HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1670 of 2014

ORDER:

The criminal revision case is filed under Section 397 & 401 Cr.P.C. by the petitioners/A.8 and A.9 against an order refusing to discharge them in C.C.No.44 of 2010 on the file of Special Judge for SPE and ACB Cases, Vijayawada. A charge sheet came to be filed against the petitioners and others for the offences punishable under Sections 468, 471, 409, 420, 120-B r/w 34 of IPC and Section 13(1)(c) r/w 13(2) of P.C. Act.

The allegations in the charge sheet are as under:

It is alleged that some of the employees of Machilipatnam Municipality in collusion with the employees of District Treasury Office (DTO), Machilipatnam, fraudulently and dishonestly misappropriated Municipal General Funds to a tune of (1) Rs.13,33,641/- relating to daily chitta amount, (2) an amount of Rs.13,556/-, which is 85% of library cess and (3) by excess drawl of LOC amount in the form of 2 LOCs to a tune of Rs.6,99,992/-. Thus, the amount alleged to have been misappropriated in the present C.C. was around Rs.20,47,189/-. Initially, a case in crime No.25/2005 came to be registered at Robertsonpet Police Station, thereafter, the CID took over further investigation and filed three different charge sheets vide C.C.No.42 of 2010 for the period covering from 23.08.2002 to 22.08.2003, C.C.No.43 of 2010 for the period 23.08.2003 to 22.08.2004 and C.C.No.44 of 2010 for the period 23.08.2004 to 27.10.2004.

In the instant case, the petitioners/A.8 and A.9 worked as Assistant Treasury Officers at Machilipatnam from 07.04.2004 to 03.01.2005 and from 05.09.2003 to 31.05.2005. It is the case of the prosecution that the present petitioners in connivance with other accused who fabricated and forged challans, falsified the accounts of Municipality and District Treasury Office, Machilipatnam and later passed them. In substance, it is alleged that the petitioners misappropriated an amount to a tune of Rs.26,50,000/- by clearing fabricated and forged challans.

After filing charge sheet, the petitioners herein filed Crl.M.P.No.395 of 2012 under Sections 227, 239 and 245 of Cr.P.C. seeking discharge. By an order dated

30.01.2014, the learned Special Judge for SPE & ACB Cases, Vijayawada, rejected the said application. Aggrieved by the same, the present revision is filed.

The learned counsel for the petitioners mainly submits that as per the Office Order No.11 of 2003 dated 18.10.2003 of DTO, Krishna District, the Accountant and Treasury Officer are responsible for preparation of Bank list, scrolls, verification, challan enfacement, maintenance of budget control register, reconciliation. In view of the above, it is urged that the petitioners, who are working in the office of DTO, are in no way responsible for the commission of the offence. Placing reliance on the statement of witnesses recorded by the police during the course of investigation, it is contended that there is no iota of material connecting the petitioners with the crime. He relied up on the statement of LW.35 to show the procedure that being followed for clearing the challans and payments made. He submits that even as per the statement of LW.35, the role of the petitioners was to forward the challans put up before them and it is practically impossible to check the genuineness and authenticity of every challan, which is placed before them. He also placed reliance on the enquiry report in support of his plea.

Per contra, the learned Public Prosecutor opposed the present revision contending that the allegations made in the charge sheet do prima facie make out a case against the accused. He submits that though the witnesses do reveal the role of the petitioners in the commission of the offence, and it is for the petitioners to explain under what circumstance, they have passed the challans which are fake and fabricated. Since, there is no dispute with regard to passing of the fake challans by the petitioners, it is urged that the question whether they have intentionally passed them or whether the challans were passed by them in a routine manner are matters which can be gone into during the course of trial.

In fact, the statement of LW.35, which is relied upon heavily by the learned counsel for the petitioners, refers only to the procedure, which is followed in the department. As per the statement, whenever the Municipal authorities approach the Treasury with a letter of credit (LOC) requisition along with duplicate challans, the DTO/ATO will initial the letter and send it to accountant who will verify the LOC requisition particulars with entries in the PD Account ledger maintained in the Treasury and prepare a note in PD account ledger showing issuance of LOC after being satisfied about the availability of balance as per the receipts attested in the account. The Sub Treasury Office will then verify the LOC requisition particulars with the entries made in the PD Account ledger and then the same will be initialed underneath the note which will be sent to ATO for final approval. The ATO will verify and attest the LOC letter, underneath the note in PD Account ledger. The said LOC letter will be prepared in triplicate, of which, one copy will be send to State Bank of India, one copy to Municipality and another to the Treasury. The Treasury will send this LOC to SBI, Machilipatnam through local tappal. On receipt of the same, the Bank will credit the amount in General Fund Account of Municipality to allow payments. The statement of LW.35 further discloses that DTA will check the PD Account ledger entries with actual challans and will also compare the cheque payments with the figures mentioned in the computer account before making the initial. From the statement of LW.35 it is clear that the petitioners are the final approving authority of the LOCs by making proper attestation in the note and thereafter, the same will send to the Bank for payment.

