THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.13654 of 2010

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/Accused 2 to 4 requesting to quash the proceedings against them in C.C.No.310 of 2010 on the file of the Judicial Magistrate of First Class, Pithapuram, East Godavari District.

2. I have heard the submissions of *Sri G.L.N.Rao*, learned counsel appearing for the petitioners/A2 to A4, and of *Sri Posani Venkateswarlu*, learned Public Prosecutor appearing for the 1st respondent/State. I have perused the material record.

3. The case of the petitioners, in brief, is this:

On the information lodged by the 2nd respondent/informant, the Station House Officer, Pithapuram Police Station, registered a case in Crime No.265 of 2008, on 20.11.2008, against the accused mentioned therein including the petitioners/accused 2 to 4 for the offences punishable under Sections 409, 468, 477 (A) read with 34 IPC. The Investigating Officer, after investigation, filed a charge sheet opining that the accused 1 to 6 named in the charge sheet including the petitioners/accused 2 to 4 are liable to be punished for the offences punishable under Sections 409, 468, 477 (A) read with 34 IPC. On filing of the charge sheet, the above-stated calendar case was taken on file by the learned Judicial Magistrate of First Class, Pithapuram. The allegation in the report lodged by the 2nd respondent and the averments in the charge sheet are false and invented. Without there being any allegation and involvement of these petitioners, they were arrayed as accused in the case. The accusations made against A2 to A4 are groundless. They are falsely implicated in the crime though they are not concerned with the crime. There is no involvement of these petitioners/ A2 to A4 in the alleged offences. The continuation of the prosecution against them is a clear abuse of process of law. The petitioners are the ex-members of the society. During their tenures as members, they have nothing to do with the day-to-day activities of the society. The complaint was filed after abnormal delay of 10 years without proper explanation. The petitioners have not committed any offences much less alleged offences punishable under Sections 409, 468 and 477(A) read with 34 IPC. The report lodged, the first information report registered and the charge sheet filed are silent as to the amount that was misappropriated by the accused 2 to 4, who are executive committee members and who are no way concerned with the affairs of the society. Except bald and omnibus allegations, no specific overt acts are attributed to the petitioners/ A2 to A4. Hence, the proceedings in the CC against the petitioners/ A2 to A4 are liable to be quashed.

3. Per contra, the learned Public Prosecutor appearing for the State of AP would contend as follows:

Under Section 52 of the Cooperative Societies Act, 1964, inspection was ordered into certain administrative irregularities and misappropriation of funds of P.Dontamuru Primary Agriculture Co-operative Society Limited (PDPACS). The Co-operative Sub Registrar (Consumers), Divisional Cooperative Office, Kakinada, was authorised to conduct inspection. The accused no.2 is the Ex-Managing Committee Member, accused No.3 is Executive Committee Member and accused no.4 is the Ex-Managing Committee Member of the society. The inspecting officer submitted inspection report under Section 52 of the said Act reporting misappropriation of the funds of the society to a tune of Rs.13,10,960/-. Sanction for prosecution was granted by the Commissioner for Cooperation and Registrar of Co-operative Societies, Andhra Pradesh, Hyderabad. All the accused are the persons responsible for such misappropriation. The Inspecting Officer's inspection revealed that all the accused and others involved in the crime have committed acts of criminal breach of trust, falsification of accounts, tampering of records by forging signatures and thumb impressions of the members; and, thereby, misappropriated the funds of the society as mentioned in the table incorporated in the charge sheet. The total amount misappropriated is Rs.11,49,347/-. The accused have committed temporary misappropriation of funds in a sum of Rs.1,22,091/- by way of false debits and remitted back in full later on. During the period of misappropriation from 1998-99 and 2001-2002, A1 is the President and there are eleven Directors, who were elected in the elections conducted on 20.7.1995. The charge sheet and the documents produced along with the charge sheet including the inspection report of a competent officer disclose the complicity of all the accused including petitioners/A2 to A4. Hence, there is a *prima facie* case and also a strong case as well against the petitioners/A2 to A4 and the proceedings against them cannot be quashed.

