HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.14262 of 2014

ORDER :

This Criminal Petition is filed by Petitioners/Accused Nos.1 to 3 under Section 482 Cr.P.C seeking to quash the proceedings in F.I.R No.443 of 2014 of Kothagudem I Town Police Station registered for the offences punishable under Sections 420, 406 read with 34 and 120-B I.P.C.

2) Initially the 2nd respondent/complainant filed a private complaint before I additional Judicial Magistrate of the First Class, Kothagudem against the petitioners/accused herein for the offences supra allegedly committed from 25.07.2014. The facts in brief are that the Complainant as well as the petitioners/accused are employees of Singareni Collieries Company Limited, Kothagudem and they belong to Telangana Boggu Ghani Karmika Sangham (for brevity 'the Union') which is having more than 41,000 members with registered byelaws and the accused No.1 is the President, Accused No.2 is the General Secretary and Accused No.3 is Treasurer of their Union. It is further stated that the recognized union is eligible to collect the monthly subscriptions from the workers and to spend for the welfare of the employees by the President, General Secretary and Treasurer of the Union, that the Singareni Collieries Company Limited (for brevity, 'the Company') send a cheque bearing No.114520, dated 21.07.2014 for an amount of Rs.91,06,159/- to the Union account bearing A/c.No.62347721392, Main Branch, State Bank of India, Kothagudem towards collection of Union Membership subscription for the period from May, 2012 to June, 2014 and the same was

credited on 24.07.2014.

3) It is also averred in the complaint that the 1st petitioner/A-1 opened an account bearing A/c.No.62351451577 of State Bank of Hyderabad main branch, Kothagudem on 25.07.2014 in his name and the 2nd petitioner/A-2 opened an account bearing A/c.No.52207540140, State Bank of Hyderabad, Main Branch, Godavarikhani with the active collusion of 3rd petitioner/A-3, drawn an amount of Rs.40,00,000/- from the Union account by the 1st petitioner/A-1 and also drawn an amount of Rs.50,00,000/- by the 2nd petitioner/A-2 on 25.07.2014 from the Union account and credited the same to their personal accounts respectively. It is further alleged that the 3rd petitioner/A-3 being a treasurer of the Union, responsible for all sums of money, against the byelaws and with the active collusion of the other accused, facilitated petitioner Nos.1 and 2 to misuse the above said amounts by conspiring together with a deceitful intention <u>from the inception itself</u> with a view to cause wrongful loss to the members and to gain wrongfully for themselves drawn the amounts on 25.07.2014 and thus they cheated the members of the union. After receiving the said complaint, the learned Magistrate forwarded the same under Section 156(3) Cr.P.C. to the S.H.O, I Town Police Station to enquire into the matter and to submit a report and the same was registered as a case in Crime No.443 of 2014 on 14.10.2014 for the above offences by the Police supra. The order forwarding the complaint is not born by record in appreciating the contention of same is not by any application of judicial mind.

4) Pending investigation of above crime, the defacto-complainant filed a petition in Crl.M.P.No.8 of 2015 under Section

156(3) Cr.P.C on 05.01.2015 seeking to incorporate Sections 409 and 477-A I.P.C on the ground that the accused being the President, General Secretary and Treasurer of the Union have committed criminal breach of trust, falsification of accounts by embezzling the amount of Rs.90,00,000/- belonging to the Union members by withdrawing from the bank account of the Union and crediting the same in their personal accounts referred supra. The said petition was allowed by the learned I Additional Judicial Magistrate of the First Class, Kothagudem on 30.01.2015. Impugning the same, the petitioners herein filed Crl.P.No.1904 of 2015 before this Court seeking to quash the proceedings in Crl.M.P.No.8 of 2015 and the same was dismissed by this Court (another bench) on 27.03.2015 by repelling the contention of premature without filing final report by police for so directing and that too without notice or calling for objections on said memo for hearing in saying under Section 156(3) Cr.P.C Magistrate got such power and thereby there is no judicial overreach or impermissible penetration into the police dominion of investigation.