At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage **(Amit Kapoor Vs. Ramesh Chander)**. In **C.B.I. Vs. Mukesh Pravin Chandra Shroff**, the Apex Court held that at the stage of framing charge, what is required to see is whether there are sufficient grounds to proceed against the accused.

It is to be noted that the Court has to satisfy itself as to whether there is sufficient material for proceeding further. The question of giving benefit of doubt may be a factor that can be taken into consideration after the completion of trial, but not at the stage of discharge. Keeping in view the principles of law laid down by the Apex Court referred to above, I shall now proceed to deal with the case on hand. As stated earlier, the 1st ground raised by the learned counsel for the petitioners is that the enquiry report gives a clean chit to the petitioners with regard to their complicity in the crime and as such, initiation of prosecution against the petitioners is unwarranted. It is to be noted that the enquiry report, which has been placed on record, show that nearly 16 officers belonging to the District Treasury Office, were tried on various allegations. In the said report, the petitioners herein were shown as CO-6 and 13. A perusal of the enquiry report would show that fraud came to the light when the Vigilance and Enforcement Department made a detailed check of all the concerned records in the District Treasury Office, and found that there was total lack of supervision on the part of the concerned, major lapse of maintenance of proper accounts and connected records on the part of those who were entrusted with the job, which enabled others to commit fraud. The enquiry officer examined number of witnesses working in the treasury office and their statements disclose that due to deviations by the petitioners and others from the accepted treasury procedures, opened flood gates for creating fake challans and fake credit bills etc., leading to siphoning of found to a tune of Rs.1 crore. The plea, which was taken by all the officers of DTO before the enquiry officer was that there was no deliberate intention to commit the offence. The enquiry officer rejected the said plea and found that the charge against the officers' stand proved.

In so far as petitioners are concerned, it was found that fake challans were taken into account for issuing LOCs. When crosschecked with the sub account concerned, it was found that no such challans were actually remitted. The above LOCs were issued without crosschecking the remittance challan received in the Treasury. The enquiry officer also found that the verification of P.D. Account reveal postings not being made as per the prescribed procedure. Postings if any made were without the attestation of the Treasury Officer concerned and (+) and (-) memorandum were not attested regularly. Several fake entries were noted to the charge memo. Thus, the enquiry officer found that the act of the accused gave scope for fraud and that the challans were also found to be fake. Therefore, the argument of the learned counsel for the petitioners that the enquiry report is silent with regard to the role of the petitioners in the commission of offence cannot be accepted. In fact, the Apex Court in **State (NCT of Delhi) Vs. Ajay Kumar Tyagi** held that the findings recorded in the departmental proceedings are not final and decisive.

The next question that falls for consideration is whether there is any material before the Court to frame a charge against the accused.

A perusal of the allegations made in the charge sheet would show that A.1 to A.5 and A.6 to A.9 prepared LOC.No.113 for Rs.26,50,000/- sent it to the District Treasury, Krishna District, Machilipatnam and thereafter, all the accused in connivance with A.7 (Accountant) and A.11-District Treasury Officer, DTO, Machilipatnam issued LOC.113 to SBI Main Branch, Machilipatnam which contains six fake unpaid challans for an amount of Rs.4,47,381/-. It is specifically stated that

A.7 and A.11 verified the copies of the challans, which were available with them and knowing that there are fake (unpaid challans shown as genuine paid up challan) for an amount of Rs.4,47,381/- with dishonest intention approved LOC. It is further alleged in the charge sheet that A.7 and A.11 issued LOC.No.113 to SBI Main Branch, Machilipatnam which contains two six challans causing loss of Rs.4,47,381/-.

From the averments made in the charge sheet, it is clear that the petitioners along with the other accused got passed LOC.113 knowing that six challans, which were before them were fake challans. As stated earlier, the counsel for the petitioners strenuously contends that statements of four witnesses examined by the prosecution does not in any way connect the petitioners with the crime. It may be true that the statements do not directly speak about the connivance of the petitioners, but the fact, which remain undisputed is that the petitioners have approved LOC.113 basing on fake challans. Whether the petitioners have done it intentionally knowing that some of the challans were fake or whether it was by accident or whether it is practically impossible for them to verify each and every challan which is placed before them, is their defence which can be agitated only during the course of trial. When the petitioners have admittedly passed fake bills, it is for them to explain during trial as how and why those fake bills are cleared. The plea taken it they are overburden with work and that it is impossible for them to identify a fake one in the lot cannot be accepted at this stage. The issue as to whether they had any intention or knowledge or have done with the act with a *malafide* intention is a matter which has to be gone to only during trial.

Since the issue involves disputed question of fact and law, the same can be adjudicated after proper appreciation of evidence adduced during the trial. Hence, I see no merit in the revision and the same is liable to dismissed. Accordingly, the Criminal Revision Case is dismissed. No order as to costs.

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

C. PRAVEEN KUMAR, J

Date: 08.04.2015

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