THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3731 OF 2016

ORDER:

The petitioner, by name Ch.Venkateswarlu, accused in C.C.No.500 of 2015, taken cognizance against him for the offence punishable under Section 409 of Indian Penal Code (for short, 'IPC'), by the learned I Additional Judicial Magistrate of First Class, Kothagudem, which is outcome of Crime No.133 of 2013 of I Town Police Station, Kothagudem, from the report of the Senior Regional Manager, Indian Overseas Bank, Hanamakonda, Warangal District, 3rd respondent to the quash petition, impugning the said crime when the police final report taken cognizance by the learned Magistrate for the offence supra, filed the quash petition. The respondents 1 & 2 are the State of Telangana, represented by learned Public Prosecutor and the Station House Officer, Kothagudem concerned Police Station supra.

2. The contents of the Crime No.133 of 2013, which was registered on 22.04.2013 for the offence punishable under Section 409 IPC by the I Town Police Station, Kothagudem, from the report of 3rd respondent-Senior Regional Manager, Indian Overseas Bank, Hanamkonda, by name Kotapuri Jeevanandam, the then, against the petitioner named Ch.Venkateswarlu as accused referring as Senior Manager, Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, are that he is under suspension, he worked in that branch in that capacity between 09.05.2009 to 10.07.2011, having been delegated with the powers as per Bank norms in discharge of duties without causing loss to Bank, however, in discharge of his duties, he misused the powers and committed

irregularities in contravention of Bank guidelines and such irregularities committed by routing unauthorised transactions in certain General Ledger Accounts that came to light in the course of Central Office Inspection and after departmental enquiry, the officer placed under suspension and the irregularities committed by him mentioned are:

"**Misappropriation in GL stamps:**

Our General Ledger head **"Stamps"** is for routing recoveries made from loan borrowers for stamp duties on documentation. During the said period (09.05.2009 to 10.07.2011), stamp duty charges towards documentation of the loans granted during the period amounted to Rs.241118/-; i.e. an amount of Rs.241180/- should have been recovered from the borrowers and credited to the GL stamps during the period. However, GL stamps shows a credit of Rs.710319/-.

Debit to GL stamps is made by branches only to purchase stamps for loan documents at the time of releasing a loan and the amount is recovered from the borrowers. Any amount outstanding in the GL stamp should be substantiated with stock of stamps purchased and kept by the branches which should be produced for verification by the inspectors at the time of inspection.

The excess amount of Rs.576801/- has been debited on various dates and no evidence of stamps purchased for the said amount of Rs.576801/- was made available. In other words an amount of Rs.576801/- is misappropriated.

Misappropriation in P & L – Stationery & Printing, Computer stationery, Sundries, Computer Expenses, Repairs to Bank Property and Electricity and lighting

During the said period **cash** debits aggregating to **Rs.390510**/- (Profit and loss account stationery and printing **Rs.127100/-,** Profit and loss account compute stationary Rs.**138700**/-, Sundry others of Profit and Loss account Rs.**54060**/-, profit and loss account computer expenses Rs.**16650**/- Profit and loss account Repairs to Bank Property Rs.**5000**/-) made on various dates to the above Profit & loss account heads is not supported by bills. Some vouchers do not have 2nd officer's signature and bears only the signature of Ch.Venkateswarlu, the Branch Manager. Debits to the above P & L heads should be supported by proper bill/invoice/receipts and signed by two officials, one of whom should be the Branch Manager. These bills should be sent to Regional Office for confirmation. Branch Manager has failed to seek RO confirmation for these expenses.

Misappropriation in suspense account

For any advance made towards expenses, debits are made to suspense head pending finalisation and approval of the expenditure. Debits' relating to TA advance taken by the branch manager and some debits without any specific narration aggregating to Rs.**98000**/- were made to Suspense account. The same have been reversed by debits to Branch P&L account and GL stamps. T.A. advance should be adjusted by submitting T.A. bill with authorization from the sanctioning authorities or in case there is a difference in the T.A. advance amount and the T.A. bill sanctioned amount, the difference amount or the total advance amount, as the case may be, should be remitted by the individual within the time. He has no authority to adjust the T.A. advance to P & L or any other head.