4. Learned counsel for the petitioners, while reiterating the case of the petitioners submitted as follows:

The total amount said to have been misappropriated is Rs.11,49,347/-. The investigation disclosed that A1 and A6 misappropriated about Rs.8,09,000/- and A5 and A6 misappropriated Rs.10,994/-, A5 also misappropriated Rs.154/-, A6 misappropriated an amount of Rs.3,920/- and Rs.8,041/-, A5 and A6 misappropriated

Rs.2,73,062/- and A5 and A6 misappropriated Rs.1,22,091/-, A6 misappropriated Rs.2,600/-, A1, A5 and A6 along with late Amjuri Venkateswara Rao, misappropriated Rs.4,26,509/-. Thus, all these amounts are only misappropriated by A1, A5 and A6 along with Ex-Secretary late Amjuri Venkateswara Rao. Therefore, there is no single allegation against the present petitioners A2 to A4 that they have misappropriated any amount of the society and misused any portion of the misappropriated amount. The period of misappropriation relates to a period, which is ten years prior to the registration of the crime. The prosecution of the accused 2 to 4 at this distance of time in the absence of any evidence brought on record against them is unjust and unfair. In the light of the fact that the misappropriated amounts were received by A1, A5 and A6 and not the present petitioners A2 to A4, the proposed charges are groundless even when the entire prosecution case is taken on its face value.

5. The learned Public Prosecutor had stated that the evidence collected during the course of investigation disclosed a *prima facie* case and also a strong case that all the accused involved in the crime had committed offences with which they are respectively proposed to be charged and hence, the charge sheet was filed.

6. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution/complainant has placed on record sufficient evidence to show a prima facie case against her under a particular penal provision of law. In case the prosecution or complainant fails in its primary duty to show a prima facie case to proceed against the accused i.e., when the Court comes to the

conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution/complainant to prove its case beyond any shadow of doubt at the time of framing of the charge or at the pre-trial stage as the prosecution or the complainant is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution/complainant is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

6.1 Further, in R. P. Kapur v. State of Punjab[1], this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

[1] AIR 1960 SC 866

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. I have carefully perused the material record. I have given earnest consideration to the facts and submissions.

8. Be it first noted that Dr.S.Harish was the Divisional Cooperative Officer at the relevant time. When it came to light that the funds of the PDPACS were misappropriated, one V.Deva Raju, who was the then Cooperative Sub-Registrar, was appointed as Enquiry Officer, vide proceedings in R.c.No.919/2003, dated 02.05.2003. The said Enquiry Officer enquired into the complaint of misappropriation of funds of PDPACS during the months of June and July 2003. He also enquired about the forgery of signatures and thumb impressions of the members, creation of fictitious loans and misappropriation of funds for the benefit of the accused. During the relevant time, A1-Posina Naga Mani is the President, A2-Gadala Chandra Rao is the Managing Committee Member, A3-Kothapalli Mangathayaru is the Executive Committee member, A4-R.Atchyutam was the Managing Committee Member, one Thota Jalavaraprasada Rao was the Circle Supervisor of the District Cooperative Bank, Pithapuram Branch, A-5-K.N.V.Konda Raju is the In-charge Secretary and A6 is the Clerk of the society. The enquiry revealed misappropriation of Rs.13,10,960/- and utilization of the said funds for the personal gains of the accused. The Enquiry Officer submitted a report to the Commissioner and Registrar of Cooperative Societies, A.P.,

Hyderabad. On that, the said authority gave orders for proceeding against the persons responsible and the persons, who abetted the offence as per the provisions of the A.P. Cooperative Societies Act (Act 7 of 1964). Therefore, the informant lodged a report with the police by furnishing the enquiry report along with his report to the police. The Investigating Officer also recorded the statement of Deva Raju, the Enquiry Officer. His statement discloses that the funds of the society were expended without proper receipts and without orders from the higher authorities, salaries and arrears of the employees were released and monies were expended without maintaining cash book and that therefore, he was appointed as an Enquiry Officer and hence, he inquired into the acts of misappropriation etcetera committed during the months of June and July, 2003, and submitted a report and that his enquiry revealed that the Board of Directors, President and employees of the Society colluded together, falsified accounts, manipulated the records, forged signatures and misappropriated the funds of the society and misused the funds for their personal gains. He stated in his statement that his enquiry revealed that Posina Naga Mani (A1), who was the then President and three committee members, namely, G.Chandra Rao (A2), K.Mangthayaru (A3) and R.Atchutham (A4) besides others were responsible for the misappropriation of the society funds. In his statement, he gave break up of the misappropriated amounts and stated that the total amount misappropriated is Rs.11,49,347/-. His statement also discloses that false records were fabricated and the District Co-operative Central Bank was made to release the funds and the same were utilised by some of the accused and that he examined some of the persons, in whose names loans were released and that eight members, who appeared before him, stated that they never raised loans from

