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

## CRIMINAL REVISION CASE No.1128 of 2012

## ORDER:

The criminal revision case is filed questioning the correctness of the order dated 30.12.2011 in Crl.P.No.1304/2010 in CC No.20/2009 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor, Chittoor District, by and under which, the Court below dismissed the petition filed by the petitioner/A13 seeking to discharge him from the charges levelled against him.

2. Heard the learned counsel appearing for the petitioner/A13 and the learned Additional Public Prosecutor, representing the State.

3. The petitioner/A13 was the Chief Executive Officer of the Chittoor Cooperative Town Bank Limited, Chittoor from 27.09.1997 to 26.01.1999 and later the non-petitioner/A14-T.Prasad worked as Chief Executive Officer of the Bank from 27.01.1999 to 01.09.2002. The non-petitioners/A1 to A12 are said to be Board of Directors and Management Committee of the Bank. The Chittoor Cooperative Town Bank Limited, Chittoor has been adhering to the directives and guidelines issued by the Reserve Bank of India from time to time since 1966 when the Bank came under the purview of the Banking Regulation Act, 1949. In the audit conducted for the years 1998-99, it found certain defects and irregularities committed by the Management Committee and the Chief Executive Officers, viz., mis-utilization of surplus funds by irregular investments in other cooperative urban banks causing locking up of funds and loss; irregular appointments of staff of the bank; irregular payments of special incentives to the staff; inflating profits by defalcating accounts and records; incurring unnecessary expenditure; payment of excess salaries to the staff etc. that are committed by the accused. The non-petitioners/A1 to A8, A10 and A11 simply ratified the action of the petitioner/A13 by passing resolutions. It is alleged that the petitioner/A13 and the non-

petitioner/A14 who are the Chief Executive Officers of the Bank are liable for punishment under Section 79(1)(h) r/w.(3) (iii) of A.P.Cooperative Societies Act, 1964 and also under Section 109 r/w.Section 409 and 420 IPC for facilitating the non-petitioners/A1 to A12 for committing the offences and caused misappropriation of the funds of the Bank.

4. One of the Chief Executive Officer of the Bank, by name, V.Bhanu Prasad, filed Crl.P.No.8062 of 2009 before this Court under Section 482 Cr.P.C to quash the proceedings in C.C.No.24/2009 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor and by order dated 03.11.2009 this Court dismissed the said petition, however granted liberty to the petitioner to file discharge petition before the trial Court. In view of that liberty given to the similarly situated person, this petitioner/A13 filed discharge petition before the Court below. The learned Magistrate vide orders dated 30.12.2011 dismissed the said discharge petition while observing that there is *prima facie* case against the petitoner/A13 and without examining the witnesses cited and the documents relied upon by the prosecution, the petitioner/A13 cannot be discharged of the charges levelled against him. Questioning the said order, the petitioner/A13 filed the present revision petition.

5. The learned counsel for the petitioner/A13 contended that the Court below failed to take into consideration the fact that similar accused, who was the then Chief Executive Officer was exonerated of the similar charges by this Court in Crl.P.No.5839/2009 and batch vide orders dated 26.09.2009. The learned counsel further contended that it is policy decision of the Managing Committee of the Bank in sanctioning loan and advances, appointment of staff, raising pay scales etc., and it is not within the competency of the petitioner/A13 to reject or override the decision of the Managing Committee. It is further contended that the Court below also failed to consider the fact that in the departmental enquiry the petitioner/A13 was exonerated of the

charges stating that the petitioner/A13 is not responsible for any lapses pointed out by the prosecution. It is further contended that considering all these aspects, the Court below ought to have discharged the petitioner/A13 of the charges levelled against him.

6. The learned Additional Public Prosecutor submits that the petitioner/A13 cannot be discharged as he has misappropriated and violated the rules and permitted the Managing Committee to misappropriate the amounts, and unless and until the trial is conducted the truth will not come to light, and that the Court below has rightly dismissed the discharge petition filed by the petitioner/A13 and it does not suffer from any irregularity warranting interference of this Court.