5) Learned counsel for the petitioners submit that since there were internal disputes between the members of the Union, the elections were held on 23.02.2014 by way of secret ballot pursuant to the orders of this Court in W.A. No.926 of 2014 dated 12.06.2014 under the supervision of the Regional Labour Commissioner and the Company officials and in the said elections, the petitioners were duly elected, that the 2nd respondent/complainant is not even a member of the Union since the membership receipts dated 09.10.2013 and 18.09.2014 are false and concocted as the same were issued by one K.Mallaiah who was the contestant for the said secret ballot elections and was defeated in the said elections and on the sole ground the

complaint has to be rejected since he has no manner of right to seek for redressal of grievances claiming himself to be a member of the Union, that the complainant himself is not being a member of the Union he is no way connected with the internal affairs of the Union. The further contention of the learned counsel for the petitioners is that the complaint is filed at the behest of the former President K.Mallaiah who was defeated in the secret ballot elections and he engineered to file the complaint against the members of the Union, by using the services of the 2nd respondent in the background supra.

6) Whether the complainant is the member of the Union or not has to be decided basing on the facts in issue and that has to be decided in another forum not before this Court. Even though the so called receipt issued by the former President of the Union or the contestant of the elections and the same is not genuine, undisputedly, complaint is one of the employees of the Company and the Union formed is by the employees of the Company for their welfare and as such, it is difficult at this stage to say no locus standi to the defacto-complainant but for to decide truth or otherwise of allegations and any offence made out prima facie or not of the matter in the pending investigation. The petitioners/accused 1 to 3 supra as per the remand report dated 22.04.2015 were arrested and submitted to judicial custody. It is not in dispute of the fact of their subsequent enlargement on regular bail. Thus, it is no way necessary to go into validity of the arrest or the so called alleged oral confessions by any of them mentioned in the remand report with bereft of particulars or even same hit by Section 25 of the Indian Evidence Act.

7) Coming to the main contention of the learned counsel for

the petitioners that the averments in the complaint reiterated the statement of L.W-1 leave about L.Ws 2 to 5 filed even taken on its face value do not attract the provisions of Sections 420, 406, 120-B or 409 or 477-A read with 34 I.P.C. since there was a resolution stating that to establish, strengthen and to increase the political power, to strengthen the Union in four districts and also to be available to the party at any time, permission was already accorded to purchase Mahindra Xuv vehicle for the President and Innova vehicle for the General Secretary, that it was also resolved to facilitate to the President and the General Secretary to transfer the amount to their own accounts or to separate accounts from the Union account, if necessary, and to utilize the same only for the requirements of the union and account for each paisa in writing along with the details thereof and submit the same before the forthcoming General Body Meeting.

8) Learned counsel for the petitioners produced material relating to the resolution passed by the Central Committee by relying on the expression of apex Court in ***Rukmini Narvekar V. Vijaya Satardekar***[1] in which it is stated that in a proceeding taken therefrom Section 482 Cr.P.C the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. Therefore, the material submitted by the learned counsel for the petitioner is perused to decide the present application.

9) Learned counsel for the defacto-complainant in contra to the above contended in this regard that the general funds of the Union shall consist of the subscription of the members shall be deposited in a bank or banks approved by Managing Committee in the name of the Union and the account may be operated by any

two i.e., the President, the General Secretary or the Treasurer and they shall not keep more than Rs.5/- with them for current expenses. He further contended that no general body meeting was conducted to decide for spending of the funds for the above said purposes and the petitioners themselves unanimously decided and resolved in a Central Committee meeting for spending those amounts as explained by them and thereby all the ingredients of the penal provisions supra apply against the petitioners/accused herein and there is nothing to quash the investigation of the crime.

