

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2491 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed requesting to quash the proceedings in C.C.No.1035 of 2015 on the file of II Additional Judicial Magistrate of First Class, Nuzvid, Krishna District.

2. Petitioner is the sole accused in the aforesaid Calendar Case. He alleged to have committed the offences punishable under Sections 406 and 409 I.P.C.

3. The petitioner said to have failed to deposit a total amount of Rs.15,81,963/-, which is the Provident Fund amount of the employees for the period from July, 2012 to December, 2012, in the Provident Fund accounts of the employees maintained by the Employees Provident Fund Organization, Ministry of Labour, Government of India. But, according to the petitioner, he has remitted the amount on 20.02.2014.

4. Sri Mohd. Gaysuddin, learned counsel representing Sri Kowturu Pavan Kumar, learned counsel for the petitioner, would submit that once the amount is remitted and material is placed on record therefor, and when the inability of the petitioner to deposit the amount was due to uncontrolled reason, that being the employees

were on staying on strike, certainly, the aforesaid offences cannot be clutched against the petitioner, as no intention or motive can be derived as to misappropriation of the amounts collected.

5. The question is whether paying or remitting the said amount on 20.02.2014 can be construed as misappropriation or not. The factual aspect has to be appreciated in the light of the evidence that would be adduced by the prosecution during trial. The intention to deposit or the intention to misappropriate the amount or otherwise can only be gathered from the proved facts or probabilities that would be derived basing on the proved facts. When the petitioner is unable to mention exactly the duration of the employees staying on strike, certainly, it is not a case where prosecution of the petitioner would amount to the abuse of process of law, as sought to be viewed by the petitioner. Hence, there is no merit in the present Criminal Petition.

6. Learned counsel for the petitioner sought to dispense with the presence of petitioner before the trial Court. But, the petitioner being sole accused in the aforesaid Calendar Case, even such a request cannot be acceded to. However, it is open to the petitioner, in case, he has got any urgent work on the date of hearing of the aforesaid Calendar Case, to make an application before the trial Court in accordance with law.

7. With the above observation, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 27, 2017.
MD

