HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.15611 of 2014

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ORDER :

The petitioner is the 2nd accused of C.C.No.103 of 2013 on the file of the Judicial First Class Magistrate-cum-Junior Civil Judge, Piduguralla of Guntur District. The 2nd respondent-*de facto* complainant filed a complaint before Piduguralla Police Station, Guntur District, which is registered as Crime No.289 of 2011 for the offences punishable under Sections 408 and 420 read with 34 IPC. The sum and substance of the accusation in the complaint dated 21.09.2011 is that, the 2nd respondent, LW.1 of the charge sheet, is the leader of Usha Mahila Podupu Sangham of Thummala Cheruvu Village and that on 24.08.2011, the E.C. members elected her as President and also Shaik Hasan Bi (LW.3) as Secretary and T.Sundaramma (LW.4) and Treasurer to the Mandal Samakya. Prior to that, one Vallepu Rama (LW.7) was President, P.Yesu Daya Mani (LW.8) was Secretary and Ch.Nagendram (LW.9) as Treasurer and during their tenure, A.1 was appointed as an accountant on a monthly salary of Rs.3,900/- and A.2 was appointed as Assistant Project Manager (APM) through the Society for Elimination of Rural Poverty (SERP). It is further alleged in the complaint that they assumed charge subsequent to 24.08.2011 and taking an advantage of illiteracy of the earlier President, Secretary and Treasurer, when they were verified regarding the amounts earlier received, it is noticed that an amount of Rs.2,21,800/- covered by '17' cheques were drawn by A.1 and utilized for self and A.2 was also responsible in this regard and A.1 and A.2 obtained their signatures without even any resolutions and the amounts were drawn from the Chaitanya Godavari Grameen Bank (CGGB) and State Bank of India (SBI) from the three joint accounts, hence, to take action. It is after investigation, police by examining as many as 13 witnesses including earlier

President, Secretary and Treasurer and Branch Managers CGGB and SBI, Piduguralla, filed the final report and the same was taken cognizance by the learned Magistrate, for the offences referred supra, speak that during the relevant period, A.1 worked as an accountant and A.2 as Assistant Branch Manager and LWs.7 to 9 V.Ramana, P.Yesu Daya Mani and Ch.Nagendram respectively as office bearers, with cheque powers to encash the amount from the Bank as per the resolution by the Society members as LWs.7 to 9 are illiterates and not having knowledge on the provisions and bylaws, but for only nothing to be signatures on the cheques. By taking advantage of it, A.1 colluded with A.2 and obtained signatures of LWs.7 to 9-office bearers supra on the cheques, encashed and misappropriated the amount and the so called cheques cncashed with were without passing resolutions, thereby misappropriated for the use by A.1, if at all any share to A.2 during the period from 03.05.2011 to 09.06.2011 and after that A.2 send a report to the Director, D.R.D.A. Guntur, about mis-appropriation of society funds by A.1 and on enquiry conducted by the District Project Manager (LW.5), it revealed that A.1 admitted about her guilty and promised to repay the amount to the Bank on adjournment basis and also paid an amount of Rs.20,000/- as first installment and there from the *de facto* complainant lodged written report and it is further mentioned in the final report that A.1 made confession that she colluded with A.2 in deceiving LWs.7 to 9 supra in getting their signatures on the 17 cheques to encash the amount of Rs.2,21,800/- by her in different dates by giving share to A.2.

2. It is impugning the said police final report, A.2 filed this quash petition with contentions that there is no basis so far as the petitioner-A.2 to implicate him in this case and that he worked as Assistant Project Manager appointed by SERP and the duties entrusted to him were only to supervise the meetings of Samakya that too with the consent of LWs.7 to 9-office bearers and he is no way responsible for financial affairs of the Samakya and that the Government will credit the amounts directly to the Bank account of the Samakya and the

President, Secretary and Treasurer of Samakya were having the cheque power and they were withdraw the amounts directly from the Bank or through their nominated persons and petitioner no way connected or concerned with the alleged amount and its misappropriation and he is falsely implicated and if at all there is any misappropriation, it is the members of the Samakya are responsible and the petitioner is nothing to do with the financial affairs that are being dealt by LWs.7 to 9 and they were not arrayed as accused in the F.I.R for the reason best known and he is falsely implicated though it is the petitioner reported misappropriation of funds to the Project Director, D.R.D.A. Guntur, in writing on 15.06.211 brining to their light about misappropriation committed by A.1 and the office bearers of the Samakya and it is A.1 that allegedly committed her guilty and addressed letter to the Project Director, Guntur, undertaking to deposit the amount to the account of Samakya and that itself shows he is innocent and the so-called confession of A.1 can never serve basis as implicated and thereby, the proceedings are liable to be quashed.

3. From the police final report, there is nothing to show specific role of the petitioner. The letter addressed by him in writing dated 15.06.2011 to the Project Director, D.R.D.A. Guntur, shows the accountant and office bearers of Samakya are withdrawing the amounts through cheques and mis-appropriated the amount to a tune of Rs.2,21,800/- under different cheques. Undisputedly, the office bearers get the cheque powers and they signed on the cheques when withdrawing the amounts. As per his letter dated 15.06.211, it is the Samakya members and A.1 alone and he is having a little role. No doubt, there is a letter in writing by A.1 to the Project Director, stating that A.1 withdrew the amount of Rs.2,21,800/- and she can redeposit the amount and no doubt it is mentioned by her that the Samakya office bearers i.e., LW.7 to 9 to the charge sheet, received the amount withdrawn, however they are not admitting the same, thereby she undertakes to redeposit the amount to the Bank. The petitioner relied on the letter of A.1 addressed to the

Project Director dated 15.06.2011. No doubt, this is relevant material to show his innocence also and even a confession of co-accused before the police that is when not admitted against co-accused under Section 25 of the Evidence Act, 1872 (for short, 'the Act'), equally not against the petitioner, but for to the extent confession leading to discovery of fact under Section 27 of the Act against the maker and to any other extent against co-accused. Even from the police final report, there is nothing to show any amount recovered or any material recovered from the petitioner, much less any fact discovered by any arrest and interrogation of him. Charge sheet itself speaks, there was no interrogation or arrest of him. However, the fact remains that the petitioner did not file any material, like statements of witnesses, which is also relevant for the Court to consider, more particularly, that of the Bank Managers' statement as to who presented the cheques and any person nominated to receive the amounts under the cheque and he is a person through nominated in the cheques to receive the amounts or withdrawn the amounts. In the absence of that material also, it is premature for this Court to quash the petition including from the F.I.R. quashment application of him disposing by this Court in Crl.P.No.10497 of 2011 dated 01.11.2011 with the observation that the police to complete investigation without making arrest of the petitioner. However, if investigation reveals that the petitioner is a person to be named as a witness, he shall be arrayed as a witness.

4. Having regard to the above, from the material falls short though some of the material which are not covered by police investigation, the petitioner can placed reliance in the quash petition that filed disclosed his innocence, for want of Part-II C.D. before the Court that is not filed by the petitioner, this criminal petition is disposed of giving liberty to the petitioner to file an application under Section 239 Cr.P.C. before the learned Magistrate along with the report of him addressed to the Project Director, D.R.D.A., dated 15.06.2011, for that the learned Magistrate to decide on merits with reference to Part-II C.D. file and the from the prosecution material and to receive these two documents also by virtue of this order.

5. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

09.11.2015

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