10) Heard both sides at length and perused the material on record. No doubt, from the remand report dated 22.04.2015 or from the statements of L.Ws 1 to 5 including the defacto-complainant recorded during October, 2014, there is no progress of investigation and the remand report particularly page No.4 last para speaks that Rules 19, 20 and 22 of the Union rules speak the role of President, General Secretary and Treasurer and Rule 29 speaks of objects of which general funds can be spent and the accused persons 1 to 3 hatched a plan to knock away the funds for their personal use by transferring to the Bank accounts in the name of A-1 and A-2 of the amounts of Rs.40.00 and Rs.50.00 lakhs respectively during July, 2014 which is contrary and violation to the said Union Rules and Bye-laws and they have not maintained any records to say they misappropriated the said amount of Rs.90.00 lakhs viz., A-1 and A-2 in connivance of A-3 in spending for their personal use and thereby committed the offences. The remand report no way speaks what the respective bye-laws speak and with reference to what violation that specifically constitutes any of the offences in arresting and remanding the accused or in accepting the same by the learned

Magistrate. However, but for to say there is no worth investigation therefrom, the legality of the remand report again not open for consideration at this stage.

11) In fact, a perusal of the bank accounts filed from the year 2005-2006 show that even during the tenure of the previous president-K.Mallaiah, from January, 2006 to several huge amounts were withdrawn and spent from the account and balance as on 1st January, 2008 is only Rs.21,327/- and Rs.1,50,000/- on 23.07.2008 shown paid to General Secretary by cheque and Rs.1,20,000/- on 01.09.2008 by cheque amount drawn and on 12.11.2008 said Mallaiah ex-president was paid by cheque Rs.40,000/- and general secretary on 22.12.2008 was paid by cheque, Rs.2,00,000/- and drawal of amount by cheque of Rs.1,70,000/- on 21.01.2009 and during 2009 several amounts paid to Mallaiah viz., Rs.60,000/- on 06.02.2009, Rs.60,000/- on 14.03.2009, Rs.45,000/- on 13.07.2009, Rs.40,000/- on 31.07.2009, Rs.90,000/- on 17.09.2009 besides Rs.30,000/- by self cheque on 02.09.2009 and Rs.1,90,000/- by self cheque on 31.12.2009, Rs.1,00,000/- and Rs.50,000/- respectively as paid to Mallaiah on 21.06.2010 and 1.07.2010 besides Rs.50,000/- each by self cheques on 17.08.2010 and 27.08.2010. It is needless to say even from 13.09.2010 heavy amounts were drawn of Rs.1,00,000/-, Rs.20,000/-, Rs.30,000/-, Rs.1,50,000/-, Rs.2,00,000/-, Rs.1,50,000/-, Rs.40,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.3,00,000/-, Rs.8,00,000/-, Rs.2,40,056/-, Rs.1,10,000/-, Rs.3,00,000/-, Rs.2,00,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.14,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.2,00,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.4,50,000/- Rs.1,00,000/- Rs.2,00,000/-, Rs.1,00,000/-, Rs.4,00,000/-,

Rs.4,00,000/-, Rs.2,00,000/-, Rs.1,50,000/-, Rs.2,00,000/-, Rs.1,00,000/- from the account copy filed upto the period 12/13.06.2013. It is unknown why the defacto-complainant made the complaint only against the present President, Secretary and treasurer by leaving the earlier office bearers even there were huge amounts drawn and not accounted for, but for if at all out of spite and ill-will as contended by the petitioners therefrom. It is needful to say it is the duty of police to investigate all these aspects from the year 2005-2006 atleast by verification of the accounts but as can be seen it appears nothing they have done in respect of those amounts.

12) No doubt, the defacto-complainant though states not given complaint in relation to the said periods also that does not prevent the police to investigate to unfurl the truth and the modus operandi and how the practice is going on and whether there is any misappropriation of funds and falsification of accounts.

