(2013) 06 KAR CK 0116

In the Karnataka High Court

Case No : Criminal Revision Petition No. 146 of 2005

Mylapur Subramanyam — APPELLANT

Vs

Thallam V. Srinivas Murthy, S. Ramamurthy and The State of Karnataka — RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 34, 420, 465, 467, 468

Citation : (2013) 06 KAR CK 0116

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R.B. Deshpande, for the Appellant; V.B. Shivakumar, Advocate for Respondent No. 1, Shri. Raja Subramanya Bhat, Government Pleader for Respondent No. 3 and Shri. Ananth Mandagi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondents. The petitioner is the defacto complainant who seeks to challenge the order passed on an application u/s 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ''the Cr.P.C.'', for brevity) filed by the respondents who were accused Nos. 1 and 2.

It was alleged against the respondents of having committed offences punishable under Sections 465, 467, 468, 471 and 420 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as ''the IPC'' for brevity). It was alleged that Accused No. 1 had forged the signature of Accused No. 2 by cancelling the crossed cheque dated 22.06.1999 which was drawn in favour of M/s. Polican International Limited, Bangalore, and encashed an amount of Rs. 12,000/- through a servant of the Society Mehaboob on 28.06.1999, and prepared fake vouchers and further that though it is indicated that certain amount was paid to one Ramamurthy and one Satish, no such amount was paid and all these amounts had been misappropriated. It is in this background that the respondents had filed an application seeking their discharge. It was pointed out that the prosecution sought to allege misappropriation and forgery when admittedly, the respondents - Accused Nos. 1 and 2 were entrusted with the work of construction of a hostel building and they had been authorised to sign cheques on behalf of the society. It is in that circumstances alleged that Accused No. 1 had forged the signature of Accused No. 2 by cancelling the Account Payee crossing on the cheque and had encashed the amount. However, it was the amount which was to be paid to M/s. Polican International Limited, which had received the amount concerned. Therefore, Accused No. 1 having drawn the amount-on 28.06.1999 corresponding to the payment to be made to M/s. Polican International Limited, was the very amount and it was pointed out that the amount was at best adjusted by Accused No. 1 and it was not mis-utilized or misappropriated for his own purposes. Further, the statements of CWs 3 and 4 were to the effect that they had signed the receipt but had not received cash, was also negated, as the court below accepted the argument canvassed by the respondent that since the signatures on the receipts were not disputed, their vague oral denial of having received payment could not be accepted. Further it was pointed out that there was no audit report supporting the misappropriation, which is an irregularity in the Account. A case having been alleged against the petitioner in the above background, the court below though has also addressed yet another issue as to whether the complaint could have been lodged by the complainant without first approaching the Registrar of Societies u/s 25 of the Karnataka Societies Registration Act, 1961, though irrelevant, has held that it was open for the Society to institute criminal proceedings independent of the Registrar. The contention as regards the authority that was available to the respondents to issue cheques on behalf of the Society, it was pointed out that there was no real irregularity pointed out in the accounts of the Society and therefore, the prosecution not having made out a case which could go to trial and the respondents having been discharged, and further that an expert opinion ought to have been obtained to allege forgery, which again may not be tenable, has resulted in the court below discharging the respondents.

2. Though the learned counsel for the petitioner would seek to canvass the several grounds urged in the present petition, having regard to the above broad contours on which the court below has discharged the accused; no irregularity can be found and hence, the petition which relates to proceedings initiated in the year 2001 would serve little purpose in being prosecuted further in the above circumstances. The petitioner has not made out a case for interference and accordingly, the petition is rejected.

