

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1782 OF 2014

ORDER:

The present Revision is filed questioning the framing of charges against the petitioner herein for the offences punishable under Sections 406, 408 and 409 IPC.

The allegations in the charges are as follows :

i)A-1 being the President of Penumadam Primary Co-op. Society Ltd., for the period from 29.07.1999 to 10.08.1999, opened a S.B. Account in the name of his family members and credited Rs.88,300/- and Rs.65,000/- and later directed A-2 and A-3 to deliver such money without vouchers, took delivery of the same and committed an offence punishable under Section 406 IPC; ii)A-2 and A-3 being the clerks of Penumadam Primary Co-op. Society Ltd., having been entrusted with money of the said society, delivered the same to A-1 without obtaining vouchers from the concerned members and when the fraud was detected, A-2 repaid the entire amount of Rs.1,53,500/-. The misappropriated amount was estimated at Rs.23,154.70 ps., thereby committing an offence punishable under Section 408 IPC and iii)A-1 to A-3 being President and Clerks of the above Society misappropriated an amount of 1,53,300/-, but subsequently repaid the amount. The Inspection Officer estimated the amount misappropriated at Rs.1,53,300/- .

The case of the prosecution is as under :

A charge-sheet came to be filed basing on the report of Deputy Registrar of Co-operative Societies, Bhimavaram, which in turn was based on a report of the enquiry conducted under Section 51 of A.P. Co-operative Societies Act. Subsequently, the Deputy Registrar issued surcharge notice on 05.05.2001 to the petitioner and other Directors, which was later dropped.

One of the arguments raised by the learned counsel for the petitioner is that when surcharge proceedings are dropped, the question of continuing with the criminal case would be an abuse of process of law. He placed reliance on a judgment of this Court passed in W.P. No.2774 of 2005.

Before proceedings further, it would appropriate to refer to the surcharge order passed on 22.01.2004. The last paragraph of the said order shows that the

proceedings are dropped since the amount was credited to the Society with interest. In view of the above, the Deputy Registrar of Cooperative Societies felt that no further action under Section 60(1) of the A.P. Cooperative Society Act is necessary and accordingly dropped the proceedings.

By this it does not lead to an ultimate conclusion that the petitioner is not guilty of the offence. The order only discloses that the amount alleged to have been misappropriated was paid back to the Society with interest. The judgment of this Court relied upon by the learned counsel for the petitioner deals with a situation where there was no material evidence to show that Ex-President and Members have caused deficiency to the assets of the Kothakota Primary Agricultural Cooperative Society, Kothakota, Visakhapatnam District. After the proceedings attained their finality, the criminal proceedings came to be lodged. The situation on hand is totally different. The trial court found enough material to frame the charges for the offences punishable under Sections 406, 408 and 409 IPC. The averments in the charge-sheet clearly disclose that the accused in collusion with others have transferred the amount thereby committing the offences alleged. In view of the above, this Court is of the opinion that question of setting aside framing of charges does not arise as there is material before the court showing *prima facie* case against the accused.

Accordingly, the Criminal Revision is dismissed making it clear that any observations made in the order are only for the purpose of deciding the case on hand and not beyond that. Having regard to the circumstances of the case and since the petitioner is aged about 70 years, his presence in C.C. No.428 of 2004 on the file of the Judicial Magistrate of First Class, Palakol is dispensed with except on the dates when his presence is specifically required by the court.

JUSTICE C. PRAVEEN KUMAR

Date: 13.04.2015

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