13) In fact so far as the petitioners-accused of the year 2014 June onwards concerned, there is a resolution of the Union dated 24.06.2014 under the chairmanship of A.Kanaka Raju who is A-1 herein, the agenda was to establish, strengthen and increase political power also to improve the Union within the four districts of its activities and also to purchase the vehicles to be available to the party of the Union at any time, permission is accorded, to purchase a Mahindra XUV for the President and an Innova for the General Secretary and power is conferred on the President and General Secretary by the resolution for the said purpose to meet by transfer of the amounts from the account of the Union to the individual accounts of the President and Secretary, besides to meet the Union requirements. It is also unanimously resolved to

account for the amount in each Paisa in writing in the forthcoming general body meeting. As can be seen from the resolution supra, the Union decided to purchase the two vehicles and for that purpose to transfer the amounts to the individual accounts to meet and to account for the same after spending for said purposes and other union purposes. It is not the case that the two vehicles not purchased and no other amounts incurred. When such is the case, it is difficult to say any element of cheating is involved from inception of their assuming office and drawal of amounts to deceive the union, but for if at all, the amounts not accounted for to fasten any liability of misappropriation or the like.

14) There is nothing to show therefrom of any element of cheating from the inception for the offence punishable under Section 420 I.P.C to sustain but for by such withdrawal if vehicles not purchased in the name of the Union or after such purchase in the balance not accounted for, whether there is any misappropriation or breach of trust either under Section 406 or under Section 409 I.P.C as the case may be and but for that there is nothing to show any inducement to deliver the money or to transfer to their accounts muchless to cheat to attract Section 420 I.P.C and there is also nothing to show any falsification of accounts by such transfer to attract Section 477-A I.P.C. In fact, it is the sum and substance of the accusation in the private complaint filed by the defacto-complainant regarding the said amount of Rs.90,00,000/- transferred to the individual accounts of the President and Secretary in saying there is offence of cheating and breach of trust by conspiracy among A-1 to A-3. There is nothing to show any conspiracy by virtue of the resolution muchless cheating but for after purchase of the vehicles if anything not accounted for the balance after spending for to the

Union, for breach of trust if it tantamounts to entrustment and otherwise only misappropriation.

15) It is in fact, the only worth allegation against the petitioners from the private complaint or statement of the witnesses L.Ws 1 to 5 examined by the investigating officer in October, 2014 and the material as on the date of arrest and remand of the accused 1 to 4 herein by April, 2015. It is needless to say once Section 409 I.P.C applies, for Section 406 included therein, it will not survive for both offences but for showing Section 409 I.P.C itself is enough if at all to found for a lesser offence ultimately if any for Section 406 I.P.C also.

16) In this background, there is another resolution of the Central Committee of the Union dated 29.06.2014 by opening a new account in State Bank of Hyderabad, Kothagudem branch pursuant to the resolution earlier, mentioning from the internal disputes in the Union, the President and the Secretary spent Rs.80.00 lakhs since 26.05.2013 towards expenses of general body, Court expenses, Union office maintenance and thereby President and Secretary are authorized to operate the new account as was operating earlier of the Bank account and another resolution earlier to it dated 24.06.2014 of the Central Committee under the Chairmanship of A-1 President in resolving that the vehicles so far purchased for maintenance of the Union not registered in the name of Union, those vehicles are seized by the Union was also resolved making President and General Secretary responsible for financial affairs and also resolved that if accounts are not submitted in the forthcoming general body meeting and funds of the Union utilized not responded in proper manner, such of them liable for the decision of the management and also