Money misappropriated from Savings Bank account No.30157/30156 of Coal Mines Pension account

SCHO-Kothagudem branch makes pension payments of retired coal mines employees every month and branch is authorized to collect Rs.30/- for each pension payment made along with Rs.3000/- consolidated amount towards postage and this amount is debited to their SB account No.30157 and 30156 of Coal Mines Pension accounts with out branch. The amount so debited is credited to branch P & L head-Commission – code 8508/8518.

On 24.09.2009 an amount of Rs.60570/- was debited to SB account No.30157 and Rs.25000/- was diverted to suspense account for elimination of 2 suspense entries against which Sri Ch.Venkateswarlu had already drawn cash. An amount of Rs.5000/- was diverted to Sundry creditors account-NEFT for apparently procuring Rs.1.50 Cr. Deposit in SB and Rs.4000/- DD was issued favouring – Gayatri Jewellery.

On 14.10.2009 SB a/c no.30157 was debited for Rs.121860/-, Rs.91860/- was only credited to P & L code 8518 – commission. A DD for Rs.10000/- fvg. SCCL Stores Ltd., a super bazaar, was issued. Three other DDs were issued – Rs.6900/- fvg. K.Raja Babu, Rs.5,000/- fvg. R.Ramu and Rs.5000/- fvg. K.R.Narayana, all three were encashed subsequently.

Between November 2009 and October 2010 and in April 2011 total amount of Rs.139880/- was diverted to Current account No.88 of M/s.OM Computer Offset Printers and Rs.29000/- was diverted to Current Account no.14 of M/s.Naveen Fancy. Both account holders have informed that they received payments for goods supplied, i.e. stationery and dairies supplied by them, however there are no bills to support their claim.

Debits to SB account 30156 and 30157 was branch income for the services done by the branch and should have been credited to the Branch P & L account 8508 or 8518. If actually any expenses were incurred towards stationery or printing the relevant expenses should be debited to P & L head supported with the bills and confirmation sent to RO. Hence there is a misappropriation in SB accounts of Coal Mine Provident Fund account of Rs.**270380**/-.

Money misappropriated from SB account No.19899 of Sri Durga Rao, unauthorised sweeper at branch

Amounts have been withdrawn from the above account as follows:
22.04.2010 – Rs.20000/-
14.06.2010 – Rs.20000/-
28.06.2010 – Rs.20000/-
26.07.2010 – Rs.16000/-
09.09.2010 – Rs. 6000/-
02.11.2010 – Rs.15000/-
On 29.06.2010 an amount of RS.10000/- was paid in cash into sb account no.19899 of Mr.Durga Rao-this sb challan in the place of cash paid by appears to have been initiated by Shri CH. Venkateswarlu. This amount of Rs.10000/- is not added in misappropriation hence he has committed an irregularity of **Rs.87148/-.**

All these withdrawal slips have been written and passed by single signature of Sri Ch.Venkateswarlu under "Pay cash" by allowing overdrafts in the SB account of the unauthorized sweeper and all subsequent credits have come from debit to the GL stamps account.

Serious irregularities in sanctioning of demand loan at SCHO-Kothagudem against deposit held at Vijayawada Main Branch

A Short Deposit bearing No. SDR 110900023 for Rs.4.50 lacs was held at Vijayawada Main branch by Smt. Dutta Satya Mithra, widow of Sri Dutta Satyanarayana, a staff member. Sri Ch.Venkateswarlu worked as Senior Manager 1st Line at Vijayawada Main Branch before his posting to SCHO-Kothagudem. On 28.08.2009, demand loan 150900063 was sanctioned against the aforesaid deposit at SCHO-Kothagudem, for Rs.4.00 lacs. The vouchers were handwritten and passed by Sri Ch.Venkateswarlu alone without the signature of any other officer of the branch. The DL amount was credited to SB account no.24444 of Smt.C.V.Padma, W/o Sri Ch.Venkateswarlu by transfer entry. The loan account was closed on 03.11.2009 by transfer from CC a/c 95 of

Mr.P.Giridhar Lal, whose whereabouts are not known and the cc account 95 is now closed.

