

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.210 OF 2015

ORDER:

This Revision is filed by the 2nd accused among three accused aggrieved by the order dated 18.11.2014 passed in CrI.M.P. No.1115 of 2014 in C.C. No.70 of 2011 on the file of II Additional Judicial Magistrate of First Class, Machilipatnam.

2) Heard learned counsel for the revision petitioner and also learned public prosecutor representing the respondent—State and perused the impugned order and other material on record.

3) The impugned order of the learned Magistrate particularly from para No.6 speaks that the charge sheet and statements of witnesses and other documents filed by prosecution, including the cheques etc., show petitioner was figured as accused No.2 in this case, as he prepared the cheques and gave requisitions to bank to issue Demand Drafts in favour of District Panchayat Officer, Krishna and there is a prima facie accusation.

4) It is the contention of the petitioner (A2) that there is no evidence to show that he committed any offence alleged by the prosecution and thereby to consider for his discharge as the impugned dismissal order is unsustainable. Learned public prosecutor representing the State supporting the order of the lower Court stated that the administrative officer also not performed his duty properly, that resulted embezzlement of the amounts by A1 through A3 and there is nothing to discharge A2 as rightly held by the lower Court and sought for dismissal of the revision.

5) A-1 is the District Panchayat Officer (DPO), Krishna District at Machilipatnam, A-2 is an Administrative officer thereunder A1—DPO. A-3 is a resident of Venkatapathi Colony, Sathenapalli Village, Guntur District, who is shown as privy in encashing the amounts as if attender under A-1 and encashed on his instructions in their misappropriation.

6) So far as the role of A-2 is concerned, even from the prosecution case including from the statement of LW.1, who succeeded A-1 as District Panchayat Officer by name Nagaraju, the cheque book and other records were under the control of one D.Jaya Prakash Babu, Junior Assistant. There is nothing in his statement, even much less from any other material, of A-2 was in his control any cheque books or accounts or prepared or processed any cheques much less the cheques in question for its withdrawal by A1 through A3 by impersonation.

7) Undisputedly, it is pursuant to the order of A-1 dated nil saying to prepare cheques in favour of the District Panchayat Officer for Rs.19,26,000/- and Rs.43,70,000/- relating to the lease amount of sand reaches of Bobbarlanka, Nimmagadda and Pedapulipaka respectively, apart from that, Rs.1,26,00,000/- towards Mulapadu Sand Reach, that were handed over to A-1—District Panchayat Officer, Krishna, Machilipatnam to settle the amount of A.D Mines and Geology, Vijayawada, which is pursuant to the interim orders regarding recovery of the amounts from the so-called licencees, who moved the writ petition No.24937 of 2006.

8) The above order of A1 is in directing A2 specifically for that instance only to prepare cheques for the amounts lying pursuant to the Court order, to invest in banks in the name of District Panchayat Officer. The impugned order of the lower Court only refers to the preparation of

the cheques by A2 to invest pursuant to the specific orders of A1 (DPO). There is nothing further to say any privy of A2 in this regard, for the subsequent embezzlement of the amount of the cheques under the control of A.1 by him through A3. There is nothing to say any role of A2—administrative officer in accommodating A—1. Even any performance of duty no deligently cannot be visited with criminal complicity with other accused much less as a privy.

9) Once the FIR and settlements and other investigation material is totally lacking any role of A-2 to array in the crime much less with privy, the trial Court went wrong in dismissing the discharge application. Thus there is no basis or any ground for the embezzlement of amount of A1 invested in his name and in his official capacity as the cheques and amounts were under the control of Jaya Prakash Babu—Junior Assistant but not even with the petitioner—A2.

10) Accordingly and in the result, the revision is allowed by setting aside the dismissal order dated 18.11.2014 in CrI.M.P. No.1115 of 2014 in C.C. No.70 of 2011 on the file of II Additional Judicial Magistrate of First Class, Machilipatnam, by allowing the same any by discharging the petitioner—A2 for no material against him to charge with A1 & A3 for any offence.

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

Dr. B. SIVA SANKARA RAO, J

Dt.06.02.2017
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