HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.6868 of 2013

ORDER

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.573 of 2012 on the file of the IV Additional Judicial First Class Magistrate, Warangal, against the petitioner.

02. Heard learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the respondents.

03. The brief facts of the case are that while working as Joint Sub Registrar, based on the complaint of the subordinates, a charge memo was issued to the petitioner under Rule 22 of APCS (CC&A) Rules, 1991, for which he submitted his explanation on 2.9.2004. But the disciplinary authority did not take any action. Meanwhile the petitioner retired from service after attaining the age of superannuation on 31.10.2006. Thereafter, his pension was fixed and payment order was also issued sanctioning full pension in the month of February, 2007. Though pension was sanctioned to the petitioner, pension and pensionary benefits were not paid to him except provident fund and death benefit fund. More than three years after his

retirement, the 2nd respondent sent proposals to the Government recommending for punishment of 2% cut in pension for a period of six months. Aggrieved by the same, the petitioner filed O.A.No.6349 of 2010 before the A.P.Administrative Tribunal. While admitting the said OA, the Tribunal directed the respondent therein to pay provisional pension forthwith. Subsequently, the Government of A.P while issuing show cause notice indicating the proposed punishment of 5% cut in pension for a period of five years, called for explanation from the petitioner. The said show cause was served on the petitioner beyond the stipulated time. Even then, the petitioner submitted his explanation. But, without considering the same, the Government passed final order stating that no explanation was submitted by the petitioner and imposed 5% cut in pension for five years.

04. Aggrieved by the said order, the petitioner filed O.A.No.9380 of 2011 before the Tribunal. While admitting the said OA, the Tribunal passed interim orders directing the respondents to pay 95% of pension and pensionary benefits within four weeks. Since the said orders were not implemented, the petitioner filed C.A.No.544 of 2012. Thereafter, the respondents started harassing the petitioner

and issued a Memo to initiate criminal action against him. The 2nd respondent lodged a complaint before the 1st respondent-Police Station, which was registered as a case in Cr.No.365 of 2012 under Sections 409 and 420 IPC. It is further stated that as per the statement enclosed to the complaint, the above crime was registered in connection with the registration of documents in SRO Mahaboobabad pertains to the year 1997 to 1999 and in District Registrar Office, Warangal, during the year 2000 to 2002. It is further stated that if the registering authority satisfied that the stamp duty is paid as per the market value, the document will be accepted for registration. The market value section shall assist the registering authority for collection of stamp duty and registration fee. All the documents are registered by collecting stamp duty and registration fee as assessed by the market value section. From 1997 to till the date of retirement of the petitioner, internal audit and statutory audit were conducted several times, but at no point of time, the allegations were raised against the petitioner regarding collection of deficit stamp duty. It is also stated that the District Registrar, who is discharging the powers of Collector, is competent authority to issue notice to the concerned parties to pay the alleged stamp duty under

Section 41-A of the Indian Stamp Act, 1899. Since the petitioner filed contempt case against the Government for flouting the orders of the Tribunal, the respondents are harassing the petitioner for nothing. In the entire case, there is no instance of initiating any criminal action on the allegation of deficit stamp duty.

05. Learned Public Prosecutor contended that the investigation revealed that while working as Joint Sub Registrar the petitioner has registered 54 documents at Hanamkonda and 24 documents at Mahabubabad, totaling to 78 documents; that he colluded with the parties and failed to collect the registration fee in consonance with the standing procedure of the Stamps & Registration department; that he has collected less amount from the parties, due to which, he caused loss to a tune of Rs.8,52,075/- to the department; that having grasped the same, an audit was conducted; that in the audit, the office found loss of an amount of Rs.8,52,075/- to the department; that a report was submitted to the Commission Inspector General, Hyderabad for taking disciplinary action against the petitioner for the loss caused by him; and thus, the petitioner committed breach of trust and therefore, he is

liable for punishment for the offences punishable under Sections 409 and 420 IPC.

06. Now the point that arose for consideration is "whether there is any *prima facie* material to show that the prosecution of the petitioner would amounts to abuse of process of law?"

07. It is the contention of the petitioner that as he filed contempt case against the Government, the criminal prosecution was launched against him.

08. On the other hand, learned Public Prosecutor contended that the petitioner committed breach of trust by collecting lesser amount and caused loss to a tune of Rs.8,52,075/- to the Government.

09. A perusal of the record shows that the petitioner worked as Joint Sub Registrar and retired from service after attaining the age of superannuation on 31.10.2006. It is also not in dispute that the petitioner worked as Sub Registrar, Mahaboobabad during the year 1997-99 and in Warangal during the year 2000-2002. Notice under Rule 22 of APCS (CC&A) Rules, 1991 was issued to the petitioner for imposing minor penalty, for which he submitted his explanation. The pension payment order was also issued by

the Accountant General sanctioning full pension in the month of February, 2007. Though pension was sanctioned, pension and pensionary benefits were not paid to the petitioner except paying the provident fund and death benefit fund. It is also clear from the petition that three years after his retirement, the 2nd respondent sent proposals to the Government recommending for imposing punishment of 2% cut in pension for a period of six months.