Another Demand Loan 150900079 for Rs. 75000/- was sanctioned on 24.11.2009 against the same fixed deposit and cash payment made. This DL was closed on 11.01.2010.

Vijayawada Main branch confirmed that lien was not marked on their deposit 110900023. From the above it appears the Sri Ch.Venkateswarlu has availed the above two loans without the Deposit Receipt and without the deposit holders consent.

CONSOLIDATION OF MISAPPROPRIATION OF AMOUNTS:

1.	GL STAMPS	:	RS. 576801/-
2.	P & L STATIONARY AND PRINTING	:	RS. 127100/-
3.	P & L COMPUTER STATIONARY	:	RS. 138700/-
4.	P & L SUNDRY OTHERS	:	RS. 54060/-
5.	P & L –ELECTRICITY AND LIGHTING	:	RS. 49000/-
6.	P & L COMPUTER EXPENSES	:	RS. 16650/-
7.	P & L REPAIRS TO BANK PROPERTY	:	RS. 5000/-
8.	SUSPENSE	:	RS. 98000/-
9.	SB ACCOUNT OF COAL MINES PF A/C.	:	RS. 270380/-
10.	SB ACCOUNT OF MR.DURGA RAO	:	RS. 87148/-
TOTAL			**RS.14,22,839/-**

The above said irregularities were identified by the inspectors during the course of their inspection of the Branch and the same have been brought to the knowledge of the Regional Manager and Head Office at Chennai for taking appropriate action against the concerned officer."

3. The charge sheet filed by the police from the investigation mentions as if there are six accused in Column No.11, whereas in Column No.4, shown himself as sole accused. The charge sheet cites ten witnesses including L.W.9 – Inspector of Police, who registered crime and investigated in part and L.W.10 – the successor Inspector continued the investigation and filed charge sheet, leave apart the *de facto* complainant supra as L.W.1, lodged the report from the instructions of L.W.5 – Chief General Manager, Disciplinary authority, Central Office, Chennai, by name B.S.Keshava Murthy, L.W.2 – Senior

Manager (Inspections) of Indian Overseas Bank, Inspectorate, Hyderabad, by name Pallipati Mohan Rao, who inspected the Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, supra and identified irregularities and prepared departmental enquiry report and sent the same to L.W.4 - P.Krishna Mohan, Assistant General Manager, Indian Overseas Bank Inspectorate, Hyderabad, speaks about received departmental enquiry report submitted by L.W.2 and forwarded to L.W.5, L.W.3 – Nunavath Devi Singh, Chief Manager, Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, now during 2015, stated assisted L.W.2 surpa in preparation of the departmental enquiry report against accused, seized case property and kept in safe custody in the locker of Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, and L.W.6 - J. Basavaraju, Chief Manager, Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, successor, stated case property in his control can arrange to produce and L.W.7 – Nedunuri Vithal, Assistant Manager, Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, and L.W.8 – K.Somaiah Chary, Security Guard, Kothagudem, who are Panch witnesses for confession and crime detail form with rough sketch, etc. The charge sheet speaks besides the facts supra in the FIR, which no way requires repetition in relation to the defaulcated amount of Rs.14,22,839/-, that on receipt of the report registered as FIR in Crime No.133 of 2013 under Section 409 IPC against the petitioner in the course of investigation, visited the scene of offence and examined the witnesses L.Ws.1 to 6 surpa and drafted scene observation and crime details panchanama before L.Ws.7 & 8 and stated the accused surrendered before I Additional Judicial Magistrate of First Class, Kothagudem, on 13.06.2013, as per

