

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16017 OF 2016

ORDER:

This criminal petition, under section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in CC No.217 of 2014 pending on the file of Junior Magistrate of First Class, Lakkireddipalli, YSR District, for the offence punishable under Section 409 of Indian Penal Code, 1860 (for short, 'I.P.C.').

The petitioner is Sub-Post Master of Neelakantaraopet Sub-Post Office. He allegedly appropriated Rs.1,19,443.80 ps. and repaid with interest i.e. Rs.1,22,449/-. It is the contention of the petitioner that the complainant is totally bereft of any reason to make the petitioner responsible for the offence punishable under Section 409 I.P.C., since the word 'dishonest intention' is absent in the entire complaint. Therefore, in the absence of dishonest intention, the petitioner is not liable for the offence punishable under Section 409 I.P.C. and continuation of proceedings in such offence would amount to abuse of process of the court.

Undoubtedly, the petitioner being the Sub-Post Master at Neelakantaraopet Sub Post Office misappropriated an amount of Rs.1,19,43.80 ps. and repayment with interest itself suffice to conclude that he misappropriated the amount. Therefore, misappropriation is not in dispute. The only dispute is, whether he has dishonest intention or not?

Curiously, the counsel for the petitioner drawn the attention of this Court to Explanation 1 of Section 405 IPC.

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Section 405 IPC deals with 'Criminal Breach of Trust' and according to it, Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"

Here the petitioner being the Sub-Post Master of Neelakantaraopet Sub-Post Office, was entrusted with the amount having dominion over it and appropriated the same for himself. There is no specific allegation in the complaint that the petitioner had no dishonest intention and misappropriated the same. But as per Explanation 1 to Section 405 I.P.C., a person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not, 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.

If Explanation 1 to Section 405 I.P.C. is applied to the present facts of the case, the petitioner being Sub-Post Master is under obligation to keep the amount in deposit having dominion over the property of the depositors. But instead of keeping the amount in deposit, he appropriated for himself, such conduct is deemed to have been 'dishonest intention' in misappropriating the amount.

In an offence punishable under Section 409 I.P.C., the petitioner has to prove entrustment of the property or dominion over the property and dishonest misappropriation of the same for himself or disposing the same otherwise, as directed by law.

Here the entrustment is not in dispute, but dishonest intention is in dispute and when an amount is entrusted to the petitioner, being Sub Post Master, a relationship of trustee and beneficiary is created between the transferor and transferee. The person, who transfers, possession of the property to the second party still remains as legal owner of the property and the person in whose favour possession is so transferred has only the custodian of the property to be kept or disposed of by him for the benefit of the other party, the person so put in possession only obtaining a special interest by way of a claim for the charges of its retention and in such circumstances, he has a right to acquire that amount as held by the Apex Court in **JASWANTRAI MANILAL AKHANEY V. STATE OF BOMBAY**¹.

In view of the principle laid down in the above judgment, the total conduct of the petitioner is to be taken into consideration

¹ AIR 1956 SC 575

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pointing out whether he dishonestly committed breach of trust. But, at this stage, it cannot be decided even by applying Explanation 1 to Section 405 I.P.C. to the present facts of the case.

However, this Court can exercise inherent jurisdiction under Section 482 Cr.P.C. only in exceptional circumstances mostly when a complaint filed against the petitioner on its face value would not constitute an offence.

But here the allegation made in the charge sheet would constitute an offence on its face value and in view of guideline No.1 laid down by the Apex Court in **STATE OF HARYANA VS. BHAJAN LAL²**,

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

I am not inclined to quash the proceedings in CC No.217 of 2014 at this stage and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 16.11.2016

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² (992) SUPP.(1) SCC 335