HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9612 of 2015

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Criminal Petition No.9994 of 2015

COMMON ORDER:

The petitioner in Criminal Petition No.9612 of 2015 is A12 and the petitioners in Criminal Petition No.9994 of 2015 are A2 to A11 of CC.No.113 of 2015 on the file of I Additional Judicial Magistrate of First Class, Khammam, which was taken cognizance for the offences punishable under Sections 406, 420, 468, 471 r/w. 34 IPC. Same is the outcome of the report of the 2nd respondent / *de facto* complainant, dated 04.05.2013, to the Inspector of Police, II Town, Khammam, which reads,

> *"He is resident of USA with name Kaja Manyam Veera (originally, Khaja Veera Venkata Subrahmanyam) and his wife is Smt.Khaja Krishna Veni also resident of USA for the past 20 years and they are casual visitors to India and with intention to provide education to students from down trodden and masses, in December 2006, he and his wife with their close relatives, including his brother- in- law- Pulipati Prasad (A1), started Sri Sai Dhurga Balaji Health and Educational Welfare Society with Registration No.265/2006, dated 16.12.2006. Upto 14.08.2012, there are seven (7) members to the society and on 14.08.2012, two members resigned and four new members were admitted making the total nine members and de facto complainant is President and Chairman of the society from the inception. He and his wife were reposing confidence of A1 (Pulipati Prasad) and contributed most of their savings by transferring Rs.5.77 crores upto*

September 2012 for purchase of land and construction of buildings for the colleges to run under the society. Recently they came to know that A1 caused breach of trust and cheated by misuse for his personal purposes the society funds grossly and clandestinely, acquired properties in his name and in the name of his wives and daughters with the society funds and acquired permissions for several other colleges belonging to other societies controlled by him quoting the property governed by the society and when he and his wife questioned A1 and demanded to render accounts, he evaded it and adopted a defiant attitude. A1 also planned to remove the de facto complainant and his wife from the management of the society and to hijack the society and created back dated forged documents and placed on record as if those were original documents and with the help of Registrar of Societies, Khammam and with the staff.

In the year 2012, he inserted back dated pages into the document registered at the time of formation of society on 16.12.2006. To gain majority, he brought his own people by making total number of members to 27 instead of original seven and also back dated resolutions by its fabrication when de facto complainant his wife were not in India by forging their signatures, on 14.08.2012, total number of members shown 33 instead of total 9, when they were not in India, a fake meeting was held on 16.10.2012 by using the forged signature of de facto complainant and his wife and fabricated the resolution by created cheque power in the name of wife of A1 viz., Pulipati Padmapriya. With said alleged resolution, A1 and his wife Padmapriya withdrawn from the bank account of Syndicate bank of the society amounts there from and on 28.01.2013, when the de facto complainant and his wife were *not in India, another illegal meeting was conducted and the de facto complainant and his wife shown removed from the society membership with the help of majority by the bogus members. A1 and his wife and other 28 persons played fraud on the de facto complainant and his wife by cheating and by forging their signatures with dishonest intention.*

A1 formed another society viz., Sri Sri Chinna Jiyer Swami Educational Society with registration no.5800/97 mentioning de facto complainant and his wife as if Executive Committee members which fact is not known to them and he was shown as the member of the Executive Committee and his wife as Vice President of the Society though they never been members of the society and their signatures were forged though they never signed any documents pertaining to that society. On 26.02.2017, when they were out of India, resignation letters of them were fabricated by using those fabricated documents cause entered and A1 thereby cheated and mis-represented as if members of the other society by forgery and fabrication of their signatures and for the above, A1 and his henchmen who are connected with the offences are liable to be booked."

2. The list of the 28 members furnished along with the report and it is there from registered as Cr.No.188/2013 by the Police for the offences supra. The police after investigation filed charge sheet stating requisition sent to Registrar of Societies, Khammam, to furnish the registration documents of Sri Sai Durga Balaji Health and Educational Welfare Society No.265/2006 and Sri Sri Chinna Jiyer Swami Educational Society No.5800/1997 till date from 26.02.2007 and collected all attested

