HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 4427 of 2019

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. seeking quashing of all further proceedings in C.C.No.54 of 2018 on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 406 and 420 read with 34 IPC and Section 38 (2) (3) (4) of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (for short "the Act").

The case of the prosecution is as under:

The Registrar, Co-operative Societies, Hyderabad ordered an enquiry vide proceedings Rc.No.11864/08/HR4 dated 05.09.2013 under Section 29 (2) of the Act into the affairs of the Andhra Pradesh High Court Employees Mutually Aided Co-operative Housing Society Limited, Hyderabad (for short 'the Society'). Pursuant to the said order, the Enquiry Officer conducted an enquiry and submitted a detailed report, dated 01.01.2014, to the Registrar of Mutually Aided Co-operative Society, Hyderabad. The contents of the enquiry report which is the basis for registering the above crime and which also forms part of the First Information Report, are as under:

The following are the irregularities alleged to have been committed by the M.C.Members of the Society as per the report of the Enquiry Officer.

1. "Legally P.Venkat Reddy (accused No.1) is not a member of the Society.

2. Technically the above members i.e. Sri P.Vinod, Sri N.Satish Varma, Sri G.Anil Kumar, Sri D.Santhosh Kumar, Sri M.V.Subbaiah and Smt. Manikyambha are still members of the Society.

3. Heavy expenditure items were approved in the last hour.

4. In the board meeting of 18.02.2013, the signature of Sri K.V.S.Murthy, Treasurer was forged and the same was confirmed by Ex.President N.Chandrasekhar.

5. In total basing on the statements given by the contractor Sri P.Veeraiah and Ex.President N.Chandrasekhar (accused No.2) and on verification of the site, nearly 2.5 Crores of amount has been misappropriated in civil works only. P.Veeraiah has submitted 28 audio files to the enquiry officer which was recorded by him secretly in his mobile regarding the money transactions between P.Venkat Reddy and himself. He also personally appeared before the Inquiry officer and his deposition was recorded on 30.12.2013 along with his colleagues Shivareddy and others. Audio phone recording of N.Chandrasekhar, Ex.President of the Society recorded by the Inquiry Officer on 27.12.2013 at 7.36 am also reveals the bare facts of misappropriation of funds in land development.

6. The readmission of membership of P.Venkat Reddy is ratified again and again which is a clear violation of byelaws and Act.

7. The 8 members who were admitted in the year 2010, Sri N.Bhavani Shankar and others membership is not valid.

8. The G.B. is taking the shelter of "Ignorance" for the mistakes the Society has committed like for example no proper maintenance of registers, issue of share certificates etc. Even after so many days of ratifying the agendas, not even a single step has been taken in fulfilling the items covered in the GBs conducted till date.

9. The AGB conducted on 23.09.2012 passed a very peculiar resolution in Agenda 9 (i) © which says that "it is unanimously resolved to authorize the Secretary to initiate stringent action against few of the Society members for their selfish gains and ulterior motives always creating hurdles and hindering the developmental activity of the Society in

achieving the target of allotting the plots to the members and issue notices to the said members and despite receipt of the notices also the said members have not changed their attitude, the Secretary is further authorized to expel the said members from the Society without ratification of the General Body meeting.

10. This resolution implies that Secretary is the General Body and General Body is Secretary. He can act according to his whims and fancies and can remove any member whom he identifies to be removed. This resolution of the General Body without application of mind has upgraded the Secretary as a Director. This is noticed by the Inquiry officer during interaction with the past directors and members of the Society. The perfect example of Secretary's monopoly is noticed in the expulsion of N.Chandrasekhar, the then president which is discussed below.

11. There is no address to the Society. The entire Inquiry is conducted in Employees Service Association hall of the High Court.

12. The files and information as required by the Inquiry Officer were given in the chamber of P.Venkat Reddy and these are not in proper Society.

13. There is no proper maintenance of registers at the Society.

14. A list of members from all cadres of the Society who have availed House Building Allowance which is certified by Section officer of the High Court is obtained by the inquiry Officer.

15. In the legal opinion given by G.P. for co-operation, Sri N.Jayasurya, it was specifically mentioned that General Body cannot condone or ratify the lapses which ultimately has the effect of nullifying the findings of the Enquiry Report. It cannot ratify all decisions which are not specifically mentioned in the byelaws of the Society.

16. Lot of money has been mis-utilised by P.Venkat Reddy and the other members of the Board were silent on activities.

17. The members and directors who resisted P.Venkat Reddy were expelled from the Society.

18. An amount of Rs.71,07,624/- is paid from 01.04.2012 to 30.08.2012 for engaging advocates. This has been ratified in GB resolution dated 23.09.2012 Agenda No.5 Page No.17 of the Minutes of G.B. No receipts were submitted to the Inquiry Officer. Since there are no receipts, the amount shall be recovered from the ex-managing committee.

19. On 23.03.2013 AGB meeting, the advocate fee of RS.4,80,000/- has been ratified. In this meeting, an amount of Rs.42,500/- has been spent towards the transportation and other expenses Rs.2,31,000/- without any receipts and shall be recovered from the concerned managing committee and also it is against the orders of W.P.Nos.29232/2012 dated 18.09.2012. These amounts shall be recovered from the concerned management.