10. Aggrieved by the same, the petitioner filed O.A.No.6349 of 2010 before the Andhra Pradesh Administrative Tribunal and in spite of the direction to pay provisional pension forthwith by the Tribunal, the same was not paid. Thereafter, the Government of A.P issued a show cause notice indicating the proposed punishment of 5% cut in pension for a period of five years, for which, the petitioner submitted his explanation. Without considering the same, final order was passed imposing 5% cut in pension for five years.

11. Aggrieved by the same, the petitioner filed O.A.No.9380 of 2001 before the Tribunal, which granted interim order directing the respondents to pay 95% of pension and pensionary benefits. In spite of the same, no

amount was paid. Alleging non-implementation, the petitioner filed C.A.No.544 of 2012. It is the contention of the petitioner that as he filed said contempt case, the respondents started harassing the petitioner and the 2nd respondent filed a private complaint in Cr.No.365/2012 for the offences punishable under Sections 409 and 420 IPC.

12. In *Robert John D'Souza and others v. Stephen V.Gomes and another*[1], the Apex Court held as under:

> **"The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.**

13. In *Cognizant Technology Solutions India Private Limited, Chennai and another v. Iridum Interactive Ltd., Hyderabad and another*[2], this Court held that the relationship between complainant and its employee is only

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[1] 2015(2) ALD (Cr.) 563 (SC)
[2] 2015(2) ALD (Crl.) 452

a master-servant relationship but not the owner-property relationship. Section 406 IPC concerns with offence of criminal breach of trust. Criminal breach of trust occurs when a person who is either entrusted with property or got the dominion over the property, and dishonestly misappropriates or converts to its own use that property or if he dishonestly uses or disposes the property in violation of any direction of law prescribing the mode in which such trust is to be discharged. Similarly, without delivery of property the offence under section 409 IPC also cannot be committed only when a property is entrusted to specific class of persons such as public servant, banker, merchant, factor, broker, attorney or agent and if they commit criminal breach of trust in respect of that property. The offence under Section 418 IPC is concerned, it says that whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which cheating relates, he was bound, either by law, or by legal contract to protect is said to have committed the offence.

14. In *Hindustan Lever Limited v. Inspector of Legal Metrology, Proddatur and another*[3], this Court held that " the law is sell settled that the constitutional Courts exercising jurisdiction under Article 226 of the Constitution of India or under Section 482 Cr.P.C interdict criminal proceedings, where the allegations taken on their face value do not disclose commission of any offence in order to prevent abuse of process of law."

15. In the case on hand, the specific allegation against the petitioner is that while working as a Sub Registrar at Mahaboobabad and Warangal, he colluded with the parties and collected lesser amounts from the parties, registered 78 documents viz., 54 documents in Hanamkonda and 24 documents in Mahaboobabad and caused loss to a tune of Rs.8,52,075/- to the Department and the same was noticed in the audit. Being a Sub Registrar, he is responsible to collect the stamp duty. In the petition, it is averred that as per the procedure, when a document is presented for registration, the document will be placed before the market value section. The concerned market value section shall verify the market value of the subject property from market value register and endorse on the document the quantum of

[3] 2009(5) ALT 622

stamp duty to be collected, then it will come to registering authority. If the registering authority satisfied that the stamp duty is paid as per market value, the document will be accepted for registration and based on the stamp duty collected the registration fee will be levied.

16. The market value section shall assist the registering authority for collection of stamp duty and registration fee. Even according to the contention of the petitioner, the market value section will assist the Sub Registrar, who is ultimately responsible for collection of stamp duty before registering the document. Section 41-A of the Indian Stamp Act, 1899 deals with deposit of stamp duty by issuing notice to the party as it is the administrative action to be taken by the concerned Registrar. The above ingredients *prima facie* would indicate the offences punishable under Sections 420 and 409 IPC in the complaint and charge sheet.

17. In the facts and circumstances of the case, I am of the considered view that there is a specific allegation that the petitioner while working as a Sub Registrar in Mahaboobabad and Waranal, in collusion with the parties, he collected lesser amounts and thereby, caused loss to a tune of Rs.8,52,075/- to the Department. A show cause

notice was also issued to the petitioner. The petitioner being a responsible Sub Registrar failed to discharge his duties properly. The above ingredients would indicate that there is a prima facie material to prosecute the petitioner. There is nothing to suggest that the complainant abused the process of Court, which will cause any prejudice to the petitioner. Therefore, I do not find any reason to quash the proceedings against the petitioner.

18. **In the result, the Criminal Petition is dismissed.**

Miscellaneous petitions, if any pending, shall stand closed.

HON'BLE SRI JUSTICE N.BALAYOGI

19th January, 2018
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