High Court order in Crl.P.No.5138 of 2013, dated 11.06.2013, and later released on bail and from the investigation done and evidence collected shows L.W.2 – Senior Manager (Inspections), inspected the Kothagudem Singareni Collieries Head Office Branch of Indian Overseas Bank and identified irregularities and prepared departmental enquiry report against the accused assisted by L.W.3 and submitted to L.W.4 as per instructions of L.W.5 and L.W.5, having received from L.W.4, based on the departmental enquiry report, placed the accused under suspension and instructed L.W.1 to lodge the complaint in registration of the crime and the property kept under custody of L.W.6 – present Chief Manager, Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, and in the course of investigation, identified the so-called irregularities and dishonest misappropriation of funds referred supra of Rs.14,22,839/- and accused was ultimately dismissed from service by the proceedings of L.W.5 and so-called allegations proved and the delay occurred in filing the charge sheet of about two years from registration of the crime is in collecting the documents including final proceedings of disciplinary authority and orders of the appellate authority, etc.

4. The contentions in the quash petition impugning the same are that:

(a) From perusal of the charge sheet, none of the ingredients of the offence under Section 409 IPC attract against the petitioner, who did not commit any criminal breach of trust nor was entrusted with any property in any manner even from face value of the allegations to file the final report and to take cognizance and in relation to the misappropriation of GL Stamps, while he was working as Senior

Manager from 09.05.2009 to 10.07.2011 concerned, he had sanctioned 1784 clean loans to the Singareni Collieries employees besides 271 loans to other borrowers and the applicable stamp charges towards documentation of above loans would be Rs.2,41,180, whereas he credited Rs.7,10,319/- into GL Stamp Account by recovering the same from various borrowers and from that credit made into GL Stamps Head, he allegedly, fraudulently and unauthorizedly debited Rs.5,76,801/- to various dates detailed in Annexure – I of the memorandum of allegations and articles of charge-cum-suspension order. However, in this regard what he submits is deposition of M.W.1 in his cross-examination evidence is that he had not taken into account use of stamps in F.125 AX, earlier unstamped documents, non-fund based limits, indemnities, etc., covered by Page No.14 of the enquiry proceedings and the Investigator or Presenting Officer not adduced any evidence of any notification or circular specifying requisite quantum of stamps to be used in a particular document, but for quoting ME 159 only in stating on verification of several existing and closed clean loan documents, what M.W.1 found of they bear Rs.120/- as total stamps affixed and the Investigator not gone through all documents to ascertain total value of used stamps, M.W.1-Investigator not listed out 1784 clean loans and 271 other loans granted during COS period and Presenting Officer not marked any document, which is unstamped, as alleged in his presenting officer’s brief and the conclusion of Rs.5,77,801/- excess amount collected is an imaginary figure and baseless.

(b) Regarding second item of misappropriation of P & L Accounts, Stationary and Printing, etc., alleged unauthorised debit of cash of Rs.3,90,510/- into that account under various heads on various dates without enclosing bills and vouchers and not signed by two officials and not sent for Regional Office confirmation concerned. His submission is that all the transactions have been made in the ordinary course of business and officials and staff of the Branch worked in that period of two years two months, aware of the transactions, duly handled the vouchers and the officials Sri Bhagi Narayana Sastry, Thomas Paul, K.Yagnanarayana, N.V. Mohan Rao, almost signed the respective vouchers as second signatories and the practice prevailing in the branch were adopted by its continuation. More over, the system of account is online. As and when an entry is feeded, it automatically reflects at all the controlling offices. From such generated entries, it is compliance to the reporting of controlling office every month, as P & L Account, after due scrutiny, will be transferred to controlling office every half year, whereby it cannot be said controlling officer's authorities not informed.

