THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION No.1741 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/A4 seeks to quash the proceedings in C.C.No.43 of 2010 on the file of Special Judge for SPE and ACB cases, Vijayawada, Krishna District.

2 a) The prosecution case is that when the petitioner was working as In-charge Manager, Machilipatnam Municipality from 01.11.2003 to 03.12.2003 certain irregularities were committed in Embezzlement of Municipal funds. Basing on the same, the police Robertson Pet PS registered a Crime No.25 of 2005 and thereafter the said case was transferred to CID, RCIU, Vijayawada. The CID police after conducting investigation filed charge sheet against the petitioner and some other employees under Section 468, 471, 409, 420 r/w 34 IPC and Section 13(1)(c) r/w 13(2) of Prevention of Corruption Act, 1988.

b) The case of the petitioner is that he worked as in-charge Manager only for one month. During the said period, the Shroff had taken his initials on Chitta book by showing the counterfoils of challans. After perusing the said counterfoils of challans only he put his initials on the Chitta book. It is submitted that without conducting proper investigation the charge sheet has been filed. The charge sheet averments did not disclose any specific overt-acts against the petitioner and he has been falsely implicated. It is also submitted that during the departmental enquiry, the enquiry officer in his report dated 08.03.2010 held that charge levelled against the petitioner was not proved and he only observed that petitioner may be warned. It is further submitted that Government through its Memo dated 31.03.2010 accepted the report submitted by the enquiry officer and issued show cause notices with regard to punishment proposed. During the interregnum period the petitioner retired from service on 31.05.2010. Since the enquiry report does not disclose any allegation against the petitioner, the Government permitted the petitioner to retire from service without imposing any condition. Therefore, continuing the proceedings against the petitioner is nothing but abuse of process of law and liable to be quashed.

3) Seeking quashment, learned counsel for petitioner/A.4 proceeded on the main plank of argument that the petitioner had nothing to do with the alleged embezzlement of municipal funds, Machilipatnam and he worked as incharge Manager of the said Municipality only for a period of one month i.e, from 01.11.2003 to 03.12.2003 when the Manager retired from Service and during the said period the Shroff had taken initials of the petitioners three times on the Chitta book by showing the counterfoils of Challans and he signed on the Chitta Book only after perusing the counterfoils and in view of the fact that he officiated as Manager for a very brief period of one month and scrupulously discharged his duties, it is not just to charge him for the offence. Learned counsel further argued that during the departmental enquiry, the Enquiry Officer held that the charge levelled against him was not proved and therefore, the Enquiry Officer recommended for dropping the proceedings against the petitioner but however, observed that the petitioner may be warned. The Government also have issued Memo No.5791/E2/2005 dated 31.03.2010 accepting the report submitted by the Enquiry Officer. Learned Counsel submitted that when the departmental enquiry and criminal proceedings have been parallelly taken up and the employee is exonerated in departmental proceedings, there will be no point in proceeding with criminal case since standard of proof required to establish the guilt of the employee in a criminal case is far higher than the standard of proof required to establish the guilt in departmental proceedings. On this aspect he relied upon the decision reported in ***P.S.Rajya vs. State of Bihar.*** He thus prayed to allow the petition.

4) Per contra, vehemently opposing the petition learned Assistant Public Prosecutor argued that in a case of this nature, law permits to hold parallel departmental proceedings along with a criminal case and merely because the employee is exonerated in a departmental enquiry, there cannot be any automatic conclusion that he is innocent and the criminal proceedings shall be closed against him. It is a

different matter, if the nature of the charges and the evidence presented both in departmental enquiry and criminal case are one and the same and the departmental proceedings ended in acquitting employee on the test of preponderance of probability, then there may not be any useful purpose in continuing the criminal case since the standard of proof in it is much higher and rigorous than the departmental enquiry. He argued that, that is not the case here and the evidence proposed in the departmental enquiry and the criminal case are quite different and distinct. Learned A.P.P submitted that in departmental enquiry, the Presenting Officer examined only one witness and when the matter came up for arguments he conceded that since petitioner/A.4 worked as Incharge Manager for only one month he cannot be held responsible for the lapses occurred for a period of two years and his submission was accepted by the Enquiry Officer without any further enquiry regarding guilt or innocence of the petitioner/A.4 and some other staff. He thus argued that virtually there was no strong evidence and threadbare analysis of the omissions and commissions of the petitioner/A.4 to arrive at a conclusion about the innocence of the petitioner and on the other hand, basing on the subjective satisfaction of the Presenting Officer, Enquiry Officer let off the petitioner/A.4. Therefore, he argued, the finding in departmental enquiry cannot be taken as criterion to quash the proceedings against him in the criminal case which was based on a thorough investigation and collection of voluminous evidence by a trained investigating agency of the calibre of D.S.P, C.I.D. He thus argued that merely because the petitioner was exonerated in departmental enquiry is not a consequence to quash the proceedings against him. He thus prayed to dismiss the petition.

