THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE Nos.2064 & 2065 OF 2006

COMMON ORDER:

Criminal Revision Case No.2064 of 2006 is filed by the petitioner/A-3 under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 8.12.2006, in Criminal Appeal No.10 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 29.1.2004, in C.C.No.164 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry.

Criminal Revision Case No.2065 of 2006 is filed by the petitioner/A-3 under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 8.12.2006, in Criminal Appeal No.11 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 29.1.2004, in C.C.No.165 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry.

2. Since the parties and the allegations in both the cases are one and the same, these two cases are being disposed of by way of this common order.

3. **CRIMINAL REVISION CASE No.2064 OF 2006**:-

Case of the prosecution, in brief, is as follows:

A-1 worked as Clerk in Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru from 1.7.1988 to 31.7.1991. While he was working as Clerk, he attended the sale of fertilizers and other items connected with the society. A-2 worked as Secretary of the said society from 15.7.1987 to 10.5.1991 and he is responsible for the executive administration of the society and shall maintain the records of the society subject to the control of the President and Board of Management. A-3 was elected as President of the society and he worked as President from 1.7.1987 to 30.8.1990 and he is the custodian of all the properties of the society including cash and records. L.W.2, who worked as Co-operative Sub-Registrar, conducted enquiry as per order of the District Co-operative Officer. During enquiry, it was revealed that A-1 to A-3 committed misappropriation of Rs.1,02,398-20 ps. during co-operative year 1988-89. The total misappropriation from 1988 to 1991 is Rs.5,62,381-43 ps. A-1 conducted sales. A-2 and A-3 did not supervise properly and failed to bring the proceeds to the cash book. A-1 misappropriated an amount of Rs.42,000/- by diverting the stock of fertilizers and he produced false bills. On 13.3.1989, A-2 debited an amount of Rs.5,100-25 ps. in the cash book and credited only an amount of Rs.3,165.55 ps. He did not account for the remaining balance. On 29.6.1989, A-2 debited an amount of Rs.98,080-63 ps. in the cash book without mentioning any details and misappropriated the amount. A-2 did not account for the remaining balance of Rs.8,474-63 ps. These facts came to light during enquiry. The District Collector accorded sanction in proceeding the accused. L.W.1 gave report to Sub-Inspector of Police, who registered the same as Crime No.171 of 1993. The accused surrendered before the Court on different dates. Separate charge sheets were framed.

4. **CRIMINAL REVISION CASE No.2065 OF 2006**:-

Case of the prosecution, in brief, is as follows:

i) A-1 worked as Clerk in Sri Rajyalakshmi Primary Agricultural Co-operative Society, Katheru from 1.7.1988 to 31.7.1991. While he was working as Clerk, he attended the sale of fertilizers and other items connected with the society. A-2 worked as Secretary of the said society and he is responsible for executive administration of the society and he maintains the records of the society subject to the control of the President and the Board of Management. A-3 was elected as President of the said society and he worked from 1.7.1987 to 30.8.1990 and he is the custodian of all the properties of the society including cash and records. L.W.2, who worked as Co-operative Sub-Registrar, conducted enquiry as per order of the District Co-operative Officer. In the enquiry, it was revealed that A-1 to A-3 committed misappropriation of Rs.1,02,398-20 ps. during co-operative year 1988-89. The total misappropriation from 1988 to 1991 is Rs.5,62,381-43 ps. A-1 conducted sales. A-2 and A-3 did not supervise properly and failed to bring the proceeds to the cash book. A-1 misappropriated an amount of Rs.8,673/-. A-2 misappropriated an amount of Rs.15,235/-. A-2 also encashed the cheque, dated 15.12.1989, on

26.12.1989 for a sum of Rs.9,425/- and did not credit the amount in the cash book and misappropriated A-3.

