THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 4911 of 2009

ORDER :

1) This Criminal Petition is filed by accused Nos.5, 10 and 12 under Section 482 Cr.P.C. seeking quashing of proceedings in C.C.No.771 of 2005 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram. A charge sheet came to be filed against the petitioners and ten others in Crime No.104 of 2003 of Vizianagaram I Town Police Station, for the offences punishable under Sections 403, 406, 409, 420, 471 and 120-B read with 34 IPC.

2) The gist of the averments in the charge sheet would show that accused Nos.1 and 2 in the capacity of President and Vice President of Eastern Employees Consumers Co-operative Stores Limited, accused No.3 in the capacity of Manager, accused No.4 in the capacity of Secretary and accused Nos.5 to 13 in the capacity of Directors of the said Stores since 1990 to 2001 are alleged to have conspired together with a common intention of embezzlement of amounts of the Stores, created false transactions in the name of Stores, obtained loans from various institutions and swallowed the amounts by showing binami transaction in the relevant books, thereby embezzled an amount of Rs.98,77,425/-. Basing on the above allegations a charge sheet came to be filed.

3) Heard learned counsel for the petitioners and Public Prosecutor appearing for the respondent-State.

4) Learned Public Prosecutor submits that accused Nos.3,4, 7 and 13 died pending the proceedings. It is also brought to the notice of the Court that the proceedings against accused Nos.1 and 2 were quashed by this Court vide Criminal Petition No.259 of 2008.

5) The record discloses that challenging the very same proceedings, accused Nos.1 and 2 filed Criminal Petition No.259 of 2008. Relying upon the orders passed in W.P.No.4563 of 2003 a learned Single Judge of this Court while quashing the proceedings against accused Nos.1 and 2 held as under:

> "3. The issue involved in this case is squarely covered by a decision of this Court in W.P.No.4563 of 2003, dated 03.04.2013, wherein this Court held that the surcharge proceedings have not been initiated against the petitioner. The 1st respondent had addressed the impugned proceedings to the 3rd respondent to initiate criminal proceedings against the petitioner even before the initiation of surcharge proceedings against the petitioner. It is only when the authority that had initiated proceedings under section 60 of the act fixes or apportions the liability of an individual, that such individual can be said to have misappropriated the funds of the society. Till such an exercise is undertaken, the

question of prosecuting the Member of the Society or its Managing committee does not arise.

xxxxxx

6. Following the order of this Court, the Criminal Petition is allowed quashing the proceedings in C.C.No.771 of 2005 on the file of the Additional Judicial First Class Magistrate, Vizianagaram. However, it is left open to the respondent to initiate such proceedings if in the proceedings under Section 60 of the A.P.Co-operative Societies Act, 1964, the liability against the petitioners is fixed and if they fails to discharge the same."

6) The said order was not challenged till date and the same has become final.

7) In view of conflicting decisions on the said point, a learned Single Judge of this Court referred this Criminal Petition before the Division Bench. By an order, dated 26.03.2013, a Division Bench of this Court held that fixing the liability under Section 60 of the Andhra Pradesh Co-operative Societies Act, 1964 is not a condition precedent to set the criminal law into motion. That being the position, the order of the learned Single Judge of this Court in Criminal Petition No.259 of 2008 cannot be made basis for deciding the case on hand.

8) But, as seen from the averments made in the charge sheet, the entire allegations are mainly directed against accused Nos.1

and 2. Insofar as these petitioners are concerned, they along with all the petitioners are alleged to have made transaction through accused No.1 with Yedukondalu Electronics, purchased electronic goods worth Rs.85,802/- and paid only Rs.61,080/-. The remaining amount was embezzled by withdrawing the same. Since the principal accused Nos.1 and 2 are alleged to have misappropriated huge amount; as the entire process of swallowing took place through them and as the allegations against the petitioners is omnibus and general in nature, this Court is of the view, that continuation of proceedings against the petitioners would be an abuse of process of law.

9) Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners in C.C.No.771 of 2005 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, are hereby quashed. Miscellaneous petitions, if any, pending in this Criminal Petition shall stands closed.

JUSTICE C. PRAVEEN KUMAR

26.09.2016
gkv