(c) Coming to the third head of misappropriation on Suspense Account of Rs.98,000/- that was reversed to branch P & L Account and GL Stamps Account with no sanction of Regional Manager, what he submits is suspense account is an intermediatary advance account mentioned as Rs.98,000/-. However, all entries were reversed and there are no outstanding in suspension account and when there is no pending in suspension account, they were all reversed by debiting to P & L Account, etc. It will not be possible to include Rs.98,000/- along with other items once again by duplication.

(d) Coming to the fourth item of alleged misappropriation, it is his contention that so-called misappropriation from SB Account Nos.30157/30156 of Coal Mines Pension Account is not correct. The Branch makes payment to retired coal mines employees every month and collect Rs.30/- each pension payment as commission and same debited from the two SB Account numbers supra, which are the coal mines pension accounts with the Branch and the accounts so debited is credited to Branch P & L Account under head commission code 8508/8518 and what is the commission collected by the branch were debited from SB Account and out of which Rs.2,70,380/- credited to various miscellaneous expenses accounts held with the branch and no supporting bill attached or not sent for confirmation to Regional Officer concerned. It is the heading written in a conclusive manner for no any irregularity taken place in the SB Account and CMPF and if at all any such irregularity or fraud taken place, it is either with Central Government auditors or CMPF auditors, who will lodge complaint to the Bank, the service charges duly calculated and debited to respective SB Accounts referred supra, the contents of the letter report says realized amount debited to CMPF account instead of crediting to P & L Account, a portion of the amount was directly spent to stationery and other expenses, as if a misappropriation, whereas under the same head, page 3 item last para, it was stated if actually expenses incurred for stationery or printing, same should be debited to P & L Head supported with bills and confirmation of Regional Officer and there is alleged misappropriation, which is in fact a procedural irregularity taken as if misappropriation and as if fraud taken place. The report of Sri C.Satyaraj, Assistant General Manager, Enquiries, in his findings submitted and copies sent to him by Chief General Manager as disciplinary authority with letter, dated 13.02.2014, stated at Page 215 with findings on Charge No.13 that part of the amount utilised for making unauthorised payments to unauthorisedly engaged personnel/staff members and for soliciting business for the branch, which itself shows the expenditure incurred directly instead of through P & L Account and non-reporting to Regional Office is only a procedural irregularity and not any misappropriation therefrom and sofar as the amount of Rs.4,000/- DD issued in favour of M/s.Gayatri Jewellery concerned, the same was spent for approximately procuring Rs.1.50 crores deposits and whenever sizeable amounts were attracted as deposits in token of courtesy in usual course, branches use to give gift articles and also diaries depending on the quantum of deposit attracted and some notable gifts will be used to present and the Rs.4,000/- spent for gifts such as silverware and in other cases amounts allegedly incurred by surpassing the budges and it is all time record in fact created by improving the business from Rs.80 crores to Rs.270 crores with branch profit from Rs.2 crores to Rs.6 crores during the said period of two years two months and the Regional Managers and every officer of the controlling offices aware of the facts and promoted the member to Scale IV – Chief Manager and some procedural irregularities, if at all adopted by the temporary staff appointed and for the temporary staff payment or payment to permanent staff on salary days of M/s.Singareni employees and issuance of gifts to valuable customers of the Bank for soliciting high value deposits by duly debiting some other heads. The controllers are aware of the working of temporary staff through at the branch and same practices were there in number of branches of the bank. The hand writing on vouchers and CC camera pull-outs reveal the evidence and not just to attribute misappropriation and lodging of police complaint by suppressing the facts.

