THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.1912 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short), is filed by the petitioner-A1 requesting to quash the proceedings against him in C.C.No.470 of 2010 on the file of the Court of the learned Special Judicial Magistrate of First Class (Excise), Eluru, West Godavari District.

2. I have heard the submissions of *Sri K. Chidambaram,* learned counsel for the petitioner-A1; and, of the learned Public Prosecutor (AP) representing the 1st respondent-State. Though the 2nd respondent-informant is served with notice, he did not enter appearance and none appeared for him. I have perused the material record.

3. At the outset, it is to be noted that the 2nd respondent-informant lodged a report with the Station House Officer, Pedavegi Police Station, vide Rc.No.2300/95-B, dated 01.11.1997. However, as no action was taken, the Divisional Co-operative Officer, Eluru, by letter, dated 18.06.2008, again requested the SHO, Pedavegi PS to register a case and conduct investigation. Pursuant thereto, a case in Crime no.117 of 2008 was registered against the petitioner herein and another for the offence punishable under Section 409 of IPC. After investigation, a charge sheet was filed. C.C.NO.470 of 2010 was taken on file by the learned Special Judicial Magistrate of First Class (Excise), Eluru, West Godavari District. The petitioner herein having entered appearance in the said CC, later filed this petition to quash the proceedings in the above Calendar Case against him.

4. The case of the petitioner-A1 in support of his request to quash the proceedings in the Calendar Case against him and the submissions made, in

brief, are as follows: 'The allegations in the report are with regard to irregularities and not illegalities. Therefore, the question of misappropriation of the funds does not arise. Pursuant to the notice under Section 60 of A.P.C.S Act, the petitioner disputed the irregularities alleged against him. He also gave a representation. The matter was placed before the General Body of the Society. Ultimately it was suggested to recover an amount of Rs.97,100/- from the petitioner and the remaining amount was directed to be written off since the same was spent on the works done. The petitioner has accordingly deposited the said amount, on 25.04.2003, under proper acknowledgement and receipt from the Society. Thus, the matter was settled amicably. But, the 2nd respondent by letter, dated 18.06.2008, again requested the police to register the case on a report lodged in the year 1997. The case was registered though the above said facts were intimated to the police. The petitioner is not a public servant as defined under Section 21 of IPC. Therefore, the charge sheet filed against the petitioner herein under Section 409 IPC cannot be sustained. The averments in the charge sheet disclose that the petitioner has committed only irregularities but not any illegalities. Therefore, initiation of prosecution against the petitioner is nothing but abuse of process of law. The investigating officer failed to take into consideration the fact that the matter was settled even prior to the registration of the crime and that the petitioner deposited the amount, on 25.04.2003, as directed by the general body of the Society. The charge sheet is filed after lapse of more than seven years after the said payment. The charge sheet filed, without obtaining any sanction as required under Section 83(3) of the APCS Act, is liable to be quashed. The alleged irregularities occurred allegedly between 27.01.1992 and 21.01.1995; the request to cause investigation was made, on 18.06.2008, by the 2nd respondent with a *mala fide* intention only to harass the petitioner. The same is illegal. Therefore, the proceedings against the petitioner-A1 are liable to be quashed.

5. Per contra, the pleaded case of the 2nd respondent and the submissions made by the learned Public Prosecutor, in brief, is this:

During the period between 27.01.1992 and 21.01.1995, the petitioner worked as President of Primary Agricultural Co-operative Society, Koppaka, Pedavegi Mandal. He was involved in misappropriation of funds of the Society to a tune of Rs.3,49,345/-. He misappropriated the funds without following the Rules governing the functioning of the Society as laid down under A.P. Co-operative Societies Act, 1964. An enquiry was conducted and the enquiry officer submitted his report, on 27.05.1996. The enquiry report reflects that the petitioner-accused misappropriated the Society funds. Accordingly, a report was sent to Pedavegi Police Station, on 01.11.1997. Subsequently, the present crime was registered. The acts of the petitioner in drawing funds without obtaining sanction from the competent authority amount to misappropriation of funds. Though the General Manager, District Co-operative Central Bank, Eluru, in the letter dated 07.05.2003, informed that the subject was placed before the General Body of Koppala PACS, held on 28.03.2002 and that the general body resolved to recover an amount of Rs.97,100/- from the petitioner and treat the balance amount of Rs.2,52,245/- as expenditure and requested to drop all further actions against the petitioner, the said fact may be a redeeming factor for taking a lenient view and for awarding lesser punishment; but, the same does not absolve the petitioner-A1 from criminal liability under Section 409 of IPC.

