

HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL PETITION NO. 10210 OF 2010

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ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C to quash the proceedings in CC No. 568 of 2008 on the file of II Additional Judicial First Class Magistrate, Nidadavole, West Godavari District. The petitioner-A2 allegedly committed the offences punishable under Section 409 IPC.

Brief facts of the case are that the second respondent herein filed a complaint against the petitioner-A2 and non-petitioner-A1 making allegations that A1 and A2 while discharging the duties as Senior Assistants in the Government Junior College (Boys) Nidavavole, West Godavari District, misappropriated certain amounts. It is submitted that there are about seven Part Time Lecturers working on contract bases at the rate of Rs. 20/- per hour for the last several years. Taking into consideration of their long service, Government has considered their cases and passed orders by granting Minimum Time Scale of pay to those who worked in various Junior Colleges in the State vide G.O.Ms. No. 352, Education (I.E) Department, dated 1.10.1994. It is also submitted that pursuant to the orders of the Government, the beneficiaries under the said order, made representations to their respective Principals to consider their cases and grant Minimum Scale including the arrears. It is further submitted that in so far as the part time Lecturers working in SCBR Government Junior College are concerned, they made a representation dated 6.9.2003 to the Principal, requesting him to consider their case and grant arrears of salary with effect from the date of their respective appointments and the Principal has approved the said representation and issued instructions to the petitioner herein for preparation of their bills. As per the instructions of the Principal, bills were prepared by the petitioner and submitted the same in the Treasurer on 30.09.2003

for admitting the same. But the said bills were returned by the Department with certain objections. After complying with the objections the bills were again resubmitted to the Treasury on 18.2.2004 and an amount of Rs. 22,44,393/- was released and credited to the respective accounts of concerned Junior Lecturers after obtaining consent letters of undertaking to the effect that in case if the lecturers are not eligible and entitled for the said amount, they will repay the same. As matters stood thus, one D. Jayaraju, who is working as Lecturer in ASNM College in Palacole, West Godavari made a representation to the Commissioner of Intermediate Education, Hyderabad alleging that the principal of the College have given permission for withdrawal of the Government Funds in the shape of irregular arrears of salary to the part time Junior Lecturers under the guise of Government Orders. Thereafter, the second respondent herein has conducted enquiry and submitted a report stating that without following the procedure the principal non-petitioner-A1 claimed the arrears of salary and on the basis of the same, the second respondent has lodged a complaint before the police against the principal-non-petitioner-A1 and the police registered a case in Crime No. 18 of 2005 under Section 409 IPC. It is further submitted that subsequently, the second respondent placed the petitioner under suspension vide orders dated 19.2.2005 and appointed an enquiry officer to conduct disciplinary enquiry by framing charges. On 9.9.2005, the enquiry officer has submitted report. Though charges framed against the petitioner were not proved and in spite of the same, the 2nd respondent has passed orders on 5.7.2007 awarding punishment of reduction of rank. Aggrieved by the same, the petitioner filed an appeal to the Government but the same is pending. Basing on the complaint lodged by the 2nd respondent, the police filed charge sheet in the Court of 1st Additional Judicial First Class Magistrate, Nidadavole and subsequently the case was registered as C.C.No. 568 of 2008. Thereupon, this Court at the stage of admission passed orders on 8.2.2010 directing the petitioner to appear before the Court below and execute appropriate bonds for

his future appearance as directed by the court below. As per the directions, the petitioner has appeared before the 1st Additional Judicial First Class Magistrate, Nidadavole and executed bonds. Subsequently the CC was adjourned and the same was posted to 14.10.2010. Aggrieved by the action of the police in implicating the petitioner as A2 in the above CC, the present Criminal Petition is filed.

Heard the learned counsel appearing for the petitioner-A2 and the learned Public Prosecutor appearing for the State.

Learned counsel appearing for the petitioner contended that the petitioner is a clerk in the college and he is not the competent authority to approve the arrears of salary; that the question of following the procedure in drawing the arrears of salary by the petitioner does not arise and as such the Police ought not have implicated the petitioner as A2. He also contended that the Police while filing the charge sheet added other allegation that the petitioner has remitted the special fee amount belatedly and temporarily misappropriated the Government funds; that in the absence of any complaint by the concerned, it is not open to the Police to file comprehensive report and made unnecessary allegations against all the persons working in the College.

The allegations in the charge sheet clearly reveal a *prima facie* case against the petitioner for the offences punishable under Section 409 I.P.C. The truth or otherwise of the allegations cannot be gone into in this petition and it can only be decided during the course of trial. Therefore, I see no reason to interfere with the matter at this stage by quashing the proceedings against the petitioner-A2. Instead it is better to allow the trial in the case to be expedited.

Having heard the learned Counsel for the petitioners and having gone through the contents of the petition, the Criminal Petition is dismissed with a direction to the trial Court to proceed with the trial of the case expeditiously. However, the trial Court shall not insist the presence of the petitioner-A2 for every date of hearing unless it feels that his presence is necessary for any specific purpose.

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

M.S.K. JAISWAL, J

Date: 22.09.2015

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