

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11510 of 2017

ORDER:

Petition, under Section 482 Cr.P.C, is filed to quash the proceedings in Crime No.296 of 2017 of Arundelpet Police Station, Guntur District, for the offences punishable under Sections 420, 408, 409, 120-B read with 34 IPC and Sections 79(1)(f), 79-A (1)(c)(2) of the A.P. Cooperative Societies Act, 1964 (the Act).

Respondent No.2 – District Cooperative Officer lodged a report with police on 07.09.2017 alleging that the petitioner, taking advantage of his working in the Cooperative Society, misappropriated Rs.7,17,716/- during 17.07.2010 to 26.07.2010; and an enquiry, under Section 51 of the Act, was ordered against the petitioner and others.

Based on the report of respondent No.2, Crime No.296 of 2017 was registered, and FIR was issued for the offences referred supra. Investigation has not yet commenced.

The present Criminal Petition is filed to quash the proceedings, firstly, on the ground that the Court cannot take cognizance as it is barred by limitation; secondly, there is a special provision in A.P.Cooperative Societies Act, and the police cannot proceed against the petitioner to investigate the offences under Sections 408 and 409 IPC;

thirdly, no notice was served after completion of enquiry under Section 51 of the Act; and, lastly, as the alleged offences would fall within Section 79 of the Act, the petitioner cannot be proceeded with for the offences punishable under Sections 408 and 409 IPC.

During hearing, learned counsel for the petitioner, while reiterating the contentions urged in the petition, would draw attention of this Court to **Garimella Subba Rao, Daruga Venkata Narayana Rao and Kandi Janaki Rao v. State of Andhra Pradesh**¹ to contend that, when special enactment provides a penal provision, the accused cannot be proceeded for the offences under the Indian Penal Code and it amounts to punishing accused twice for the same offence. On the strength of the said principle he prayed to quash the FIR.

Learned Public Prosecutor appearing for the State of Andhra Pradesh contends that, when investigation has not yet commenced, the Court cannot quash the proceedings and requested to dismiss the petition.

Undisputedly respondent No.2 lodged report with police, who, in turn, registered as Crime No.296 of 2017 for various offences referred above. Now investigation has not yet commenced. However, enquiry report, under Section 51 of the Act, discloses that petitioner and others committed fraud and misused funds to a tune of Rs.7,17,716/- and

¹ 2014 (1) ALT (CrI.) 53 (AP)

proceedings under Section 51 of the Act are surcharge proceedings for recovery but lodging FIR is for prosecuting the accused who misappropriated the funds of the Cooperative Society and, therefore, no notice, as contemplated, is to be issued either under the A.P.Cooperative Societies Act or Indian Penal Code, after completion of enquiry under Section 51 of the Act. Hence, the contention of the learned counsel for the petitioner that no notice was issued before launching criminal prosecution is without any substance.

The other contention, raised by the learned counsel for the petitioner, is that the Magistrate has no power to take cognizance since it is barred by Limitation.

In view of Section 468 IPC, the offences said to have been committed by the petitioner are punishable under Sections 408 and 409 IPC. The punishment prescribed under Section 408 IPC is seven years and Section 409 IPC prescribes the punishment of ten years and fine. The other offences are under special enactment i.e. A.P.Cooperative Societies, 1964. Therefore, Section 468 IPC has no application since the offence under Section 409 IPC is punishable with imprisonment of ten years. Consequently, on this ground, the proceedings in Crime No.296 of 2017 of Arundelpet Police Station, Guntur District, cannot be quashed.

Apart from that, in view of the law declared by the Supreme Court, in **Noida Entrepreneurs Association v. Noida**², it was held that the question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot be a ground for dismissing the complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge.

Therefore, the contention of the petitioner that limitation cannot be taken as a ground at the initial stage is supported by the law declared by the Supreme Court in the decisions referred supra.

The Supreme Court consistently held that while deciding an application under Section 482 Cr.P.C. the limitation cannot be taken into consideration if the allegations in the complaint disclose commission of offence on its face value. Therefore, by applying the aforesaid judgment, it is difficult to uphold the contention raised by the petitioner. Therefore, on the ground of limitation the proceedings in Crime No.296 of 2017 cannot be quashed.

