SMT JUSTICE T. RAJANI

CRIMINAL PETITION No. 8454 of 2011

ORDER:

This petition is filed by the petitioners seeking for quashment of the proceedings in Crime No.61 of 2006 of Central Crime Station, Hyderabad.

2. Heard the counsel for the petitioners and the Public Prosecutor, who appears for the 1st respondent. None appears for the 2nd respondent, in spite of notice.

3. The case of the complainant is that the accused misused the society funds of the complainant - A.G. Office Co-operative Credit Society Ltd., (for brevity, "Society"), which was registered under the A.P. Cooperative Societies Act, to a tune of Rs.14.81 Crores. The contents of the complaint also show that the operation of the Society shall extend throughout the Indian Union wherever the members of Indian Audit and Accounts Department belonging to the office of the members of Indian Audit and Accounts Department; the Society includes the members of Class-I category and the retired officials on a nominal admission fee; the members of the present Managing Committee gave a representation against accused persons for fraud, mismanagement, and misusing the funds of the Society; the management of the Society collected Fixed Deposits to a tune of Rs.26.90 crores from the members and non-members beyond the actual requirement of the Society by following the APCS Act and Banking Regulations Act and invested the said

amount in different Cooperative Banks against the objects of the Society; A1 issued FD Receipt of Rs.3.560 lakhs to depositor for 45 days, who was neither an employee of AG Office nor a member of the Society; the said member has deposited the amount through a cheque which bounced; A1 instead of initiating legal action against the depositor, allowed the deposit to be encashed.

4. The counsel for the petitioners submits that the allegation made in the complaint that the act of the petitioners in depositing the amounts collected from the members, in Cooperative Banks, instead of the schedule banks, and hence would amount to an offence, is not merited, as, section 46 of the Andhra Pradesh Co-operative Societies Act, 1964 (old Act), which is applicable at the time of the offences alleged in this complaint, permits the Society to invest or deposit the funds in any bank, which is approved by the Registrar and hence, no offence can be made out in that regard.

5. The counsel for the respondents does not raise any contention against the said submission made by the petitioners' counsel and the fact that the bank in which the deposits were made is approved by the Registrar, is not opposed as incorrect. The counsel also brings to the notice of this Court that Rs.1.264 Crores out of Rs.14 Crores and odd, which was alleged to be deposited in the Cooperative Bank, which was ultimately closed, was made good by RBI, and the rest of the amount is being deposited. The said contention too is not opposed. However,

the court is concerned only with the propriety of the act of the accused, in depositing the amounts in the cooperative bank instead of schedule bank and not about the loss caused due to the subsequent closure of the said bank.

6. The counsel filed some documents which are not refuted by the respondents, thereby allowing this court to look into the same as permitted by RAJIV THAPAR v. MADAN LAL KAPOOR[1]. The order of the Divisional Cooperative Officer, in the enquiry against the petitioner, which was taken up as per the orders of the District Cooperative Officer, Hyderabad, recommending both a departmental enquiry and prosecution, shows that there are no instructions from the Registrar of Cooperative Societies, prohibiting the Society from investing its surplus funds in the Cooperative Banks, during the tenure of the delinquents.

7. Hence, in the light of the above, it cannot be said that the deposit of funds in the Cooperative Bank, does violate any of the provisions of the Act, as it stood on the date of the alleged offence. It is only in the year 2001, that section 46(d) was amended, by substituting "Nationalized bank or Schedule Bank or the concerned District Co-operative Bank," for "any Bank approved by the Registrar" i.e. after the alleged deposits are made.

As regards the contention that A1 issued a fixed deposit receipt to a depositor for three and half lakhs and that the

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[1] 2013(3) SCC 330

depositor has deposited the amount through a cheque which got bounced and later permitted a depositor to encash the cheque and deposit the amount of Rs.3,50,000/-, without initiating legal action against the depositor, the same order shows that on scrutiny of explanations of the ex-managing committee members, deposition of Sri C.V. Siva Ramaiah (A1), it is found that the amount of FDR to a tune of Rs.3,50,000/- dated 13.02.2002 was recovered fully with interest. However, an observation that the ex-office bearers, who have issued FDRs, have exhibited negligence by simply depending on the staff of the society is made. However, an act of negligence does not attract the offences alleged in this complaint.

8. The counsel for the 2nd respondent concedes that the above observations and submissions are correct.

9. Hence, there remains nothing for the 2nd respondent to seek for prosecution of the petitioners herein and in the light of the above observations, any further proceedings in the above crime would result in abuse of process of law.

6. The Criminal petition is accordingly allowed and the further proceedings in Crime No.61 of 2006 of Central Crime Station, Hyderabad are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

November , 2017
LMV