resolved to utilize funds of the Union for its welfare and the vehicles to be used to strengthen the activities of the Union. In fact, the material further shows the defacto-complainant who worked originally as a clerk now earned in Crores and Rs.2.00 crores are credited to his bank account of Indian Overseas Bank Nos.125401 0000 – 20434 and 06360 and the news clippings further shows on enquiry, the then C.M.D of the Company Management ordered transfer of said Sampath from Kothagudem area. This Court is not of much influenced by the news clipping against Sampath as it is a different matter if at all for the accused to give a complaint for any of his alleged illegalities and that will not absolve the liability of the petitioners for any misappropriation or breach of trust of the amounts of the Union by any of its misutilisation and unaccounted for even from report of said Sampath and even by saying Ex-president Mallaiah is behind in using Sampath to settle the scores. No doubt one of the accusations placed reliance including the guidelines from the **State of Haryana v. Bhajan Lal**[2] speak that criminal proceedings cannot be allowed to continue to settle scores and if outcome of vengeance. The scope herein is entirely different as it is the Union amount spending by the executive committee and if there is any element of differences between the complainant and accused are the groups differently of they belong if any that is not a ground here to quash the proceedings in entirety but for to say so far as offence under Section 409 I.P.C concerned which includes Section 406 I.P.C read with Section 120-B I.P.C read with Section 34 I.P.C as the case may be, it requires investigation. It also requires investigation against the ex-president and other ex-executive committee members from 2005-2006 onwards regarding any misappropriation or breach of trust of the funds to show from any complicity of them as co-accused. It is also needful to investigate regarding the disproportionate wealth of said Sampath by forwarding the source information to the concerned investigating agency under Prevention of Corruption Act.

17) It is the contention of the learned counsel for the defacto-complainant that so far as inclusion of the offence under Section 409 and 477-A I.P.C by by petition/memo of the defacto-complainant that was ordered in Crl.M.P.No.8 of 2015 confirmed by this Court (another bench) in Crl.P.No.1904 of 2015 dated 27.03.2015, the same is final and not open for challenge. In fact a perusal of the order supra, no way discussed whether application to the facts or not but for only answered the inclusion is sustainable or not in saying there is nothing to interfere with the memo ordered to include those offences also as it is within the power of the Court. Thus, it is entirely different from application of any of the penal provisions or not to decide independently here in this petition seeking to quash the crime proceedings pending under various sections of law including this covered by the memo. No doubt, it is the submission of the learned counsel for the defacto-complainant that the so called resolutions authorizing the President and Secretary among the accused persons 1 to 3 to transfer the amounts to their individual accounts are invalid and running contrary to the Rules and Bye-laws. The bye-laws are not before this Court and it is for the police to investigate and this Court already observed that it is a matter to be investigated so far as offence under Section 409 I.P.C concerned as to there is any misappropriation or breach of trust from transfer of the amounts to the individual accounts of A-1 and A-2 from the account of the Union for the same not accounted for. For that, pursuant to the resolutions even not valid there is nothing of application of either

Section 420 or Section 477-A I.P.C.

18) No doubt, learned counsel for the petitioners contend that as laid down by the Apex Court in ***P.Durgappa V. State***[3] sections 409 or 406 have no application for mere retention of money. It is premature for this Court to come to any conclusion muchless to quash the F.I.R on that ground as in the factual matrix, the case decided was in a Criminal Revision maintained against criminal appeal confirming the trial court's conviction judgment for the offences punishable under Section 409 I.P.C. The other decision of Five Judges bench of the Apex Court in ***Tulsi Ram V. State***[4] is regarding ingredients of Section 420 I.P.C in saying it is to be established not only of defacto-complainant is shown cheated but also he was dishonestly induced for the purpose of cheating to deliver any property or valuable security by the assailants to cause wrongful loss and wrongful gain by unlawful means, that to be established of any of the facets of dishonesty of loss or gain. As concluded already in the factual matrix itself from perusal of the complaint referred and registered as crime and the statement of the complainant recorded as L.W-1 during investigation apart from others coupled with remand report of accused, the material no way shows attracting of Section 420 I.P.C. or Section 477-A I.P.C.

