisition particulars with the entries made in the PD Account ledger and then the same will be initialed underneath the note which will be sent to ATO for final approval. The ATO will verify and attest the LOC letter, underneath the note in PD Account ledger. The said LOC letter will be prepared in triplicate, of which, one copy will be send to State Bank of India, one copy to Municipality and another to the Treasury. The Treasury will send this LOC to SBI, Machilipatnam through local tappal. On receipt of the same, the Bank will credit the amount in General Fund Account of Municipality to allow payments. The statement of LW.35 further discloses that DTA will check the PD Account ledger entries with actual challans and will also compare the cheque payments with the figures mentioned in the computer account before making the initial. From the statement of LW.35 it is clear that the petitioner is the final approving authority of the LOCs by making proper attestation in the note and thereafter, the same will send to the Bank for payment.

At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage **(Amit Kapoor Vs. Ramesh Chander)**. In **C.B.I. Vs. Mukesh Pravin Chandra Shroff**, the Apex Court held that at the stage of framing charge, what is required to see is whether there are sufficient grounds to proceed against the accused.

It is to be noted that the Court has to satisfy itself as to whether there is sufficient material for proceeding further. The question of giving benefit of doubt may be a factor that can be taken into consideration after the completion of trial, but not at the stage of discharge. Keeping in view the principles of law laid down by the Apex Court referred to above, I shall now proceed to deal with the case on hand. As stated earlier, the 1st ground raised by the learned counsel for the petitioner is that the enquiry report gives a clean chit to the petitioner with regard to his complicity in the crime and as such, initiation of prosecution against the petitioner is unwarranted. It is to be noted that the enquiry report, which has been placed on record, show that nearly 16 officers belonging to the District Treasury Office, were tried on various allegations. In the said report, the petitioner herein was shown as CO-5. A perusal of the enquiry report would show that fraud came to the light when the Vigilance and

Enforcement Department made a detailed check of all the concerned records in the District Treasury Office, and found that there was total lack of supervision on the part of the concerned, major lapse of maintenance of proper accounts and connected records on the part of those who were entrusted with the job, which enabled others to commit fraud. The enquiry officer examined number of witnesses working in the treasury office and their statements disclose that due to deviations by the petitioner and others from the accepted treasury procedures, opened flood gates for creating fake challans and fake credit bills etc., leading to siphoning of found to a tune of Rs.1 crore. The plea, which was taken by all the officers of DTO before the enquiry officer was that there was no deliberate intention to commit the offence. The enquiry officer rejected the said plea and found that the charge against the officers' stand proved.

In so far as petitioner is concerned, it was found that fake challans bearing Nos.131H, 380H, 243H and 108H were taken into account for issuing LOCs. When crosschecked with the sub account concerned, it was found that no such challans were actually remitted. The above LOCs were issued without crosschecking the remittance challan received in the Treasury. The enquiry officer also found that the verification of P.D. Account reveal postings not being made as per the prescribed procedure. Postings if any made were without the attestation of the Treasury Officer concerned and (+) and (-) memorandum were not attested regularly. Several fake entries were noted to the charge memo. Thus, the enquiry officer found that the act of the accused gave scope for fraud and that the challans were also found to be fake. Therefore, the argument of the learned counsel for the petitioner that the enquiry report is silent with regard to the role of the petitioner in the commission of offence cannot be accepted. In fact, the Apex Court in **State (NCT of Delhi) Vs. Ajay Kumar Tyagi** held that the findings recorded in the departmental proceedings are not final and decisive.

The next question that falls for consideration is whether there is any material before the Court to frame a charge against the accused.

A perusal of the allegations made in the charge sheet would show that A.1 and A.5 who are employees of Machilipatnam Municipality connected with each other and A.5 without verified the challans, which were in the custody of A.1 while preparing the requisition for LOC.No.92 for Rs.49,00,000/- sent it to the District

Treasury, Krishna District, Machilipatnam and thereafter, all the accused in connivance with A.7 (Accountant) and A.11-District Treasury Officer, DTO, Machilipatnam issued LOC.92 to SBI Main Branch, Machilipatnam which contains one fake unpaid challan for an amount of Rs.1,89,640/-. It is specifically stated that A.7 and A.11 verified the copies of the challans, which were available with them and knowing that there are fake (unpaid challan shown as genuine paid up challan) for an amount of Rs.1,89,640/- with dishonest intention approved LOC. It is further alleged in the charge sheet that A.7 and A.11 issued LOC.No.92 to SBI Main Branch, Machilipatnam which contains two fake challans causing loss of Rs.1,67,201/-. The averments in the charge sheet further disclose that the initials and signatures of the petitioner in the letter to Manager, State Bank of India, Machilipatnam from the Deputy Director, District Treasury Office, Krishna, Machilipatnam vide Rc.No.C4/LOC/M92/2000 dated 22.07.2003 for sanctioning of Rs.49,00,000/- includes a fake challan.

From the averments made in the charge sheet, it is clear that A.11 along with the accused got passed LOC.92 knowing that one of the challans, which was before him was a fake challan. As stated earlier, the counsel for the petitioner strenuously contends that statements of four witnesses examined by the prosecution does not in any way connect the petitioner with the crime. It may be true that the statements do not directly speak about the connivance of the petitioner, but the fact, which remain undisputed is that the petitioner has approved LOC.92 basing on a fake challan. Whether the petitioner has done it intentionally knowing that one of the challans was fake or whether it was by accident or whether it is practically impossible for him to verify each and every challan which is placed before him, is his defence which can be agitated only during the course of trial. When the petitioner has admittedly passed fake bills, it is for him to explain during trial as how and why those fake bills are cleared. The plea taken it he is overburden with work and that it is impossible for him to identify a fake one in the lot cannot be accepted at this stage. The issue as to whether he had any intention or knowledge or have done with the act with a *malafide* intention is a matter which has to be gone to only during trial.

Since the issue involves disputed question of fact and law, the same can be adjudicated after proper appreciation of evidence adduced during the trial. Hence, I see no merit in the revision and the same is liable to dismissed. Accordingly, the

Criminal Revision Case is dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

C. PRAVEEN KUMAR, J

Date: 08.04.2015

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