7. The point that arises for consideration in this revision is as to whether the petitioner/A13 is entitled to be discharged of the offences alleged against him.

Point:

8. The admitted facts are that the petitioner herein is shown as A13 in C.C.No.20/2009 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor, Chittoor District. In the charge sheet, the specific allegation is that the non-petitioners/A1 to A12 are liable for punishment under sections 409, 420, 477A r/w.Sec.120-B IPC and other provisions of law of the A.P.Cooperative Societies Act, 1964. In so far as the present petitioner/A13 and another non-petitioner/A14 are concerned, admittedly, they were working as Chief Executive Officers of the Chittoor Cooperative Town Bank, Chittoor. When the petitioner/A13 was working as Chief Executive Officer from 27.09.1997 to 26.01.1999, from the next day i.e. from 27.01.1999 to 01.09.2002 the Chief Executive Officer was one T.Prasad (A14). These two Chief Executive Officers, as per the charge sheet, are liable for punishment under sections 79(1)(h) r/w.(3) (iii) of A.P.Cooperative Societies Act, 1964, in addition, under Section 109 r/w.Section 409 and 420 IPC, and a specific averment is that these two Chief Executive Officers facilitated the non-petitioners/A1 to A12 for committing the

offences and cause misappropriation of the funds of the Bank. The non-petitioner/A14 was also held to be liable under section 477A IPC and other provisions of the A.P.Cooperative Societies Act, 1964.

9. The non-petitioners/A1 to A12 are the Managing Committee, such as Chairman and Directors of the Bank, where several irregularities are alleged to have been committed during the period when these two Chief Executive Officers were functioning. Briefly stated the allegations were mis-utilization of surplus funds by irregular investments in other cooperative urban banks causing locking up of funds and loss; irregular appointments of staff of the bank; irregular payments of special incentives to the staff; inflating profits by defalcating accounts and records; incurring unnecessary expenditure; payment of excess salaries to the staff; and for these acts of omissions and commissions what is alleged against the petitioner/A13 is that he being the Chief Executive Officer has not properly guided the non-petitioners/A1 to A12, which resulted in their passing irregular resolutions and orders.

10. The contention of the petitioner/A13 is that even though he was working as Chief Executive Officer, it is the Managing Committee which is responsible for the affairs of the Bank and in spite of the advice being given by the Chief Executive Officers, the Managing Committee was not adhering to it and passing the resolutions and the petitioner/A13 being the Chief Executive Officer was bound to obey and implement the same.

11. Several proceedings were launched against the petitioner/A13 and the non-petitioner/A14. Departmental enquiry and surcharge proceedings were initiated under the provisions of the A.P.Cooperative Societies Act, 1964. In so far as the surcharge proceedings are concerned, the Deputy Registrar of Cooperative Societies found violations against the non-petitioners/Managing Committee members and directed recovery of amounts. Aggrieved by the said proceedings, O.A.Nos.11/2012 and 13/2013 were filed before

the A.P.Cooperative Tribunal at Vijayawada and vide orders dated 29.04.2015, the Two-Member Tribunal allowed the said two O.As and set aside the surcharge proceedings.

12. Similarly, the departmental proceedings under the Service Rules were initiated against the petitioner/A13 and other Chief Executive Officers. The charges that were framed against the Chief Executive Officers were to the effect that there was dereliction of legitimate duties which caused financial crisis in the Bank, failure to scrutinize the proposed amendment pertaining to the sanction of loans, violation of the directions of the Reserve Bank of India in the matter of loans, recommending the revised pay scales to the Bank staff without complying with the provisions of the A.P.Cooperative Societies Act, and after conducting full fledged enquiry, the Enquiry Officer submitted the report exonerating the petitioner/A13 of all the charges leveled against him. The said report was accepted by the Commissioner & Registrar of the Cooperative Societies on 26.07.2007 and held that the charges alleged against the Chief Executive Officers are not proved and dropped the further action.