(e) Coming to the fifth allegation of misappropriated money from SB Account No.19899 of one Durga Rao, unauthorised sweeper at branch of Rs.87,148/- irregularity in sanctioning overdraft to Durga Rao on six occasions, all these withdrawal slips written and passed by single signature of the petitioner and paid cash by allowing overdrafts in SB Account and subsequently all credits came from debiting the ledger of GL Stamp Accounts, same amount was shown as misappropriated elsewhere also stated again as if misappropriation by duplication and it is not true to say the account was overdrawn whenever urgency arises, first Special Adhesive Stamps purchased by Durga Rao and said amounts were eliminated to the debit of GL Stamps Account, fact is known to every staff member and there is no misappropriation and it is not thereby just to include said amount of Rs.87,148/- as if misappropriation to make it so-called total of Rs.14,22,839/-. Sofar as the serious irregularities in sanction of demand loan at Singareni Collieries Head Office Branch, Kothagudem, against deposit held at Vijayawada main branch under allegation No.6 concerned, the Deposit Receipt bearing No.SDR 110900023 for Rs.4,50,000/- held at Vijayawada main branch by Smt.Dutta Satya Mithra, widow of Mr. Dutta Satyanarayana, staff member, The accused worked as Senior Manager, 1st Line at Vijayawada main branch before his posting to Singareni Collieries Head Office Branch, Kothagudem, and on 28.08.2009, demand loan bearing No.150900063 was sanctioned against the aforesaid deposit at Singareni Collieries Head Office Branch, Kothagudem, for Rs.4,00,000/-. Vouchers were handwritten and passed by accused credited to SB A/c No.2444 of Smt.CVP of 95 Padma, W/o.Venkateswarlu, by transfer entry, whereas loan closed on 03.11.2009 by transfer from CC A/c 95 Mr. P.Giridhar Lal, whose whereabouts not known and the CC A/c 95 was closed and coming to another demand loan of Rs.75,000/- from 150900079 sanctioned on

24.11.2009 against same fixed deposit and cash payment, the Demand Loan was closed on 11.01.2010, Vijayawada main branch confirmed that lien was not marked on their deposit 110900023 to say where from accused availed two loans on the deposit receipts and without deposit holders consent concerned. This was reported in page 9 of the report without showing any amounts has to be recovered as if it is an irregularity for no misappropriation attributed. Said Dutta Satya Mithra availed loan and instructed to credit the same to the SB A/c of CV Padma, who in turn issued a cheque favouring Mrs.Karunasri and a letter addressed to mark lien was kept along with the documents, which are genuine and with regard to Giridhar Lal debit and other debits, they were in no way got relevance, as all transactions of their own. The bank was not put to any inconvenience or loss of income therefrom. Thereby it cannot be called any misappropriation that too when there is no financial loss.

(f) It is further contended that sofar as the consolidation of the amounts making Rs.14,22,839/- and above thereby incorrect and unjust and several amounts such as suspense A/c, Durga Rao A/c and part of other accounts are nothing but duplication of figures and whatever amount spent were spent towards temporary staff salaries, overtime wages to regular staff for payment of Singareni salaries to workmen and officers, purchase of stationery and gift articles for procurement of high value deposits for smooth functioning of the branch as well as for improvement of the business, especially deposits and to avoid inconvenience to customers due to shortage of staff. From any procedural irregularities caused, there is no any misappropriation. It is further contended that though charge sheets were served to all the previous staff and officials, who worked during the petitioner's tenure, all the facts were suppressed and the petitioner was made a scapegoat, as if he committed misappropriation. Even he improved the business with his best efforts and services from Rs.80 crores to Rs.270 crores with profit from Rs.2 crores to Rs.6 crores in the growth of the bank business, which otherwise could not be improved that was totally ignored of his dint of hard work and all the 33 years of service with no remark and the absence of taking action against others responsible, if any, he cannot be made a scapegoat by giving police report in cause registering FIR. It is also the contention that the Chief General Manager-cum-Disciplinary Authority awarded the petitioner punishment *vide* proceedings, dated 23.06.2014, saying reduction in Grade from Scale-IV to Scale-III as Senior Manager in the Bank with respective basic pay in the initial stage of Scale-III as per Indian Overseas Bank Officer Employee's (Discipline & Appeal) Regulations, 1976, amended upto date and because it is not a misappropriation and only a procedural irregularity, only punishment of reduction in increments awarded to other officials/staff members, whereas reduction in Grade awarded to the petitioner and there was no any misappropriation committed by him exclusively to charge him for offence under Section 409 IPC by making a scapegoat and the proceedings are liable to be quashed.