Third ground, raised by the learned counsel for the petitioner, is that registration of crime both under the penal provisions of Indian Penal Code and under the Cooperative Societies Act amounts to punishing a person twice.

² AIR 2011 SC 2112

Section 75 of the Act deals with punishment for misappropriation of funds but, at the same time, Sections 408 and 409 IPC deal with punishment for criminal breach of trust by clerk or servant and criminal breach of trust by public servant, or by banker, merchant or agent. Though the effect is one and the same, but, at this stage, this Court cannot express its opinion as to which offence petitioner has committed. In view of the law declared by the Supreme Court in **Umesh Kumar v. State of Andhra Pradesh**³, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 Cr.P.C. The only legal requirement is that a witness has to be recalled as provided under Section 217 Cr.P.C. when a charge is altered or added by the court. Even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it is for Court to decide during trial whether to alter charge or frame charges basing on the evidence produced before it. If this Court expresses its opinion at the threshold while deciding application under Section 482 Cr.P.C, the power conferred under Section 216 Cr.P.C. would become otiose/nugatory. Therefore, while deciding an application under Section 482 Cr.P.C, this Court cannot express its opinion whether petitioner committed any offence under

³ (2013)10 SCC 591

the penal provision of any enactment, more particularly, when investigation is at foetus stage. Time and again, the Apex Court held that, when the investigation is at the threshold and, investigation has not yet commenced, this Court should not exercise jurisdiction to quash the proceedings under Section 482 Cr.P.C. and the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material and, at the stage of deciding an application, this Court is required to verify the contents of the FIR/charge sheet and, if the FIR/charge sheet discloses commission of any offence, this Court cannot appreciate the material on record and quash the proceedings (vide **State of Orissa v. Saroj Kumar Sahoo**⁴).

Earlier in **Kurukshetra University v. State of Haryana**⁵, the same principle was also reiterated. In view of the law declared by the Apex Court in **Kurukshetra University** (5 supra) and **State of Orissa** (4 supra), when investigation is not commenced, the scope and facts are

⁴ 2005 (13) SCC 540

⁵ (1977)4 SCC 451 : AIR 1977 SC 2229

incomplete, this Court cannot exercise power under Section 482 Cr.P.C. A bare look at Section 482 Cr.P.C. contemplates that this Court should exercise such power only to give effect to the orders passed by the Court or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Based on the broad spectrum of Section 482 Cr.P.C., the Supreme Court, in **State of Haryana v. Bhajanlal**⁶, laid down the following seven guidelines:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

⁶ 1992 Supp.(1) SCC 335

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Even if those seven guidelines are applied to the facts, there is nothing on record to stifle prosecution at the threshold while exercising power under Section 482 Cr.P.C. That apart, the allegations made in the complaint lodged by the District Cooperative Officer disclose commission of serious offences punishable under Sections 408 and 409 IPC and the provisions of the A.P. Cooperative Societies Act. Therefore, at this stage, it is difficult to accept as to which offence the petitioner has committed since investigation has not commenced and no evidence has been collected. Consequently, this petition is liable to be dismissed.

At this stage, learned counsel for the petitioner seeks a direction against the investigating agency not to arrest the petitioner as he is a senior citizen and a retired employee.

The Apex Court in **State of Telangana v. Habib Abdullah Jeelani**⁷ held that the Court cannot direct the police not to arrest when the Court finds no ground to quash the proceedings. Issue of such direction to police not to arrest the petitioner/accused is nothing but granting a

⁷ 2017(2)SCC 779

pre-arrest bail under Section 438 Cr.P.C. While exercising power under Section 482 Cr.P.C. issuing such direction is worse than granting pre-arrest bail. If pre-arrest bail is granted, the Court use to insist furnishing of sureties and bonds for his appearance before the Court but, in case of issuing a direction not to arrest, the Courts are not insisting furnishing sureties or execution of bonds by the accused. Therefore, such power under Section 438 Cr.P.C. cannot be exercised under Section 482 Cr.P.C. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner and the same is hereby rejected.

The Criminal Petition is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date: 23.11.2017
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