HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7114 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in C.C. No.1414 of 2011 pending on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally, registered against the petitioner and two others for the offence punishable under Sections 408 and 420 of Indian Penal Code, 1860 (for short 'I.P.C.').

The petitioner is working as Assistant Manager in Andhra Bank, allegedly committed a serious offence of misappropriation of funds deposited and fraudulently en-cashed the cheques etc. The allegations made in the complaint are as follows:

> "While verifying Bank records during the process of investigation by U.V. Sathyanarayana, Senior Manager one instance of misappropriation of funds by G.S.S.Prasad cashier and K.Babu Rao, Joint Custodian Officer has surfaced. On 21.07.2009 the then cashier G.S.S.S.Prasad and the then Joint Custodian Officer K.Babu Rao had jointly in furtherance of conspiracy to cheat the bank have prepared false debit voucher for Rs.50 lakhs debiting intermediary General ledger account (suspense account) No.1512029549012 and withdraw cash of Rs.50 lakh from the Bank."

On the strength of the complaint of Branch Manager, Andhra Bank, Nizampet Branch, Kukatpally, the Police, KPHB Colony Police Station, Cyberabad, registered a crime and conducted investigation into. During investigation, the accused persons confessed that one Shaik Masthanvale belongs to Hanuman Consultancy Services, operating account in their Branch since long time. He used to get open accounts to the students and other employees, who are going to abroad and they used to get open accounts, they used to issue certificates and statements showing the credits and debits in their accounts, though there were no physical transactions, for which the said Masthanvale used to offer amounts. In this process, the A.1 to A.3 have taken huge amount. While so, as the said company was involved in a case, the said Masthanvale insisted them for due amount. On 08.06.2009 they made entries for about Rs.43,51,000/- as the said Masthanvale credited in his account, and on the same day they made entry as the said amount was withdrawn by him, though there was no physical transaction. The said Masthanvale and his employees Raghavareddy and Venkateswar Reddy started insisting for the credited amount Rs.43,51,000/-. At that time, in order to make payments, A.1 to A.3 dishonestly and fraudulently have cancelled the FD No.151220100013588 of APSCCFCL for Rs.50.00 lakhs and diverted to IGL Account and withdrawn the amount. A.1 being the cashier has verified the entry, A.3 being an Assistant Manager authorized transaction on 21.07.2009 and the said amount was allegedly paid to the said Masthanvale. Thereafter also, though A.3 was relieved, the A.1 to A.3 colluded each other and A.1 and A.2 cancelled FD No.151220100018556 on 27.01.2010 and diverted to IGL account and withdrawn the cash of Rs.49,01,477/- and in this transaction, A.1 entered and A.2 authorised. A.1 to A.3 shared the said amount equally and misappropriated. Even after the above two instances, in order to adjust the above transactions, A.1 and A.2 cancelled the FD of IRDA for Rs.1 crore and diverted the amount to Bank IGL account and then an amount of Rs.17.50 lakhs was transferred to the personal account of A.1 and the remaining amount of Rs.83.00 lakhs was transferred to another personal account of A.1 at Sulthan Bazaar Branch. He withdrawn the amount of Rs.17.50 lakhs and A.1 to A.3 shared among them. Thus, A.1 to A.3 cheated the Bank and misappropriated funds.

The main contention of the petitioner is that he being the Assistant Manager is only arrayed as A.3 (Ex. Assistant Manager of Nizampet Branch now working as Assistant Manager, Andhra Bank, Bachupally Branch), he allegedly shared the amount as an Assistant Manager, authorized to transfer the amount to the personal account of A.1, but he is no way concerned with the alleged encashment of FDR and transfer of various amounts and he is not the custodian any of the funds and the allegations in the complaint would not constitute offences punishable under Sections 408 and 420 I.P.C.

The account ledger and cancelled FDR (Photostat) are filed along with the present petition. It would go to show that Rs.50.00 lakhs FDR was enchased and the petitioner and two others conspired together and withdrawn the amount, issued certificates to the students, who proposed to go abroad, without any physical transaction of deposit, receiving the amount from the consultancy would constitute an offence punishable under Section 420 I.P.C., since by issuing certificates, the petitioner accommodated various students to go abroad for prosecuting their study.

Undisputedly, the petitioner is an Assistant Manager, who is having custody of the accounts jointly with the Manager and enchasing the fixed deposits, and transferring the amount to the credit of their accounts is suffice to conclude that it would constitute an offence punishable under Section 408 I.P.C., because they were entrusted with the funds by the public. The account ledger inquiry report – Debit Tran. Dated 21.07.2009 for Rs.50,00,000/- A/c.FD (51220100013588) for Rs.50,00,000/-, account ledger inquiry report – Credit Tran. Dated 21.07.2009 for Rs.50,00,000/- A/c.IGL (15121029549012), account ledger inquiry report –Debit Tran. Dated 21.07.2009 for Rs.50,00,000/- A/c.IGL (15121029549012), account ledger inquiry report –Credit Tran. Dated 21.07.2009 for Rs.50,00,000/- A/c. Head Cashier cash (15121040010005) would clearly establishes the encashment of F.D.Rs. by the petitioner and others.