20. Even in the subcontract which has been given to the APSEB contractor G.Nagendra Prasad, he was paid an amount of Rs.4,50,000/- through cheque No.200452 dated 26.12.2011 fraud is made. The Enquiry officer's staff has made call to G.Nagendra Prasad and recorded the call in the mobile where it was inquired about the specifications as mentioned in the quotation submitted to the Society. The contractor himself has said that the specification can be met in Rs.2,40,000/-. The excess amounts paid i.e. Rs.2,10,000/-.

21. The list of directors given to the Inquiry Officer of the board present as on date of ordering of Inquiry is as below:

P.Venkat Reddy	: President (Asst. Registrar)
N.Ramesh Kumar	: Director(Assistant)
B.Mallaiah	: Director(Attender)
P.Narsimhulu	: Director(Attender)
N.Muralidhar	: Director(Driver)
Mohd. Mahaboob Sharif	: Director(DSO)
K.V.S.Murthy	: Director(Section Officer retired)
Mohd. Shamsheer Ali	: Director(Attender)
G.Devender	: Director(Assistant

The Board has more attenders and assistants than officers. The Class IV employees with their low education qualifications are easily targeted by the intelligent Ex.President P.Venkat Reddy. The above Ex.Directors N.Ramesh Kumar, B.Mallaiah, P.Narsimhulu, Shamsheer Ali are all co-opted members. They are not elected by the members of the Society. Ex.President N.Chandrasekhar and D.Yadaiah (Ex.Vice President) and D.Narsing Rao (Ex.Director) are also responsible for the management of funds of the Society."

Basing on these allegations a charge sheet came to be filed.

Learned counsel for the petitioner mainly submits that even accepting the allegations in the charge sheet to be true, no offence is made out against the petitioner. According to him, the petitioner has no active role in functioning of the Society and specific allegations are made against the principal accused. He also submits that though the Contractor on whose statement the entire case is built up is not shown as an accused till today. In any event, he submits that the petitioner is not liable for the offences alleged in the absence of any specific role being attributed to him.

Learned Public Prosecutor opposed the application contending that the allegations in the report do make out a case against the petitioner.

Learned counsel appearing for the second respondent admitted that the petitioner is a co-opted Directorand he is not elected and the petitioner had resigned the post of the Director.

The material on record would disclose that the petitioner was a co-opted Director only for a period of ten days. Thereafter, on 31.3.2012 the petitioner addressed a letter to the Secretary of the Society resigning from the said post and the same was acknowledged by accused No.1. From the above, it is clear that the petitioner was a co-opted Director of the Society for only ten days. Further, the averments in the report disclose that the alleged acts of misappropriation by accused Nos.1 and 2 took place in the year 2012 and the petitioner was not a Director of the society at that point of time. The averments in the charge sheet, which is based on the report of the Enquiry Officer, dated 01.01.2014 show that the allegations of fraud and misappropriation are mainly directed against accused Nos.1 and 2. A reading of the entire report does not anywhere refer to any specific role being attributed to the petitioner in any of the transactions.

Clauses Nos.4,5,9 and 19 of the Enquiry Report do not refer to the role of the petitioner in the alleged acts of misappropriation or fraud. In clause-4, it was mentioned that in the board meeting dated 18.02.2013, the signature of K.V.S.Murthy, Treasurer was not tallying which was confirmed by Ex.President N.Chandrasekhar.

Clause No.5 refers to misappropriation of Rs.2.5 crores in civil works. It refers to a transaction between accused No.1 and Veeraiah. The said Veeraiah appeared before the enquiry officer and reported about the acts of misappropriation in the development of land but he is not made an accused so far. Even otherwise the said allegation is directed against the principal accused.

Similarly clause No.15 refers to misutilisation of funds of the society by accused No.1. What all it says is that the other members were silent about the activities of accused No.1, that by itself do not fasten the petitioner liable for the offences alleged.

Clause (3) of Section 38 of the Act states that an offence committed by a Co-operative society shall be deemed to have been committed by each office-bearer of the Co-operative society bound by the bye-laws thereof to fulfil the duties whereof the offence is a breach, or if there is no such office-bearer then by each of the Director, unless the office-bearer or Director proves to have attempted to prevent the commission of the offence.

In *Maqsud Saiyed v. State of Gujarat*[1] the Apex Court while dealing with the vicarious liability in criminal offences observed as under:

> 13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

From the judgment referred to above, it is clear that even if there is a provision fixing vicarious liability, it is obligatory on the the

[1] 2008 (5) SCC 668

part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. Merely saying that the petitioner is a Director would not fasten him with the criminal liability.

Having regard to the fact that the petitioner was only co-opted Director, not elected and the allegations of fraud and misappropriation are mainly directed against accused Nos.1 and 2, that taken place prior to that and at the relevant time he was not in the capacity of Director of society, continuation of proceedings against the petitioner/accused No.14 in C.C.No.54 of 2018 on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad would amount to an abuse of process of law.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/accused No.14 in C.C.No.54 of 2018 on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad are hereby quashed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

17.09.2019
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