19) The other decision of Three Judges of the Apex Court in ***State of M.P. V. Mir Basith Alikhan***[5] holds that for the offence of cheating it is not even suffice of the scheme evolved is speculative or unworkable without showing any defraud or cheating with intention of suppression or misrepresentation in deceiving to cheat with wrongful gain or wrongful loss.

20) The other decision is ***Hari Prasad Chamaria V. Bishun Kumar Surekha***[6] of appellant to start business in full faith give large amount to respondents and respondents starting the business in their own name and refusing to render account is not even suffice to attract the offence under Section 420 I.P.C. in the absence of specific showing in the complaint of prima facie accusation of dishonest or fradulent intention from the inception. The other decision relied is ***Brahmananda Mohanty V. The State***[7] of what is the proof required for the offence under Section 409 and 405 I.P.C in saying intention on the part of the accused and is giving of false accounts of what he has done with the money is a strong circumstance for not accounted for. In fact, it is also after full dressed trial of the conclusions arrived on facts in deciding the matter.

21) Equally coming to the decision in ***S.Harnam Singh V. The State (Delhi Admn)***[8] to attract the offence punishable under Section 477-A I.P.C, the word willfully and intent to defraud used to mean intentionally or deliberately and mere fact of certain entries made by accused wrongly even does not attract offence under Section 477-A, I.P.C. Nothing more is required to discuss from this accusation for the conclusion already arrived from facts plain of no offence under Section 477-A, I.P.C is attracted in the case on hand.

22) The other decision for the offence under Section 406 I.P.C of ***Kalaktar Singh V. The State of Bihar***[9] no way requires further discussion but for to say reiteration of the principle laid down in the decision supra of there must be entrustment of property or dominion over property and it is thereafter same is

shown as misappropriated or converted to own use in violation of the direction, to attract the offence of breach of trust defined under Section 405 I.P.C. The decision in ***Ashim K.Roy V. Bipinbhai Vadilal Mehta***[10] relied is premature to discuss where it was a calendar case on appreciation from the material on record upheld the order of the High Court quashing the crime under Section 409 I.P.C on the allegation of respondents diverted the funds of the Company by making advance to suppliers, whereas respondents not in control or management of the Company.

23) The decision in ***S.N.Palanitkar V. State of Bihar***[11] not laid down any new principle regarding the offence under Section 420 and 406 I.P.C than what is referred supra. It was in fact added therein of arbitration clause in the agreement cannot prevent criminal prosecution if acts alleged made out a case but for to say on facts there is nothing to show any entrustment to any of accused any principal or dominion over it of complainant and nothing to say from the inception any existence of intention to deceive but for any failure of promise. Same is also laid down in the other expression relied in ***K.C.Builders V. Assistant Commissioner of Income Tax***[12] at para No.29 of which required to be proved of accused had fraudulent or dishonest intention at the time of making promise or misrepresentation and failure to keep a promise subsequently even nothing to presume culpable intention right from beginning in the absence of same making out. The other decision of ***V.P.Srivastava V. Indian Explosives Limited***[13] in saying in holding a person guilty of cheating it is necessary to show that at the time of making promise he had fraudulent or dishonest intention to deceive or to

induce person so deceived to do something which he would not otherwise do and in the absence of which nothing can be presumed for subsequent failure to keep the promise. Specific averments must be there in the complaint or report. On facts, the complaint for the offence under Section 420, 406, 120-B I.P.C were quashed in saying the absence of any entrustment no offence under Section 406 I.P.C that can be made out even showing any dishonest conversion of any property or its dominion for own use; thus not laid down any new principle than what is discussed supra. So also, the expression in ***Iridium India Telecom Ltd. V. Motorola Incorporated***[14] regarding offence under Section 420 I.P.C of deception from inception necessary and complaint must show inducement caused by deception exercised by accused. Coming to the other decision in ***Sadhupati Nageswara Rao V. State of A.P.***[15] in relation to offence under Section 409 I.P.C accused dealer of fair price shop and food for work coupons rice entrusted to him to distribute against coupons. However, he sold without ration cards and could not submit coupons for the stock found deficient during inspection is nothing but deception on facts. In fact it is already observed that the offence under Section 409 I.P.C requires investigation from facts on hand also, leave it as to how far the principle applied in the expression to the present facts to decide after police investigation final report to raise at that relevant point of time. So, also the expression ***Inder Mohan Goswami V. State of Uttaranchal***[16] where the Court held that criminal prosecution not to be used as an instrument of harassment or for seeking vendetta and if such facts brought in, refusal to quash is improper.