The contention of the petitioner before this court is that he is no way concerned with the offence and he was never having joint custody of account along with others. Therefore, question of misappropriation does not arise.

Admittedly, the petitioner was Assistant Manager in Andhra Bank, Nizampet Branch, and he being the Assistant Manager in the Branch, having joint custody of funds deposits and accounts etc. In such case, issuing certificates to various students at the instance of consultancy of Masthanvali to permit the students to go abroad for prosecuting studies is a serious offence and it is nothing but defrauding the immigration authorities making them to believe that there was a physical transaction on deposit of the amount to the credit of those accounts, en-cashing two FDRs for Rs.50,00,000/- each, transferred the amount to personal account and withdrawing cash partly. Therefore, the allegations made in the charge sheet on its face value would constitute an offence.

The jurisdiction of this Court in exercising inherent power under Section 482 Cr.P.C. is limited and in extraordinary circumstances, it should be sparingly to give effect to any order under the code of criminal procedure, to prevent abuse of process of court. In **R.P. KAPUR** V. **STATE OF PUNJAB**[1] the Apex Court laid down four guidelines to be followed by the court while exercising inherent power under Section 482 Cr.P.C.

In **STATE OF HARYANA VS. BHAJAN LAL**[2] the Apex Court laid down certain guidelines to exercise the jurisdiction under Section 482 Cr.P.C. wherein it was held that the allegations made in the charge sheet and other connected material would constitute an offence on its face value, the Court cannot exercise inherent jurisdiction to quash the proceedings.

Learned counsel for the petitioner drawn the attention of this court to a Judgment of this Court reported in **M.SRINIVASULU REDDY v. STATION HOUSE OFFICER, VIJAYAWADA POLICE STATION, PAYAKAPURAM, VIJAYAWADA AND OTHERS**[3]**,** wherein this court while deciding the writ petition under Article 226 of the Constitution made an observation that there is sacred obligation and duty on Court to arrest the same, and to strengthen the confidence of the people in the system guided by rule of law, since legislative intent behind enacting the criminal laws is to

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[1] AIR 1960 SC 866
[2] 1992 Supp (1) SCC 335
[3] 2016(1) ALD (Crl.)1014

maintain law and order, peace and tranquility in the society. Therefore, the prosecutions shall be in the direction of achieving the said goal and in the direction of inspiring confidence and faith of the people in the system and the process of law should never be permitted to achieve the destination by way of short circuit methods. It is a settled and well established proposition of law that the inherent and extraordinary power of this Court under Section 482 Cr.P.C. and Article 226 of the Constitution of India is required to be pressed into service very sparingly and with great care, caution and circumspection and within the principles and parameters laid down in the authoritative pronouncements. In the event of there being any abuse of process of law, there is a sacred obligation and duty of the courts to arrest the same and to strengthen the confidence of the people in the system guided by rule of law.

Applying the principle laid down in the above Judgment, this Court has to come to conclusion that if filing of complaint is an abuse of process of law, the court cannot quash the proceedings. But here there is a lot of material to establish that the petitioner is also a joint custodian of the accounts and deposits of general public. In such case, he cannot be exonerated from the criminal liability at the threshold of the proceedings. Even if the principle laid down in the above Judgment is applied, the petitioner is not entitled to any relief, as the allegations made in the charge sheet and other material annexed to the petition on its face value would constitute an offence under Sections 408 and 420 I.P.C.

Learned counsel for the petitioner further drawn the attention of this Court to a Judgment of the Apex Court in **RAMESH RAJAGOPAL v. DEVI POLYMERS PRIVATE LIMITED**[4] wherein the Apex Court held that if there is an abuse of process of the court, the allegations inherently improbable and no sufficient ground to proceed further, evident from complaint itself is found, the proceedings are bound to be quashed.

Here the petitioner involved not only in misappropriation of total two FDRs each for Rs.50,00,000/- and two other crimes were registered against him and total amount misappropriated by the petitioner along with others is Rs.50 crores, and it belongs to the public depositors. The petitioner, being a responsible Bank Manager, dealing with the money of the general public, is not supposed to indulge in such activities which crumble the confidence of the depositor and public on the financial institutions like reputed Andhra Bank. If the public lost faith in the Bank, it is difficult for the Banks to run. In such case, a single act of individual is sufficient to lost faith of the pubic and it is a serious economic offence allegedly committed by the petitioner along with two others. In such case, the petitioner cannot be exonerated so lightly when there are sufficient allegations in the charge sheet which constitute an offence, on its face value.

Learned counsel for the petitioner further contended that, at best, the allegations made in the complaint and charge sheet would attract the misconduct in discharging official duties and departmental enquiry was initiated against the petitioner, which is

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[4] (2016) 6 SCC 310

pending and thereby the Branch Manager is not entitled to proceed against the petitioner under criminal liability. To support his contention, he placed reliance on the Judgment of this Court in **B.MUTHAIAH v. STATE OF ANDHRA PRADESH AND ANOTHER**[5] wherein this court held that once petitioner is exonerated for same charges in departmental proceedings due to non-availability of records, pendency of trial against the petitioner is nothing but an abuse of process of law, since proceeding with the matter would not serve any purpose, especially in the absence of any material on record. Therefore, the proceedings against the petitioner were quashed.