6. At the hearing, learned counsel for the petitioner-A1 reiterated the grounds urged in the criminal petition, which are extracted supra while stating the case of the petitioner.

7. 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." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

8. I have given earnest consideration to the facts and submissions. This Court at the time of examining the request for quashing the proceedings will not conduct a roving enquiry or a mini trial.

9. The averments in the charge sheet reflect that the petitioner/accused committed irregularities during the period he worked as President of the subject society. The General Body of the society in its meeting, held on 28.03.2002, resolved to recover an amount of Rs.97,100/- from the petitioner and treat the balance amount of Rs.2,52,245/- as expenditure. On payment of the amount by the petitioner in April 2003 the matter was settled amicably and the petitioner was exonerated by the General Body of the Society and the general body of the Society also requested to drop all further actions against the petitioner.

10. Admittedly, the petitioner worked as President during the period between 27.01.1992 and 21.01.1995. An enquiry was conducted and the enquiry officer submitted his report, on 27.05.1996. Accordingly, a report was sent to Pedavegi Police Station, on 01.11.1997. However, for one reason or the other, no crime was registered. As per the resolution, dated 28.03.2002, of the General Body of Koppala PACS an amount of Rs.97,100/- was directed to be recovered from the petitioner while treating the balance amount of Rs.2,52,245/- as expenditure on works done and a request was made to drop all further actions against the petitioner. The General Manager, District Co-operative Central Bank, Eluru, in the letter dated 07.05.2003, affirmed the said facts. The petitioner has accordingly deposited the said amount, on 25.04.2003, under proper acknowledgement and receipt from the Society. Thus, the matter was settled amicably long before the crime was registered. However, as no action was taken on the report lodged in November, 1997, the Divisional Co-operative Officer, Eluru, by letter, dated 18.06.2008, again requested the SHO, Pedavegi Police Station, to register a case and conduct investigation. Pursuant thereto, a case in Crime no.117 of 2008, was registered against the petitioner herein and another for the offence punishable under Section 409 of IPC. Thus the crime was registered in the year 2008, that is, about a decade after the report was lodged. Further, the charge sheet was later filed in the year 2008, long after the said amicable settlement of the issue even by the year 2003. It is apt to note that the period of misappropriation relates to a period between 27.01.1992 and 21.01.1995 and that the crime was registered on the reminder letter, dated 18.06.2008, addressed to the police by the Divisional Co-operative officer and that the charge sheet was filed seven years after settlement and about 13 years after the misappropriation period, viz., 27.01.1992 and 21.01.1995. On the said ground of inordinate delay alone the case against the petitioner/A1 deserves to

be quashed. In the light of the above said findings of the Court, there is no need to dilate on any other aspects of the matter.

11. Thus, looking at the matter from the point of view of the facts and law, this Court finds that the proceeding against the petitioner/A1 in the above calendar case is clear abuse of process of the Court. Therefore, in the well considered view of this Court, satisfactory circumstances do exist in the present case to quash the proceedings against the petitioner/A1 and suffice it to say that the present case is a fit case to invoke the jurisdiction and quash the proceedings against the petitioner-A1.

12. On the above analysis and for all the reasons assigned supra and the legal position obtaining, this Court finds that the request of the petitioner/A1 to quash the criminal proceedings against him merits consideration and that his petition deserves to be allowed.

13. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/A1 in C.C.No.470 of 2010 on the file of the Court of the learned Special Judicial Magistrate of First Class (Excise), Eluru, West Godavari District, are quashed. His bail bonds, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

27.11.2017
Vjl