documents from Registrar of Societies, Khammam and also bank transaction statement of *de facto* complainant and his wife and xerox copies of their passports and from the statements of LWs 1 to 6, including the *de facto* complainant and his wife, with others by name Y.V.Shekaram, U.A.Prasad, P.Bharathi, K.Chamundeswar Rao shows involvement of A12- Pulipati Madhavi, W/o.A1-Pulipati Prasad also besides some of the fake members of the society in about 28, other than A3, A6 to A10, A14 to A17, A19, A21 to A26 whose names with permission of SDPO deleted and *de facto* complainant was the Chairman and President of the Sri Sai Dhurga Balaji Health and Educational Welfare Society and A1 acted as Secretary and A12, wife of A1, as Vice President. The *de facto* complainant sent Rs.30 lakhs from USA to the Account No.3320303000001 on 12.09.2012 and again Rs.20 lakhs on 24.08.2012 through cheque bearing No.295120 for development of the society and among that, Rs.25 lakhs withdrawn by A1 and instead of taking signature of President and Treasurer, drawn the amounts and used for his own and having noticed the misappropriation done by A1, the society President and Treasurer stopped bank transactions. Then A1 created false names of members and false resolutions of society meetings and constituted 28 members more than nine fake and created resolutions of General Body and eliminated from the society. The *def acto* complainant is wife among others, including one Yerram Sujatha-LW2, Khaja Chamundeswar Rao-LW7, Khaja Swarajya Lakshmi and created false and fake documents and by admitting fake members to the society in committing the acts of cheating and misappropriation and breach of trust and using as genuine forged documents by forgery of documents. After registration of crime while under investigation, there was order to proceed with investigation if not to arrest and there by investigation completed and filed charge sheet against A1 to A12 of whom A1, A10 & A11 still to be apprehended, obtained orders not to arrest vide Criminal Petition No.5872/2013 and Criminal Petition No.7244/2014 respectively and A12 still in abscondance, wife of A1 and brought charge sheet been filed against her and it establishes the offence committed by them and in the charge sheet, among 11 witnesses besides those referred supra, LWs 8 & 9 are panch witnesses, LWs 10 & 11 are Investigating Officers. So far as A12 concerned, a separate charge sheet filed. Later in August 2014 stating earlier she was shown in abscondance and the evidence collected in the earlier charge sheet already establishes the offence committed by A1 to A12 and thereby a separate charge sheet. Same is the impugnment herein respectively in the two quash petitions.

3. Now so far as A12 concerned by name P.Madhavi, W/o.P.Prasad, the contentions in the quash petition heard as A12 are that, LW2, wife of LW1-complainant, is sister of A1, who all started the Education Society and in the course of its functioning, there were disputes between them and there were number of cases pending against each other and the main allegation is only against A1 and there is no basis to implicate the petitioner as A12 and there is no allegation even in the main charge sheet or supplemental charge sheet filed by the Police. The society is non-profitable organization and the affairs are governed by the Societies Registration Act and so far as the misuse of funds by A1 and nothing to implicate the petitioner for any misappropriation and even the defacto complainant stated removed from society by forged documents, is not correct for the removal is by way of only General Body meeting held on 28.01.2013 that was submitted to Registrar of Societies and the General Body got power to remove and admit new members. The *de facto* complainant filed O.P.No.195/2013 before the Additional District Judge,

Khammam, to declare various meetings conducted by society as null and void without seeking cancellation of those resolutions, including removal of him from the society management by the General Body. The Registrar of Societies was also one of the respondents to the said O.P.195/2013 who filed counter opposing the petition averments and impugning the genuineness of resolutions. The petitioner- A12 is not even a member of the society but for of other society by name 'Paulomi Educational Society.' As per the Bye-laws of society, financial transactions are dealt by Secretary and Treasurer of the society and petitioner to array as A12 has no role. Even from the allegations in the charge sheet so to array and no offence made out even from the face value of the allegations to array the petitioner as A12 and therefore, the cognizance order of the learned Magistrate is unsustainable and liable to be quashed from the array of the petitioner as A12 in the police final report taken cognizance.

4. So far as A2 to A11 petitioners in Crl.P.No.9994 of 2015 in impugning the said police final report taken cognizance supra for the offences supra concerned, it is also through similar contest saying from perusal of the police final report there is absolutely no mention against any of the petitioners A2 to A11, much less to say they colluded with A1 or A12 much less to cheat *de facto* complainant in the affairs of the non-profitable Educational Society governed by the Societies Registration Act and if at all there is any embezzlement to find is only A1 and nothing on the face value of allegations against A2 to A11 and thereby the proceedings are liable to be quashed.

