

*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+CRIMINAL REVISION PETITION No.1905 of 2016

% Dated 03.02.2017

Between:

Nazar Ali Murad Ali Mandani ... Petitioner

and

\$ The State of Telangana,
Through SHO, Inthejargunj Police Station,
Warangal district. ... Respondent

! Counsel for the petitioner : Sri D.V.Nagarjuna Babu,

^ Counsel for respondent : Public Prosecutor

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? Cases referred: :

1. 1990(3) ALT 353
- 2 (2014) 3 SCC 306
- 3 2009 CrI.J.958
- 4 2006(1) SCC 752
- 5 2002(1) SCC 714
- 6 2001(6) SCC 181
- 7 1979(2) Sec.-322
- 8 (2004) 13 SCC 292
- 9 2013(6) ALT-101
10. 2013(3) SCJ 595
- 11 2013-CrI.J-776 SC),
- 12 (2013) 5 SCC 148
- 13 (1990) 27 ACC 438
- 14 1980 1 SCC 554
- 15 (2008) SCC 409
- 16 AIR 1965 SC 85
- 17 1999 5 SCC 253



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.1905 OF 2016

ORDER:

The Criminal Revision Case is maintained by the Accused Nazar Ali Murad Ali Mandani of C.C.No.66 of 2011 on the file of the I Addl.Judicial Magistrate of First Class, Warangal. It was outcome of Cr.No.141 of 2009 of Station House Officer, Inthejargunj Police Station of Warangal, dated 20.06.2009 for the offences punishable under Sections 120-B, 420, 477-A and 506 IPC. The police registered the crime based on a private complaint dated 01.06.2009, referred by the learned Magistrate to register FIR and investigate, of the President of The Jubilee Co-operative Credit Society Limited, Warangal (for short, 'the Society') and filed final report dated 04.11.2009 as of civil nature. It is subsequent to that on the report dated 07.04.2010 of one Battu Zhumkilal-Deputy Registrar/ Divisional Co-operative Officer, Warangal, police registered a case for the alleged misappropriation of the funds of the Society by the accused as Ex-President that the permission for launching prosecution accorded, by the District Collector, dated 23.03.2010, in Cr.No.63 of 2010 and from the investigation police filed chargesheet for the offences punishable under Section 420, 406 and 409 IPC. The learned Magistrate taken cognizance for the offences against the accused and allotted C.C.No.66 of 2011 on 21.06.2011 from the police chargesheet-cum-final report dated 16.06.2010 by investigation.

2. Pursuant to the cognizance when summons issued to the accused after supply of copies, when the matter coming for hearing before the charges, the Accused filed the application seeking to discharge under Section 239 of CrPC by also invoking Section 300 CrPC, which is covered by CrI.M.P.No.1552 of 2012 and after hearing the

learned Magistrate by impugned order dated 01.12.2015 dismissed the discharge application and framed the charges against him. It is impugning the same, the revision is maintained.

3. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/ accused are that the learned Magistrate erred in dismissing the discharge petition supra though for the self-same alleged facts of the petitioner as the then President of the Society, the Cr.No.141 of 2009 registered by Inthejargunj Police Station and after investigation came to the conclusion of civil nature by filing referred report that was once recorded by the Magistrate on 04.11.2005; the second complaint by subsequent President of the Society is not maintainable and hit by double jeopardy as enunciated under Article 20(2) of the Constitution of India and also Section 300 of CrPC. It is also the contention that once it is a dispute of civil nature and police filed referred report after investigation with that conclusion, the investigation and filing of second final report on the further complaint of present President does not arise and the learned Magistrate ought to have seen that there were statutory audits conducted under Section 50 of the A.P.Cooperative Societies Act(for short, 'the Act'), 1964 where nothing pointed out any discrepancies that were alleged in the complaint/ report and proceedings under Section 61 of the Act before the Deputy Registrar and aggrieved by it, the petitioner/ accused preferred CTA No.43 of 2010 and 61 of 2010 before the A.P.Cooperative Tribunal, Warangal under Section 76 of the Act and those appeals were allowed by order dated 02.05.2011 with the conclusion that there is animosity between the defacto-complainant and the petitioner which led to the filing of criminal complaint as well as arbitration proceedings. When the defacto-complainant filed W.P.Nos.

