

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.288 of 2017

ORDER:

The petitioner is shown as LW.1 and his name is not reflected in FIR but after investigation, he is arrayed as A-25. The learned Magistrate has taken cognizance from the said final report filed under Section 173 read with 190 Cr.P.C for the offences punishable under Sections 409, 420, 468 and 477-A, 109 read with 120 B IPC. It is in relation to the alleged misappropriation or embezzlement of Government funds to a tune of Rs.41,21,878/- in the final report, there are as many as 26 accused, leave about A-26 shown as died and case abated. Crime No.49 of 2011 was registered based on the report of Dr.K.Srinivasulu, Additional District Medical and Health Officer (Tribal), Rampachodavaram against three persons viz., accused Nos.1 to 3 of the charge sheet. It is during investigation, the other accused roped in as allegedly revealed in filing the final report and not taking cognizance referred supra. The petitioner/ accused No.25 filed an application under Section 239 Cr.P.C seeking to discharge and that was dismissed by the learned Judicial Magistrate of First Class, Addategala vide order dated 22.11.2016 in CrI.M.P. No.524 of 2016 in C.C. No.207 of 2015, which resulted in maintaining the revision by impugning the same.

- 2) Heard both sides and perused the material on record.

3) So far as the petitioner—A25 is concerned, there is no material including from the enquiry report. What the so-called statement in enquiry report reveals from one A.N.V.S.D. Kumar, Senior Assistant of D.M & H.O Office, Duppalapalem, of the petitioner got knowledge about proceedings in relation to GPA, HBA and NC advances.

4) A person having knowledge of the proceedings is different from a person's role pursuant to the knowledge in allowing the funds contrary to the proceedings, if at all to say either as a co-conspirator or abettor as the case may be. It is only then, if at all, by invoking Section 39 (viii) Cr.P.C from the knowledge in making entries in the accounts of the embezzlement of funds by suppressing the same to consider at best as an abetment defined under Section 107 r/w 109 IPC. Even to rely on the so-called statement of LW.4, there is nothing more from the alleged say that he along with other Drawing Disbursement Officers including Dr.KSSVR Prasad, PJ Varma and ANUSD Kumar prepared records, pay bills etc., but for the alleged fact that he is also one of the persons in preparing the accounts or entries or bills as the case may be. Before the Investigating Officer any statement of A25 is hit by Section 25 Evidence Act and saved by Section 162 (2) Cr.P.C r/w Section 27 Evidence Act from the value of the statement under Section 162 (1) Cr.P.C. But for that stray sentence of A25 as a witness of he and LW.4 also one of the persons prepared the accounts, there is nothing more. Nothing is

even depicting from reading of charge sheet much less with entire material covered by police final report and investigation.

5) Once such is the case, there is nothing to take cognizance much less to say any material justifying dismissal of the discharge application against the petitioner—A25. Thereby, the impugned order is set-aside. The petitioner—A25 is discharged from array of accused for no grounds to charge. However, it is made clear that it no way takes the power of police under Section 173 (8) Cr.P.C, if at all, there is any material to make further investigation and file any supplemental final report.

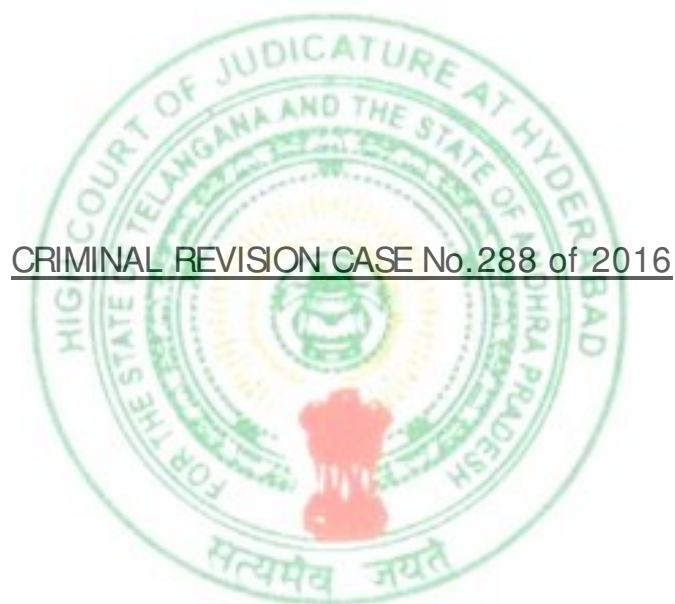
6) Accordingly and in the result, the revision is allowed.

7) As a sequel, miscellaneous petitions if any pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.28.02.2017
knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO



Date:28.02.2017

Knl