A-3, with the assistance of A-1 and A-2, obtained an amount of Rs.60,000/- in the name of L.Ws.3 to 12. A-1 to A-3 forged the loan application and other documents. The enquiry officer brought the above facts to the light and submitted the report to the District Co-operative Officer. The Collector accorded sanction in proceeding the accused. The Divisional Co-operative Officer gave report to the Sub-Inspector of Police, who registered the case in Crime No.171 of 2003 under Sections 409, 465 and 477-A read with 34 I.P.C. After completion of investigation, Sub Inspector filed charge sheet besides two other charge sheets since the misappropriation and other offences were committed for a period of three successive years.

5. In both the cases, cognizance was taken against A-3 for the offences under Sections 408, 409, 420 and 477-A I.P.C. After appearance of A-3, he was charged under Section 409 I.P.C. in both the cases for which, he pleaded not guilty. So, he was placed for trial. The prosecution examined three witnesses and marked twenty documents in C.C.No.164 of 1997 whereas the prosecution examined nine witnesses and marked four documents in C.C.No.165 of 1997.

6. After considering both oral and documentary evidence, the trial Court found A-3 not guilty for the offence punishable under Section 409 I.P.C., but found him guilty for the offence punishable under Section 406 I.P.C. in both the cases and accordingly,

convicted and sentenced him to undergo rigorous imprisonment for a period of two years in both the cases. Challenging the judgments in C.C.Nos.164 and 165 of 1997, A-3 preferred Criminal Appeal Nos.10 and 11 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry respectively and the same were dismissed by the learned Sessions Judge confirming the judgments of the trial Court on the ground that the trial Court has not committed any error. Aggrieved thereby, A-3 filed these Revision Cases.

7. Heard and perused the material available on record.

8. It is brought to the notice of this Court that during pendency of these Criminal Revision Cases, the petitioner preferred an appeal before the A.P. Co-operative Tribunal, Visakhapatnam challenging the surcharge orders of the Deputy Registrar of Co-operative Societies, Rajahmundry under Section 60 of the A.P. Cooperative Societies Act, 1964 vide Rc.No.90/92-G, dated 18.3.1994, and the same was numbered as O.A.No.26 of 2005. *Vide* order, dated 21.3.2007, the Tribunal observed in para No.6 as under:

> ***"........However, the ex-President/appellant herein is included in the section 51 Enquiry Report and in the impugned surcharge order on the ground that the ex-president has not properly supervised the work of the ex-salesman and the ex-secretary of the society. There may be negligence on the part of the ex-president but there is no evidence of willful negligence on his part. Hence, the Deputy Registrar/1st respondent is not justified in including the name of the ex-president along with the salesman and secretary of the society in the impugned surcharge orders."***

The said order was challenged by Sri Rajya Lakshmi Primary Agricultural Co-operative Credit Society before this Court in W.P.No.6529 of 2009 and the same was dismissed as withdrawn on 3.2.2010. Hence, the order passed by the A.P. Co-operative Tribunal is final.

9. After perusing the entire record and considering the facts and circumstances of the case, this Court is of the view that the observation of the Tribunal in O.A.No.26 of 2005 is applicable to the present Criminal Revision Cases also. The petitioner, being the ex-President of the said society, has no direct role to play and deal with the financial transactions of the society. Hence, this Court is of the view that the judgments of the Courts below are liable to be set aside.

10. Accordingly, the Criminal Revision Cases are allowed setting aside the conviction and sentence recorded in the judgment, dated C.C.No.164 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, which was confirmed in the judgment, dated 8.12.2006, in Criminal Appeal No.10 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry, and the judgment, dated 29.1.2004, in C.C.No.165 of 1997 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, which was confirmed in the judgment, dated 8.12.2006, in Criminal Appeal No.11 of 2004 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry against the petitioner/A-3 for the offence punishable under Section 306 I.P.C. and accordingly, he is acquitted of the said offence in both the

cases. The petitioner/A-3 shall be released forthwith, if he is not required in any other crime.

11. Miscellaneous petitions pending, if any, in these Criminal Revision Cases shall stand closed.

JUSTICE RAJA ELANGO

22.8.2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE Nos.2064 & 2065 OF 2006

Date: 22.8.2016

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