30710 of 2011 and 52584 of 2011 in High Court assailing the validity of the order of the appellate tribunals, the Writ Petitions were admitted which are still pending by not passing any interim order and the findings of the Co-operative Tribunal are conclusive and the learned Magistrate failed to consider the same and thereby the order is unsustainable. It is also the contention that the earlier FIR in Cr.No.141 of 2009 and present FIR covered by C.C.No.66 of 2011 are almost in verbatim suffice to discharge the petitioner even cognizance taken though ought not to have taken cognizance from second time final report and sanction is also required from the Registrar of Cooperative Societies, under Section 83 of the Act for the alleged criminal irregularities are in the course of official duties of the President of the Society apart from there are no any discrepancies exist to cause of action to initiate criminal proceedings. Thereby the discharge dismissal order of the learned Magistrate is liable to be set aside and the same to be allowed by discharging the accused from the prosecution and the charge.

4. Whereas, it is the submission of the learned Public prosecutor that the order of the learned Magistrate holds good and there is no bar to the second FIR from fresh or additional facts and law is fairly settled in this regard for in the case of the 1st complaint and 2nd complaint are not one and the same as they are different and there are also subsequent events and the Cooperative Tribunal appeals were allowed having when subject matter of the lis covered by the Writ Petitions undisputedly pending as subjudice taken up a basis from the appellate Court's order against the surcharge proceedings much less to have not a bar against continuation of criminal prosecution and thereby the order of the learned Magistrate dismissing the discharge application no way requires interference. Hence to dismiss the same.

5. Heard and perused the material on record.

6. Before coming to the facts, coming to the law in this regard is that the learned counsel for the revision petitioners placed reliance on a Single Judge expression of this Court in Tarigoppula Venkata Ramadas Vs. State of A.P.¹ report by the SHO, J.R.Puram, Srikakulam District, where it is observed in the quash petition on C.C.No.112 of 89 on the file of the Additional J.F.C.M.,Srikakulam, that from re-investigation or second investigation in the face of the order of the Magistrate accepting the referred report becoming final, there being no revision or appeal against that order is illegal. The consequential order of the Magistrate taking cognizance of the offence in pursuance of the chargesheet filed is equally illegal. The learned Magistrate is immuned from reviewing the earlier order to take cognizance from latter final report. In fact, the law is fairly settled from the Constitutional Bench of the Apex Court in this regard in Dharampal Vs. State of Haryana² 5 Judge Bench on the scope of Sections 190,193,173,209 and 319 Cr.P.C. where it is held that the Magistrate is competent even the police filed a final report by deferring to their opinion to take cognizance from the material available on record as Magistrate is not bound by the opinion of the Investigating officer and for that no protest application even required apart from any protest application and taking cognizance from the final report even accepting of earlier final report not even a bar for proceeding further and to take cognizance under Section 190 of Cr.P.C. pursuant thereto.

7. Coming to the Second report maintained to be impugned concerned, this Court scanned the law in Kummari Laxmaiah Vs. State of A.P. in CrI.P.No.341 of 2015 dated 07.12.2015 on maintainability of a

¹ 1990(3) ALT 353

² (2014) 3 SCC 306

second report from the second FIR registered to investigate by referring to several expressions including Nirmal Singh Kahlon Vs. State of Punjab³, Rameshchandra Nandlal Parek Vs. State of Gujarat⁴, Kari Choudhary Vs. Sita Devi⁵ referring to T.T. Antony Vs. State of Kerala⁶, Ramlal Narang Vs. State (Delhi, Admn)⁷ and the three Judge Bench expression of the Apex Court referring to Ramlal and Kari supra etc., in Upkar Singh Vs. Ved Prakash⁸ another expression of this Court in Akbaruddin Owaisi Vs. Government of A.P.⁹ also of the Apex Court in Amitbhai Anil Chandra Shah Vs. C.B.I.¹⁰, and Anju Chaudhary Vs. State of UP¹¹ saying whether the two FIRs relate to some or different incidents or at least some facts are even different to consider and the second FIR is not a bar as held in Nirmal Singh Kohlan supra even outcome of any report or complaint that was referred by the Magistrate for investigation to police.