5) In view of rival arguments, the point for determination is:

"Whether there are merits in this petition to quash the proceedings?"

6) **POINT**: The allegations as per charge-sheet in C.C.No.43 of 2010 are that the revenue collection of General Funds amounting to Rs.64,15,997/- relating to Machilipatnam Municipality were not

deposited in the bank by the Shroff/Assistant Shroff with the connivance of the Accountants and Managers of the Municipality who worked during 23.08.2003 to 22.08.2004. Though the Shroff and Assistant Shroff wrote the challans and obtained challans numbers from the Treasury but they did not pay the amounts into the bank and on the other hand, showed the unpaid challans as paid-up challans. They destroyed the fake challans except the six which were seized by the Vigilance Authorities. The bank scrolls proved that the money was not deposited in the bank. After investigation, the police laid charge-sheet against the employees of the Municipality as well as the District Treasury, Machilipatnam. The petitioner/A.4 is concerned, on the retirement of the regular Manager, the petitioner officiated as FAC Manager from 01.11.2003 to 03.12.2003. The role of Manager is concerned, he is the overall supervisor of Municipal Office and he is next superior to the Commissioner and he is the head of ministerial administration. He is primarily responsible for proper maintenance of all records and registers pertaining to financial transactions and responsible for close supervision. The allegations against the petitioner/A.4 are that his initials and signatures in Daily Chitta Registers Vol. Nos.5, 6, 8, 9, 10, 13, 14, 15, 17, 18 fake challans (unpaid challans shown as paid up challans) 334H in Petty Cash Books from 04.09.2003 to 05.02.2004, 01.04.2004 to 15.10.2004. General Funds Cash Books from 01.04.2002 to 31.10.2002 were tallied as per opinion of FSL, thus showing complicity. Hence the charges for the offences under Sec.468, 471, 409, 420 IPC r/w 34 IPC r/w 120-B IPC r/w 13(1)(c) r/w 13(2) of P.C.Act, 1988 for causing wrongful loss to the Government.

7) Be that it may, the contention of the petitioner/A.4 is that he only officiated as FAC Manager for a very brief period of one month from 01.11.2003 to 03.12.2003 and during the said period the Shroff had taken his initials three times only on the Chitta Books by showing the counterfoils of Challans and after perusing the said counterfoils of challans he put his initials and he was not involved in any conspiracy and mis-embezzlement of funds. His further contention is that in the

resultant departmental enquiry he was exonerated.

8) I perused the copy of the departmental enquiry report of Inquiring Authority which is filed by the petitioner. Around 17 Officers of the Municipality including the petitioner were charged in the departmental enquiry proceedings for misappropriation of an amount of Rs.1,06,014,764/-. As rightly pointed out by A.P.P., the Presenting Officer has examined only one witness i.e, PW.1—Sri Kanta Rao, the-then S.P, Vigilance and Enforcement Department, Vijayawada. No other witness was examined. Further, the petitioner/A.4 is concerned, the Presenting Officer stated that the petitioner has worked as Incharge Manager for only one month and as such he cannot be held responsible for the lapses that occurred for a period of two years and his submission was accepted by the Enquiry Officer and accordingly exonerated the petitioner and some other employees without any further discussion regarding their roles. Therefore, the departmental enquiry is concerned there was no much discussion about the role of the petitioner/A.4. It is true that in the cited decision of ***P.S.Rajya***'s case (1 supra), the Apex Court observed that when the employee is exonerated in the disciplinary proceedings, there is nothing further to proceed against him in criminal proceedings if the charge and evidence in departmental proceedings and criminal case are identical and the said charge could not be established in the departmental proceedings, because 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 departmental proceedings. When the departmental proceedings in the instant case are perused, as rightly argued by learned A.P.P. only one witness was examined and virtually the Presenting Officer conceded that since the petitioner worked for only one month, no imputation can be made against him. However, the criminal proceedings are concerned, the Investigating Agency has come up with voluminous evidence both oral and documentary to establish the guilt of all the charged accused including the petitioner. Therefore, in my considered view, it is not apt to quash the proceedings against

the petitioner/A.4 merely because he was exonerated in departmental enquiry. As per charge sheet there is a *prima facie* case against him. Therefore, he shall face the trial and prove his innocence, if any.

9) In the result, this Criminal Petition is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 10.06.2015

Note: L.R Copy to be marked: Yes/No

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