

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.3055 of 2012

ORDER:

1. This Criminal Petition is filed by the petitioners-A2 and A3 under Section 482 Cr.P.C. seeking to quash the proceedings against them in C.C.No.346 of 2003 on the file of the Judicial First Class Magistrate, Pithapuram, East Godavari District.

2. It is alleged that the petitioner along with other accused committed the offence punishable under Sections 407, 409, 420 and 477 IPC.

3. The case of the prosecution is as follows:

A1 worked as the Secretary of the Chebrolu Primary Agricultural Co-operative Society (for short, 'PACS') Limited, during the period from 1979 to 1990 along with other staff including the 1st petitioner-A2-clerk, who used to attend the office files in the absence of A1, and A3-Circle Supervisor of the District Co-operative Central Branch bank, who used to supervise the affairs of the society periodically. While so, on certain allegations, an inspection was conducted against A1 and the petitioners and the Inspecting Officer submitted his report on 24.12.1992 alleging that A1 and the petitioners committed certain irregularities. Basing upon the said report, Surcharge proceedings were initiated and ultimately, the Deputy Registrar of Co-operative Societies, Kakinada passed Surcharge orders under Section 60 of the A.P. Co-operative Societies Act, 1964 on 31.1.1994 directing A1 to pay a sum of Rs.1,63,141-84 with 18% interest per annum. Challenging the same, A1 filed O.A.No.14 of 1994 before the A.P. Co-operative Tribunal, Vijayawada, and the said O.A. was dismissed by the Tribunal on 14.3.2000. Challenging the said order, A1 filed W.P.No.23585 of 2000 before this Court and this Court after hearing arguments allowed the writ petition and quashed the

impugned surcharge orders and remanded the matter to the Deputy Registrar for fresh enquiry. At that juncture, the de facto complainant addressed a letter to the Collector, East Godavari District seeking sanction to prosecute the petitioners and A1 on the ground that A1 violated the surcharge proceedings. The Collector in turn gave sanction for their prosecution vide his proceedings dated 6.8.1994. Subsequently, the de facto complainant lodged a report before the Station House Officer, Gollaprolu alleging that A1 had misappropriated an amount of Rs.1,63,141-84 and A2 and A3 abetted A1 to commit the offence.

4. Learned Counsel for the petitioners submitted that on the basis of the surcharge proceedings, the criminal case was launched and subsequently, the surcharge proceedings were dropped and therefore, the question of filing any criminal case against the petitioners on the same ground would not arise at all. He further submitted that the proceedings in the above C.C. against A1, who is alleged to have misappropriated the amount, were quashed by this Court vide order dated 9.12.2011 in CrI.P.No.499 of 2009 and that the case against the present petitioners, who are alleged to have abetted A1 for commission of alleged misappropriation, may also be quashed.

5. Heard and perused the material on record.

6. In CrI.P.No.499 of 2009, this Court passed the following order quashing the proceedings against A1 in the above C.C:

“In fact, by virtue of Section 51 of the Act, an enquiry had to be conducted against A1 to A3 with regard to the allegations of misappropriation of the funds of the department and by virtue of Section 60 of the Act, necessary surcharge proceedings were to be issued when once A1 to A3 were found to have misappropriated the funds of the department on the basis of the enquiry conducted. Those proceedings are the basis for initiation of the criminal case. This Court does not find any legality in prosecuting A1 on

the ground that though the Surcharge proceedings were issued, ultimately those proceedings were dropped. Similar observations were made by this Court in W.P.No.7794 of 2004, a copy of which is filed before this Court under similar circumstances which are applicable here. Accordingly, the proceedings in the C.C. are liable to be quashed.”

7. In view of the above order of this Court in CrI.P.No.499 of 2009, this Court is inclined to quash the proceedings against the petitioners herein in the above C.C.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners-A2 and A3 in C.C.No.346 of 2003 on the file of the Judicial First Class Magistrate, Pithapuram, East Godavari District. Miscellaneous petitions pending, if any, shall stand closed.

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RAJA ELANGO, J

22nd July, 2016

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