5. Learned counsel for the petitioner reiterated the same, whereas it is submission of the learned Public Prosecutor and learned counsel for the 3rd respondent Bank that the police after investigation having filed the charge sheet, which *prima facie* shows sustainable accusation against the petitioner-accused that was rightly taken cognizance by the trial Magistrate and that there is nothing to quash

the proceedings and sought for dismissal of the quash petition thereby.

6. Heard. Perused the material on record.

7. Sofar as the petitioner concerned, he worked as Senior Manager of the Indian Overseas Bank, Singareni Collieries Head Office Branch, Kothagudem, in the relevant period from 09.05.2009 to 10.07.2011 and previously worked at Vijayawada Branch not in dispute. Unless there is privy of other accused, who are employees of the Bank also, it is not possible for the petitioner alone to misappropriate the so-called amount of Rs.14,22,839/- out of which the amount shown under ten heads of General Ledger Stamps - Rs.5,76,801/-, Profit & Loss Account (Stationery & Printing) – Rs.1,27,100/-, Profit & Loss A/c (Computer Stationery) – Rs.1,38,700/-, Profit & Loss A/c (Sundry others) – Rs.54,060/-, Profit & Loss A/c (Electricity and Lighting) – Rs.49,000/-, Profit & Loss A/c (Computer Expenses) – Rs.16,650/-, Profit & Loss A/c (Repairs to Bank Property) – Rs.5,000/-, Suspense A/c – Rs.98,000/-, Savings Bank A/c of Coal Mines Pension Account – Rs.2,70,380/-, Savings Bank A/c of Mr. Durga Rao – Rs.87,148/-, there is no any independent investigation done by the police in filing the charge sheet by entirely referring to the FIR covered by the report and with one page mention thereafter saying departmental enquiry against the accused initiated and as if he was dismissed from service and the allegations are proved. In fact even the crime was registered and charge sheet filed referring to six accused as stated from Column No.11 of charge sheet, only the petitioner is made scapegoat it appears. From the said disciplinary action taken by L.W.5, there was punishment of only reduction in rank and that too the departmental enquiry is not against the petitioner alone for also against several

others and the police did not even verify any records in relation to the respective heads as to there is any real misappropriation or not and did not even discuss what are the relevant areas of the enquiry report to place reliance. The police are supposed to make independent investigation and a perusal of the record shows it is proceeded with pre-determined mind to charge the accused and save others as such it is not an impartial and fair investigation. In fact fair trial includes fair investigation also. Even the crime registered with reference to the departmental enquiry proceedings and in the departmental enquiry from the punishment imposed, there is no any recovery of amount ordered against the petitioner. In the crime registered from the report of the *de facto* complainant as referred supra on dated 22.04.2013, the allegations on the articles of charge in the departmental enquiry were dated 09.03.2013 and the Investigating Officer did not even refer to what is the defence of the petitioner in the departmental enquiry and what is his representation or submission to the articles of charge and what are the respective findings of the departmental enquiry disciplinary authority/enquiry authority. When the disciplinary proceedings are pending against several officers, who are all staff of the bank and punishments awarded against others also and there is no any special entrustment to the petitioner alone exclusively making the petitioner as a scapegoat or sole accused in the report and in the charge and thereby the cognizance is no way sustainable.

