HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.6678 of 2011

ORDER:

This criminal petition is filed by the petitioner/A-2, under Section 482 of Cr.P.C., seeking to quash the proceedings in FIR No.309 of 2009, on the file of Osmania University Police Station, Hyderabad City, and the consequent charge sheet in C.C.No.388 of 2011, on the file of the IV Additional Chief Metropolitan Magistrate, at Hyderabad.

2. Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent. Perused the material available on record.

3. The contention of the petitioner/A-2 is that even if the allegations are true, the prosecution cannot be launched against the petitioner, having retired on 30.11.2006 much before the agreement, dated 06.04.2007. He has nothing to do with the transactions done by the complainant after his retirement. He further contend that the petitioner cannot be blamed for not charging penalty or deposit the cheques in ordinary clearance system for the affairs of the complainant Federation after 30.11.2006. Further, the complaint or charge sheet does not spell out when and what date the cheques were returned and when and what date and which cheques were deposited in the bank by way of normal clearance.

4. On the other hand, learned Public Prosecutor for Telangana contended that the petitioner, who is an Accountant along with one P.N. Swamy has violated the terms and changed cheque deposit system into normal value, which means cheques clearance will take 3 to 4 days and he took voluntary retirement to avoid disciplinary proceedings.

5. A perusal of the record goes to suggest that the General Manager (Mkt) of Andhra Pradesh Dairy Development Corporation Federation (APDDCF) presented a complaint on 17.11.2009 stating that the APDDCF Limited, for the purpose of supply of milk distribution, engaged distributors/contractors and M/s.HAM Marketing Services, represented by its Managing Proprietor Abdul Gafoor Khan was appointed as Distributor/Contractor and entered into an agreement for a period of 06.04.2007 to 05.04.2010. According to the terms of the agreement, dated 06.04.2007, the value of the stocks lifted is to be paid by way of cheque. In case of return of the cheques, the amount has to be paid by demand draft on the next day. The Managing Partner Abdul Gafoor Khan had an obligation to remit the sale proceeds on day-to-day basis without any default. The Managing Partner of M/s.HAM Marketing Services Abdul Gafoor Khan, with dishonest intention, misappropriated an amount of Rs.1,13,61,783/- belonging to the Federation by cheating the Federation and committed the offence of breach of trust.

6. Further, as per the statement of witnesses recorded, there is *prima facie* material as to who is the contractor for supply of milk distribution. As per the terms and conditions of the agreement, dated 06.04.2007, amount is to be deposited in the account on the same day in the form of cheque as high value clearance system. In case of first bouncing of cheque, a fine of Rs.25,000/- and in the case of second bouncing of cheque, a fine of Rs.50,000/- will be imposed. The whole process is checked by the Account Section i.e., the petitioner and one P.N. Swamy, who are the Senior Account Officers, but this was not done by them. According to the agreement, the cheques must be deposited in high value clearance system for the same day clearance, but the

petitioner and one P.N. Swamy violated the terms and changed cheque deposit system into normal value. As such, it will take 3 or 4 days for clearance. As per rules, the cheque bounce information has to be intimated to the General Manager LMS (Liquod Milk Section), G.M. Finance, and the Managing Director of M/s. HAM Marketing Service in the form of letter. The petitioner and one P.N. Swamy mingled and with dishonest intention, misappropriated an amount of Rs.1,13,61,783/- belonging to the Federation by cheating the Federation and committed the offence.

7. In view of the clear assertion against the petitioner and one P.N. Swamy and since investigation is already completed and charge sheet is filed, which is numbered as C.C.No.388 of 2011, I am of the opinion that there is sufficient *prima facie* material to prosecute the petitioner/A-2. There is no abuse of process of law. I do not find any ground to quash the proceedings in FIR No.309 of 2009.

8. In the result, the Criminal Petition is dismissed and the interim order, dated 05.08.2011, granted in Crl.P.M.P.No.6861 of 2011 stands vacated.

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

N.BALAYOGI, J

Date: 16th October, 2017

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