13. On the same set of allegations, the present criminal prosecution is launched against the petitioner/A13.

14. Smt.Shesha Rajyam, learned senior counsel appearing for the petitioner/A13 submits that in view of the fact that the petitioner/A13 and another Chief Executive Officer had been exonerated of all the charges, and for the self-same charges, the petitioner/A13 cannot be prosecuted. The learned senior counsel further submits that it is well established legal position that when a charge in the departmental proceedings and criminal proceedings is one and the same and the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings, continuing the criminal proceedings cannot be sustained. In support of this contention, the learned senior counsel relied upon the decisions of the Hon'ble Supreme Court in ***P.S.Rajya***

***v. State of Bihar*[1]*, State of Haryana v. Bhajan Lal*[2]** and ***SBI v. R.Periyasamy*[3]**. In all these authorities of the Hon'ble Supreme Court it has been consistently laid down that standard of proof in criminal case is proof beyond reasonable doubt while in departmental proceedings it is preponderance of probabilities.

15. Even acquittal in a criminal case does not automatically lead to exoneration of a public servant in the departmental proceedings, for the reasons stated above. On the other hand, if the departmental authorities specifically held that even by applying doctrine of "preponderance of probabilities" no case is made out against the delinquent officer, continuing the criminal proceedings, which require stricter proof than in departmental proceedings, cannot be sustained, and it will be subjecting the accused to harassment.

16. As already stated, during the period in controversy, i.e. from September, 1997 to September, 2002, two Chief Executive Officers have performed their duties, viz., the petitioner herein (A13) and one T.Prasad (A14). The allegations against both the Chief Executive Officers are one and the same. Both of them are charge sheeted in the same criminal case, i.e. C.C.No.20/2009. The non-petitoner/A14 (T.Prasad), who was shown as one of the accused in C.C.Nos.20 to 24 of 2009 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor, has filed Crl.P.Nos.5487, 5778, 5836, 5839 and 5843 of 2009 before this Court under Section 482 Cr.P.C to quash all further proceedings in the said Calendar Cases. This Court, by order dated 26.08.2009, allowed all the criminal petitions and quashed all further proceedings in C.C.Nos.20 to 24 of 2009 on the file of the IV Additional Judicial Magistrate of First Class, Chittoor against the non-petitioner/A14, who is another Chief Executive Officer of the Bank. The allegation in so far as the petitioner/A13 is concerned is *pari materia* to one that fall for consideration before this Court in the previous proceedings. Both the accused, viz., the petitioner/A13 herein and the non-petitioner/A14 are alleged to have committed

similar offences. When similarly placed accused has been discharged of the accusations and all further proceedings against him are quashed, I think that the petitioner/A13 herein, who is similarly placed, is also entitled to the same relief, lest it will amount to invidious discrimination.

17. For the foregoing observations and in view of the specific findings of the A.P.Cooperative Tribunal, dropping surcharge proceedings and the Commissioner & Registrar of Cooperatives Societies exonerating the petitioner/A13 herein of all the accusations, the present criminal proceedings against the petitioner/A13 cannot be continued, and therefore, the order impugned is liable to be set aside.

18. Accordingly, the Criminal Revision Case is allowed, the impugned order of the Court below dated 30.12.2011 passed in Crl.P.No.1304/2010 in CC.No.20/2009 is set aside, and the petitioner/A13 stands discharged of the charges levelled against him. The bail bonds executed by the petitioner/A13, if any, shall stand cancelled.

Pending miscellaneous applications, if any, shall stand closed in consequence.

**M.S.K.JAISWAL,J**

Date:03.11.2015
Dsr

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[1] (1996) 9 SCC 1

[2] 1992 SCC (Crl) 426

[3] (2015) 3 SCC 101