8. In fact, coming to the departmental enquiry report submitted by the enquiring authority against the petitioner among others under the so-called ten heads, under the allegation one concerned, the finding given concerned speaks the guidelines stipulate that all P & L vouchers should be passed by Deputy Manager and counter signed by

Manager and stitched voucher bundles of each day should be verified by Manager and there is delegation of daily verification voucher job to the second line official is not permitted. It is observed that no record available of CSO taken up with cashier for having paid the amount in cash without discharging the voucher to unidentifiable and fictitious persons and no documents produce by the defence for having raised such queries to cashier are about reporting of the matter to the controlling authority whereby CSO well aware of the happenings in the branch and this unfair practice adopted in the branch had tacit approval of the Manager/CSO, as it is suited to his requirements. Even a perusal of the finding is outcome of inferences no way sustainable for departmental enquiry is quasi-criminal in nature, leave about strict proof is required of the allegations in a criminal case and the police did not even investigate any persons like said Durga Rao or Mrs. Yamini or N.V.Mohan Rao and not even examined any staff members of the branch and not even referred in the charge sheet about verification of any records or accounts and not even investigated as to any others are privy, as dereliction of duty or negligence in duty of the Manager is entirely different from misappropriation, which is a pre-requisite to be established and *prima facie* made out to sustain the charge. Even coming to allegation No.2 covered by the departmental enquiry report for the 37 transactions not even a single bill is attached except ME 89 entry, dated 07.06.2010, for Rs.2,000/- of the purchase of the items are incurring expenditure and there are 36 vouchers mentioned, but not supporting bills and these vouchers annexed to ME 159 affixed with round stamp of Singareni Collieries Head Office Branch and attested by branch official with his signature.

9. Once such is the case referred supra, it is not possible to hold that the amount covered under Head No.2 is misappropriated by the petitioner as mismanagement or dereliction of duty is different from misappropriation. Same is the position even in relation to the other charges, as can be seen from the enquiry report, mainly points out dereliction of duty. In fact, the auditor's report, dated 10.12.2013, speaks that a plain reading of the summary investigation or interim report of the Senior Manager (Inspections) by name N.V.Mohan Rao shows some of the names of other employees of the branch reflecting, who also counter signed along with accused in several vouchers and unauthorised staff worked in the branch and complexity of unauthorised workers also to be known including as to their appointment and mode of payment to them. It is also observed that during the work period of the accused of two years during 2009-11, there are periodical inspections or audits and the details also to be furnished to verify. In fact, that is also required to be investigated by the Investigating Officer, which they did not and having regard to the above, that inherent power is to be sparingly exercised where it is necessary to sub-serve the ends of justice or to prevent abuse of process and not to stifle legitimate prosecution from what is discussed supra the very giving of report and filing of charge sheet mechanically and perfunctorily without investigation by making petitioner alone scapegoat. Even the above material shows only mismanagement or dereliction of duty or negligence of the petitioner or misappropriation, that too if at all by all the staff, who are several others responsible as per interim report supra and not even verification of the periodical audit reports and not even examination of any witnesses and not even verification of any records, but solely based on the enquiry report, the

prosecution is no way sustainable against the petitioner for the grave offence of criminal misappropriation and breach of trust.

10. In fact, there is a want of sanction to prosecute the petitioner by filing charge sheet as employee of the nationalised bank, a public servant within the meaning of Section 197 Cr.P.C., as held in similar situation against Sri Ch.Lakshmi Narayana, the then Chief Manager of State Bank of India in Crl.P.Nos.326 & 13925 of 2016, common order of this Court, dated 01.06.2017, by quashing the proceedings for IPC offences for want of sanction under Section 197 Cr.P.C. Thereby also the cognizance order is liable to be quashed.

11. Having regard to the above, without prejudice to the departmental enquiry and the action taken thereunder, which is subject matter of appeal, if any, the prosecution cannot be allowed to be continued to sub-serve the ends of justice, that too solely against the petitioner by making a scapegoat and from the perfunctory and unfair investigation supra.

12. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/accused in C.C.No.500 of 2015, on the file of I Additional Judicial Magistrate of First Class, Kothagudem. Bail bonds of the petitioner/accused stand cancelled.

13. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 21st January, 2019

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THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3731 OF 2016

Date: 21st January, 2019

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