8. Here as referred supra, the second FIR is not by the same person and there are additional facts even thereby the second FIR is not a bar particularly from the expression of Upkar Singh supra. Further the Apex Court in Surendra Kaushik Vs. State of U.P.¹² also held that merely because same appellant lodged FIR against certain persons alleging forgery and fabrication of documents etc., that would not debar any other aggrieved person from subsequently seeking by report or even approaching Magistrate by complaint and it is referring to police for investigation under Section 156(3) and the second FIR thereby not liable

³ 2009 CrI.J. 958

⁴ 2006(1) SCC 752

⁵ 2002(1) SCC 714

⁶ 2001(6) SCC 181

⁷ 1979(2) Sec.-322

⁸ (2004) 13 SCC 292

⁹ 2013(6) ALT-101

¹⁰ 2013(3) SCJ 595

¹¹ 2013-CrI.J-776 SC),

¹² (2013) 5 SCC 148

to be quashed therefrom unless it is shown of two FIRs outcome of same incident and even then to read second FIR only with a value of Section 161 of CrPC in filing the final report if at all also with reference to earlier investigation material. In fact in Upkar Singh supra second complaint in regard to same incident filed to register as a counter complaint not prohibited by clarifying T.T.Antony supra and referring to Rammohan Garg Vs. State of U.P.¹³ and relying upon Kary Chowdary, Ramlal supra and State of Bihar Vs. JAC Saldana¹⁴ among others. It is in fact in Sakiri Vasu Vs. State of Uttar Pradesh¹⁵, the Apex Court held that even same person not satisfied with the earlier investigation filed protest and that can even be referred to police for investigation u/ sec.156(3) registration of second FIR and its investigation no way a bar.

9. Coming to the said contention raised of the bar u/ sec. 300 CrPC and Article 20 of the Constitution of India, this Court answered the scope of law by referring to several expressions of the Apex Court particularly of the five Judge Bench expressions in Manipur Administration Vs. Thokchom Bira Singh¹⁶ in answering reference regarding to the earlier conflicting expressions saying what is a bar under Section 300 Cr.P.C. is even where a person is tried upon a charge he cannot again be tried for the same offence that bar has no way applied to investigation and taking cognizance, leave about Article 20 of the Constitution of India, has no application at all which say once a person is convicted again he cannot be tried for the same offence, in Crl.P.No.7868 of 2015 in **Konakalla Suresh @ Mukku Suresh @ Rushi Vs. State of Telangana** dated 12.11.2015, **State through Superintendent**

¹³ (1990) 27 ACC 438

¹⁴ 1980 1 SCC 554

¹⁵ (2008) SCC 409

¹⁶ AIR 1965 SC 85

of Police, CBI/SIT vs Nalini & others¹⁷ at para 235 to 238 and another expression of this Court in CrI.P.No.6687 of 2015 in Rambha Kumar Rao Vs. State of A.P. dated 19.11.2015.

10. Coming to the other contention of earlier surcharge proceedings against the petitioner/accused when challenged before Cooperative Tribunal appeals those were allowed and thereby the prosecution no way survive concerned, undisputedly impugning the same, the Writ Petitions are filed which are referred supra and those were admitted and pending to say the same is a subjudice with no finality and even pending enquiry or non-commencement of enquiry or even enquiry report totally not found the person liable for the misappropriation that itself is not a bar to the continuation of criminal proceedings as held by this Court in CrI.P.No.11995 of 2014 and batch vide common order dated 17.11.2015 in A.Venkat Rami Reddy and others Vs. State of Telangana.

11. Having regard to the above, the contentions raised impugning the dismissal of the discharge petition of the revision petitioner/accused covered by the impugned order of the lower Court dated 01.12.2015 in CrI.M.P.No.1552 of 2012 in C.C.No.66 of 2011 no way requires interference by this Court.

12. In the result, the revision is dismissed. There is no order as to costs. Pending miscellaneous petitions, if any in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO J,

Date: 03.02.2017

Note: L.R. copy to be marked.
b/ o. Vvr.

¹⁷ 1999 5 SCC 253