5. Whereas it is the contention of the counsel for the 2nd respondent/*de facto* complainant *vis-a-vis* the Public Prosecutor representing the 1st respondent- State, that there is sustainable material

in taking cognizance and as per the recent expression of the Apex Court, no reasons are necessary from the police final report for taking cognizance of the offences, much less detailed reasons and anything coming by reasons cannot be called application of mind once there is *prima facie* accusation against all colluded together in cheating the *de facto* complainant by using forged documents and misappropriated the funds and committed breach of trust by using forged documents and thereby, the cognizance order no way requires inference, but for dismissal of the quash petitions.

6. In the course of hearing additional material filed by the respective accused persons which is the judgment in O.P.No.195 of 2013 supra dated 31.08.2016, passed by the then Prl.District Judge, Khammam, that was maintained by *de facto* complainant herein against 34 respondents and his wife besides Khaja Chamundeswar Rao and his wife Lakshmi Samrajyam and one Yerram Sujatha against Sri Sai Dhurga Balaji Health and Educational Welfare Society, including A1 to A12 herein where it is a claim to declare the resolution dated 13.06.2012 purported to have been passed by Respondent No.1- Pulipati Prasad admitting Respondents 7 to 29 as members of society as illegal and unlawful and with consequential declaration of other resolutions right from 10.12.2006 to 28.01.2013 respectively as null and void and to restrain Respondent Nos.7 to 29 from claiming or acting as members of the society, including not to interfere in day to day affairs of Respondent No.1 society either by claiming as members or by entering into the society premises and its affairs in any way and to declare resolution dated 16.10.2012 passed by Respondent No.1 society changing the instructions to the banker- Respondent No.32, authorizing Respondent No.3- Padmapriya, W/o.Pulipati Prasad to operate the bank account with

Respondent No.2 as illegal and consequently to direct the banks Respondent No.32 to Respondent No.34 to freeze corresponding bank accounts and not to permit them to operate the bank accounts, including by restraining them from taking any policy decisions or operating bank accounts and appoint receiver as personal management on day to day affairs of Respondent No.1 society and it is ultimately on contest on 31.08.2016, dismissed with no costs. The observations in dismissal of the O.P. are that,

7. Clause 17 of the bye-laws of the society gives total authority to the Treasurer in respect of the properties, accounts and monthly affairs of Respondent No.1 society and its two other educational societies and Respondent No.1 society opened accounts in various banks in the year 2006 and petitioner No.5 as Treasurer continued till 08.09.2012. Thereafter, the 3rd petitioner took charge as Treasurer till 28.01.2013 and thereby the allegation that Respondent No.2- Pulipati Prasad, misappropriated or misused funds is an invented one. Letter on 15.11.2012 addressed by the 1st petitioner from USA to Syndicate Bank, Khammam, thereby, the story of 3rd petitioner gave blank signed cheques also not correct. Society administrative staff are updating the affairs and seeking approvals, including from petitioners 1, 3 and Respondent No.2 in day to day management even through email correspondence. The General Body constitutes primary members of Respondent no.1 society is 27, and Respondent Nos.4 and 5 are members by 05.10.2011, petitioners 3 & 4 are members by 06.10.2011 with oral approval of Executive Committee. The petitioners 3 & 4 and Respondents 4 & 5 were absorbed as office bearers by resolution dated 08.08.2012 which explains prior approval of their membership. The Annual General Body Meeting of Society held on 08.08.2012 and amendments relating to Board of

