HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.3319 of 2017

ORDER:

Heard the learned counsel for the petitioner, learned Public Prosecutor appearing for the 1st respondent - State and the learned Standing counsel for the 2nd respondent Board.

The present revision case came to be filed against the order of dismissal of the application filed to discharge the petitioner for the offence under Sections 409 IPC and Section 61 of the Wakf Act, 1995.

The facts in brief are that the petitioner is an accused for the above said offences. A complaint was lodged against him before the Dabeerpura Police Station stating that he has not paid the wakf funds for the years 2001 to 2004 and failed to submit budgetary statement and audited accounts. The Wakf board also accorded permission to the Mutawalli for construction of Ghusul Khana with his own funds, but admittedly, he has constructed the same through the funds of Al Kausar Trust that too without intimating to the Board. Pursuant to the said complaint, Crime No.59 of 2016 was registered for the above said offences. After investigation, a charge sheet has been laid before the VIII Additional Chief Metropolitan Magistrate, Hyderabad, stating that the petitioner committed the above said offences. The learned Magistrate, after taking cognizance of the offences, numbered the case as C.C.No.606 of 2016. Pending the said C.C., the petitioner filed Crl.M.P.No.1629 of 2017 under Section 239 Cr.P.C., for his discharge. The said petition was dismissed by orders dated 30.08.2017; against which the present revision case is filed.

Learned counsel appearing for the petitioner submitted that the Court below failed to take into consideration the letter issued by the complainant/2nd respondent to the 1st respondent to withdraw the criminal case. The 2nd respondent has no right to give a complaint before the police unless an enquiry is conducted by the Board into the alleged offences. The ingredients of Section 409 IPC are not satisfied. To support his contentions, learned counsel relied on the judgment of the Apex Court in **Kailash Kumar Sanwatia vs. State of Bihar and another**[1].

Per contra, the learned Public Prosecutor appearing for the 1st respondent State supported the impugned order.

Having heard both the counsel and from the perusal of the material on record, it is revealed that Maqbera Nawab Ehtesamul Mulk is a notified and registered wakf published in A.P. Gazette No.11-A dated 16.03.1989. The petitioner, being the Mutawalli of the said institution, failed to pay the wakf fund from the year 2001 to 2004, submit budgetary statement and audited accounts in contravention of the provisions of the Wakf Act. In fact, when the petitioner being

---

[1] (2003) 7 SCC 399

the Mutawalli was accorded permission for construction of Ghusul Khana with his own funds, he constructed the same through the funds of Al Kauser Trust. During the course of investigation, the petitioner approached this Court vide Crl.P.No.8150 of 2016 to quash the proceedings in Crime No.59 of 2016, and the same came to be dismissed observing that the truth or otherwise of the allegations made in the complaint can only be decided during the course of investigation or trial. However, the investigating agency is directed to complete the investigation without arresting the petitioner. In the charge sheet, it is clearly mentioned that during the investigation and as per the statements of the witnesses and the detailed report furnished through the Executive Officer of the Telangana State Wakf Board, the petitioner has not paid the wakf funds from the year 2001 to 2004 and submitted the accounts report on 09.10.2015. The petitioner also failed to submit budgetary statement and audited accounts.

From the above, it is evident that the petitioner has not paid the wakf funds and not submitted the audited accounts as stated supra. The said allegation squarely falls within the ambit of Section 405 IPC read with Section 409 IPC. As per Section 405 IPC, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged etc., commits breach of trust.

The facts in the judgment referred above, which is relied on by the petitioner, are that a complaint was lodged for the offence under Section 409 read with 34 IPC since the money entrusted to the appellants therein, who were the bank officers, was missing. After investigation a charge sheet was filed. The trial Court, relying on the evidence of the prosecution, found the accused guilty for the above said offence. However, the Additional Sessions Judge, Dhanbad, as well as the High Court of Patna acquitted the accused by holding that the possibility of theft of money cannot be ruled out and due to paucity of evidence on the point of entrustment, the case under Section 409 IPC cannot be made out. When the matter was carried to the Apex Court, the appeal was dismissed on the ground that though there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. A person, who is entrusted with money, is incapacitated from carrying out the job, it will not satisfy the ingredients of Section 405 IPC or Section 409 IPC, unless misappropriation or conversion to personal use or disposal of property is established. However, the facts of the present case are totally different. Therefore, the said judgment is not applicable to the present case.

In the case on hand, though the petitioner was directed by the Board to construct the Ghusul Khana with his own funds, admittedly, it was constructed with the funds of Al Kauser Trust. That apart, the petitioner also failed to pay the wakf funds and not submitted the budgetary statement as well as the audited accounts. Therefore, from the perusal of the material on record, this Court is of the opinion that a *prima facie* case is made out against the petitioner for commission of the offence. Further, the truth or otherwise of the said allegations cannot be decided in a petition filed for discharge and the same can be established only after a full-fledged trial. As such, there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 30.07.2018.
ES