PDPACS. However, after conclusion of the investigation a charge sheet was filed opining that The total amount said to have been misappropriated is Rs.11,49,347/-. The investigation disclosed that A1 and A6 misappropriated about Rs.8,09,000/- and A5 and A6 misappropriated Rs.10,994/-, A5 also misappropriated Rs.154/-, A6 misappropriated an amount of Rs.3,920/- and Rs.8,041/-, A5 and A6 misappropriated Rs.2,73,062/- and A5 and A6 misappropriated Rs.1,22,091/-, A6 misappropriated Rs.2,600/-, A1, A5 and A6 along with late Amjuri Venkateswara Rao, misappropriated Rs.4,26,509/-. Thus, investigation disclosed that all these amounts are only misappropriated by A1, A5 and A6 along with Ex-Secretary late Amjuri Venkateswara Rao. So investigation revealed no misappropriation of the money of the society by the petitioners herein, that is, accused 2 to 4. Investigation further disclosed that late Amjuri Venkateswara Rao and A6 have jointly committed the offences and are jointly responsible and that A5 and A6 resorted to false debits without vouchers relating to books and forms, printing charges, electrical charges, EC fees, postage, TA, Attender salary, false printing vouchers etcetera and that A1, A5 and A6 violated circular memo of the Registrar of Co-operative Societies, AP, Hyderabad, and that one late Amjuri Venkateswara Rao, A5 and A6 have committed temporary misappropriation of funds by way of false debits and remitted back in full Rs.1,22,091/-. Thus, after consideration of the entire material as well as the statements of the witnesses a charge sheet was filed opining that the other accused 1, 5 and 6 misappropriated funds and received respective amounts from out of the misappropriated amounts and that along with them, one late Amjuri Venkateswara Rao was jointly and severally liable and that late Amjuri Venkateswara Rao, A5 and A6 have committed temporary misappropriation of funds by way of false debits and remitted back in full Rs.1,22,091/-. Though there are allegations of forgery of signatures and thumb impressions, no investigation in that direction appears to have been done and no opinions of a Forensic Expert are obtained by the Investigating Officer with regard to the documents said to have been forged. Thus, if the omnibus allegations are excluded, nothing is opined in the charge sheet showing the complicity of the petitioners/accused 2 to 4 for the offences alleged against them. Thus, the material documents on record when examined with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offences, it is manifest that there is no *prima facie* case, much less, a strong case for proceeding against the petitioners/accused 2 to 4.

9. It is apt to note that in the charge sheet, it is stated that during the final audit of the society for the years 1998-99 to 2001-2002 the auditors detected several irregularities with regard to the working of the PDPACS and that the auditors also detected the misappropriation of funds of the society by various means. It is borne out by record that the enquiry officer was appointed vide proceedings, dated 02.05.2003, and that a report was lodged with the police, on 20.11.2008, and the crime was registered, on 20.11.2008 long after the said period. On the said ground of inordinate delay of several years also, the case against the petitioners/accused deserves to be quashed more particularly, in the light of the crucial fact that the investigation conducted did not disclose any acts with regard to misappropriation of funds and sharing of the misappropriated funds or any other acts or omissions showing the complicity of the present petitioners/A2 to A4. Thus, looking at the matter from the point of view of the facts and law, this Court finds that

the uncontroverted allegations made in the first information given to the police and the evidence collected in support of the same and the averments in the charge sheet along with supporting material do not disclose *prima facie* the commission of any cognizable offences by the petitioners/A2 to A4 and make out a case against them *ex facie*. Therefore, in the well considered view of this Court, satisfactory circumstances do exist in the present case to quash the proceedings against the petitioners/accused 2 to 4 and suffice it to say that the present case is a fit case to invoke the jurisdiction and quash the proceedings against the petitioners-accused 2 to 4.

10. On the above analysis and for all the reasons assigned supra and the legal position obtaining, this Court finds that the request of the petitioners/A2 to A4 to quash the criminal proceedings against them merits consideration and that their petition deserves to be allowed.

11. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/A2 to 4 in C.C.No.310 of 2010 on the file of the Judicial Magistrate of First Class, Pithapuram, East Godavari District, are quashed. Their bail bonds, if any, shall stand cancelled.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

19th September, 2017
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