But, here the departmental enquiry is not yet concluded against the petitioner, at this stage, the petitioner cannot be exonerated from liability at the threshold of the criminal proceedings. Therefore, mere pendency of departmental proceedings would not serve any purpose and of no assistance to quash the proceedings in CC No.1415 of 2011 at this stage.

In **STATE OF TAMILNADU REPRESENTED BY INSPECTOR OF POLICE CCIW/CID DHARMAPURI UNIT v. K.RAMESH AND ANOTHER**[6] a similar question of misappropriation of funds of Cooperative Society by its cashiers has came up consideration. Wherein the Apex Court held that when a specific allegation made against the Cashier in Branch Office and Head Office of the Society, it was not fit case for the High court to quash the

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[5] 2016(2) ALD (Crl.) 286

[6] (2015) 15 SCC 673

proceedings in question and set aside the order passed by the High Court.

The principle laid down in the above Judgment is that when the charges leveled against the petitioner for the offence under Sections 408 and 420 I.P.C. were supported by sufficient allegations in the charge sheet after due investigation filed by the investigating agency after completion of due investigation, if disclosed and if taken on its face value, the proceedings cannot be quashed by exercising inherent power vested on the High court under Section 482 Cr.P.C.

In the present facts of the case as stated above, for issuing certificates to the students who are proposing to prosecute higher studies abroad through Hanuman Consultancy Services run by Shaik Masthanvale and en-cashing FDR's for Rs.50,00,000/- each and transferring to personal account withdrawing the part of it by cash would constitute a serious offence. The petitioner and two others issued certificates certifying the amount to the credit of their accounts in the said process, they committed such misappropriation amounting to Rs.49,01,477/- in the present case, total misappropriation is about Rs.50 crores in all three cases.

In the charge sheet, there is no specific allegation about the dishonest intention, but based on the acts committed by the petitioner and two others, the court can conclude that they had dishonest intention, otherwise the question of en-cashing the FDRs, and transferring the amount to various accounts of the petitioner and two others and withdrawing the amount would not arise, the total conduct if taken into consideration, it would constitute an offence punishable under Section 408 I.P.C. Even otherwise to establish the offence punishable under Section 408 I.P.C., the prosecution has to prove that the accused are employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over it and accused dishonestly misappropriated that property to convert to his own or used it or disposed of it or willful suffered other properties in violation of any direction of the law prescribing as such.

Here, the fixed deposit receipts were issued for Rs.50,00,000/- each, and duplicate fixed deposit receipts were taken, en-cashed the same in the process of issuing certificates various students by the petitioner. Generally, the amount covered by fixed deposit receipts will be repaid to the depositor, on canceling or, on maturity, subject to the terms of fixed deposit receipt, when such deposit is required to be repaid together with interest, but en-cashing the same by creating duplicate fixed deposit receipt would indicate the dishonest intention of the petitioner.

Explanation 1 to Section 405 clearly shows that a person, being an employer who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Here the entrustment of the funds with the Bank is constructive and the relationship between the employee and the employer is based on faith and trust, the Bank and its employees are trustees of the amount deposited by the depositors. When such relationship is created by the deposittee and depositors, the petitioner being a servant of trust, misappropriation of amount though there is an obligation to repay the amount in terms of fixed deposit receipt that would constitute an offence punishable under Section 408 I.P.C.

Similarly, the accused allegedly committed an offence punishable under Section 420 I.P.C., since he created duplicate fixed deposit receipts and encashed the same, and by issuing certificates to the students, who are going to abroad to prosecute studies through Hanuman Consultancy Services being run by Shaik Masthan Vali.

Section 415 I.P.C. defines the word 'cheating'. According to it, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Here the petitioner issued false certificates to defraud the authorities concerned while permitting the students who are going abroad and also they obtained duplicate fixed deposit receipts and en-cashed the same, in such case, those acts on its face value would constitute an offence punishable under section 420 I.P.C.

To prove the offence of fraud, the prosecution has to establish the following ingredients.

> i) There should be fraudulent or dishonest inducement of a person by deceiving him;
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> (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
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> (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
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> (iii) In cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

But those requirements can be established only during trial and at this stage, it is difficult to conclude that the petitioner did commit no offence, filing charge sheet against the petitioner would not amount to abuse of process of the court, at the threshold.

Therefore, by applying the guideline No.1 in **STATE OF HARYANA** VS. **BHAJAN LAL**[7], and in **STATE OF TAMILNADU REPRESENTED BY INSPECTOR OF POLICE CCIW/CID DHARMAPURI UNIT v. K.RAMESH AND ANOTHER** referred to

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[7] (1992) SUPP (1) SCC 335

supra, I find no grounds to quash the proceedings against the petitioner and hence the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

08-12-2016
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