

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 697 of 2016**

Dr. S.V.K.Prashad S/o Late S.A.P. Prashad Aged About 62 Years
Occupation Principal, Government College Kawardha, R/o Collage
Premises Kawardha, Police Station & Tahsil Kawardha, District
Kabeerdham, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Station House Officer, Police Station Kawardha, District Kabirdham, Chhattisgarh.
2. Piyush Singh S/o Late Raj Kumar Singh Aged About 25 Years R/o Ward No. 19, Kalika Nagar Kawardha, District Kabirdham, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Pawan Kesharwani, Advocate
For Respondent No.1/State:		Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.07.2016**

1. By way of the present Petition the Petitioner seeks quashment of the charge sheet No. 251/2014 registered by the Police Station Kawardha, District Kabirdham against the present Petitioner for the offence under Section 406, 409 read with 34 of I.P.C.
2. Learned Counsel for the Petitioner submits that from a plain reading of the averments made in the F.I.R. admittedly the present Petitioner have not misappropriated fund of the College under Jan Bhagidari Scheme for his personal use and that the whatever act which the present Petitioner committed was on the basis of a resolution passed by the Staff Council of the College and therefore

the present Petitioner can not be saddled with the charge of having committed an act under Section 406 of I.P.C. He further submits, a plain reading of the complaint in F.I.R. also would show that the present Petitioner has used the money for a noble cause in as much as part of the college fund under Jan Bhagidari Scheme was used, that too on the decision of staff council for certain payment from the said amount to 3 of the staff member of the college who were in dire need of money for the medical treatment. Even before the F.I.R. was lodged the entire money which has been given to those three staffs have returned back and as such there is no misappropriation of fund or for that matter no role has been played by the present Petitioner intending misappropriation. Therefore, prayed for quashment of the entire proceedings at the threshold itself.

3. Learned Counsel for the Petitioner further relies on the judgment of the High Court of Chandigarh in Criminal Miscellaneous No.M-8390/2011 decided on 22.05.2012. Learned Counsel for the Petitioner submits that taking into consideration the fact that there was a resolution of the staff council for providing the payment from the said funds to the 3 staff members itself is sufficient to prove the Petitioner had no personal interest in the said transaction that it has been done taking into consideration the decision of the staff council and also for a noble cause which the staff council has decided.

4. He further relies upon the judgment of the Supreme Court in the case of R. Venkatkrishnan Vs. Central Bureau of Investigation reported in (2009) 11 SCC 737 on para 149 which reads as below:

“ 149. In *Ram Narayan Popli* this Court stated the law, thus:

361. To constitute an offence of Criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him, that the amounts to a criminal breach of trust as defined by Section 405. The section is relatable to property in a positive part and negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust.”

5. So far as the judgment of the Chandigarh High Court is concerned the facts of the said case are quite distinguishable from the present case for the reason that it was the case where siphoning and misappropriation of Provident Fund amount of the staff of the college was done and the offence was registered against the President. The finding was that the said misappropriation was done at the ends of the Principal of the College without the knowledge of the President and the Principal was not made an accused in the case nor was he was made a party to the proceedings at all and therefore in absence of direct allegation the Petition filed by the President of the College for quashment of the F.I.R. was allowed.

6. Further, the judgment of the Supreme Court in case of *R. Venkatkrishnan* (Supra) relied upon by the learned Counsel for the Petitioner is concerned the ingredients which has been put forth for constitution of offence under criminal breach of trust is concerned are missing in the present case. There must be misappropriation or conversion once in use or used in violation of legal contract. So far

as entrustment part is concerned it is not in dispute that the Principal is entrusted of the fund under Jan Bhaghidari Scheme and so far as misappropriation is concerned there is again prima face a case made out to the extent that the fund under Jan Bhagidari was withdrawn by the present Petitioner and have been used for the purpose other than works under Jan Bhagidari Scheme and now only thing which has to be seen is whether there was a motive in the mind of the Petitioner for misappropriation or siphoning of funds. These are all facts which can be looked by the prosecution only during the course of evidence and it can not be looked by this Court while exercising the power under Section 482 of Cr.P.C..

7. So far as the law under Section 482 CrPC is concerned is by now is well settled proposition that while considering the case for quashing of the Criminal proceedings the court should not “kill a stillborn child” and appropriate prosecution should not be stifled unless there a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a

charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.

8. Having considered the contentions put forth by the Counsel for the Petitioner prima facie this Court is of the opinion that there is an admission on part of the present Petitioner to the extent that the funds which were in the account of Jan Bhagidari Scheme has been withdrawn at the instance of the present Petitioner though it might have been used for some noble cause, admittedly the fact remain the same that the said withdrawn amount was used for purpose other than the scheme of the Jan Bhagidari.

9. Therefore, at this stage it would not be appropriate to quash the F.I.R. which has been lodged against the present Petitioner. As such, the present Petition being devoid of merit, the same is dismissed.

10. However, the reluctance in entertaining the present Petition would not preclude the Petitioner from raising of these disputes before the Court below at the time of framing of charge.

Sd/-
(P. Sam Koshy)
JUDGE