24) In fact in the case on hand the allegation is

misappropriation or breach of trust of the Union amounts by the executive committee of the Union. As observed supra, it requires to investigate from the year 2005-2006 including against the Ex-executive members for several huge amounts drawn or flown to their hands, to show and account for how they spent. Having regard to the above, the investigation so far as the offence under Section 409 I.P.C is required, including against Ex-executive committee President etc, as in the factual scenario already discussed above.

25) The decision relied upon of ***Binod Kumar V. State of Bihar***[17] speaks a civil liability since cannot be converted to criminal liability, which requires quashing as abuse of process of Court. There on facts, despite direction of the V.C, the accused persons Principal and Professor and Bursar withheld the amount and in that scenario held no offence under Section 406 I.P.C made out and by referring to ***Indian Oil Corporation V. NEPC India Ltd***[18] and ***G.Sagar Suri V. State of U.P***[19] held so and the facts therein are entirely different to the facts herein that too from the investigation in progress so far as the offence under Section 409 I.P.C for this Court at this stage does not in the interest of justice to quash but for directing the police to complete the investigation for the same right from the year 2005-2006 for persons responsible including against Ex-executive committee. It is needless to say the inherent powers of the Court saved under Section 482 Cr.P.C, that inheres from its constitution to exercise is to meet the ends of Justice as the Court has a duty from facts brought to its notice, not to perpetrate any illegality and also to prevent any injustice and not to allow any proceedings to be used to work as substantial injustice and here the paramount

consideration is to protect the Union and its funds.

26) Accordingly, in the result, the Criminal Petition is partly allowed, while directing the investigation of the crime so far as the offence under Section 409 I.P.C, not only against the present accused Nos.1 to 3 from 2014, but also against Ex-executive committee President, Secretary, Treasurer etc., from the year 2005-2006 in detail and file final report against all those responsible and so far as the defacto-complainant herein concerned to forward the paper cutting of his disproportionate wealth to known sources for Anti Corruption Bureau to take legal action by verification of truth for registering any Crime and investigation. The other offences for which the crime registered and including by adding of other sections from direction of the Court viz., for Sections 420, 406, 477-A I.P.C are quashed. Needless to say in the event of police filing final report so far as the offence under Section 409 I.P.C concerned in addition to any other offences if at all made out that can be included and any cognizance taken by Court therefrom, it is left open further remedies to the petitioners/accused.

Dr. B. SIVA SANKARA RAO, J

16.09.2015
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[1] 2009 Cri.L.J 822

[2] AIR 1992 SC 604

[3] AIR 1956 Mysure 40

[4] AIR 1963 SC 666

[5] AIR 1971 SC 1620

[6] AIR 1974 SC 301

[7] AIR 1967 Orissa 135

[8] AIR 1976 SC 2140

[9] 1978 Cri.L.J 663

[10] AIR 1997 SC 3976

[11] AIR 2001 SC 2960

[12] (2004)2 SCC 731

[13] (2010)10 SCC 361

[14] AIR 2011 SC 20

[15] AIR 2012 SC 3242

[16] AIR 2008 SC 251

[17] (2014)10 SCC 663

[18] (2006)6 SCC 736

[19] (2000)2 SCC 636