Governors and functioning of Executive Committee and operation of bank accounts, effected covered by minutes of the meeting of even date that was approved by General Body, the proposed meetings of the bye-laws on 02.09.2012 by its confirmation. There is a misbehaviour by There is a misbehaviour by Yerra Ankith with Principal and administrative staff of Engineering staff in July 2012. Respondent No.2 and other members of Respondent No.1 society supported the staff and there from differences arose and Respondent No.2 was implicated in a case punishable under Sections 323 and 294(b) IPC by 5th petitioner that was ended in acquittal. On 24.11.2012, the 5th petitioner and her husband and their son and one Bharathi assaulted Respondent No.3 and took away documents which is subject matter of Crime No.135/2012 of III Town P.S., Khammam on 19.02.2013. They broke open the cup-board and taken away records, for that another Crime No.27 of 2013 registered. In view of that, there was a general body meeting held on 28.01.2013 for which the petitioner did not attend and resolution was passed terminating the petitioner from membership of society on 28.01.2013 as per the contest of the respondents. It is observed from Para 68 onwards of the order that on verification of Exs.A38 and A39 of passports of PW2 showing her visit to India and those dates are not corresponding with dates of PW2 stay in India and the dates of resolutions to declare as null and void as per Ex.A13. From 28.01.2013, the petitioners 1 to 5 are not members of Respondent No.1 society and once they are not members, the question of invoking Section 23 of the A.P.Societies Registration Act, 2001, by non-member, does not arise. Ultimately, observed at Para 76 that petitioners asked various relief's, including the relief of declaring resolution dated 13.06.2012 passed by Respondent No.1 society admitting Respondent Nos.7 to 29 as null and void and not adduced necessary evidence to show they were not included into Respondent No.1

society as members and not complained to anybody of any authorized activities of Respondent No.2 in dealing with affairs of the society, thereby holding not entitled to the reliefs.

8. The dismissal of the O.P.No.195/2013 there from is mainly on the ground that as per resolution dated 28.01.2013, petitioners were removed from the membership of the society thereby they being non-members from there, cannot maintain the petition under Section 23 of the Act and no other sustainable merits. Thus, that order is no way coming in the way nor helpful in any manner to decide the present quash petitions, but for on own merits. Even from the quash petition averments with reference to the FIR and investigation material covered by final report, A1-Pulipati Prasad is brother- in- law of *de facto* complainant, no other than his wife's brother and A2- wife of A1. They started the society in December 2006 under the Societies Registration Act. Having been registered not in dispute. Complainant and his wife are residents of USA, not even in dispute. What is the allegation is forgery and fabrication of resolutions by signatures of *de facto* complainant and his wife by the accused persons in embezzlement of the amounts of the society by siphoning the same. So far as the evidence of forgery concerned, it must be shown dishonest intention from the inception to cheat which is lacking for not a case that right from registration of society, any of the accused got any dishonest intention and even the admission of the other members in the society is only subsequent to that against the original strength of the society and not immediately even after registration of the society to infer any dishonest intention on the part of A1 or A2 or any of the other accused among A1 to A12 from the inception. Thus, there is no attracting of the offence under Section 420 IPC concerned.

9. The operation of the bank accounts by A1, A2 pursuant to the so called resolutions not in dispute. This results outcome of the forged signatures of the complainant and his wife is one of the claims. It is a matter for adjudication and even there is endorsement of the affairs of the society and dealt by A1 along with others if any, and so far as the signatures of the complainant and his wife allegedly forged for purpose of cheating by using as if genuine concerned that attracts the offence under Section 471 IPC and so far as offence under Section 468 IPC concerned, it must be shown proof some way particularly and specifically forged the signatures using as genuine forged signature is different defined and punishable under Section471 IPC to very forgery of signatures under Section 468 IPC. So far a passing of resolutions to each of the accused members concerned, there using as genuine the so called forged signatures of the complainant and his wife, including a change of authorization of the bank accounts operation and embezzlement of funds alleged. However, so far as the forgery concerned, there is no specific allegation as to who forged the signature in what document. Coming to resolutions, if at all the resolutions show very forged signatures of the complainant and his wife, including to the notice for their alleged absence there from is a matter for appreciation. So far as A12 among the 12 accused, particularly, the contentions in quash petition No.9612 of 2015 by name Smt.P.Madhavi, W/o.P.Prasad concerned, she is also a member of the society not disputed in saying no specific allegation against her. Once if it is the allegation of several members introduced by forgery of signatures of the defacto complainant and his wife to the resolutions by increasing the strength against the original bye-laws, including by amendment of byelaws and once they are parties to any resolutions, it is difficult to quash the crime pending against any of them in toto, including against A12, but for to say, there is no attracting of offence under Section 420 IPC, specifically, but for any other offences.

10. Having regard to the above and with these observations, the Criminal Petition Nos.9612 of 2015 and 9994 of 2015 are allowed in-part by quashing the cognizance order only for the offence under Section 420 IPC and by left open all defences to raise during trial for rest of offences by dismissing so for as rest of the offences taken cognizance concerned.

11. Miscellaneous petitions pending, if any, in these criminal petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.28.03.2019
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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