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**(1998) 07 AP CK 0077**

**In the Andhra Pradesh High Court**

**Case No :** Criminal RC No. 430 of 1998 and Criminal RP No. 428 of 1998

Regula Bruhaspathi Rao

APPELLANT

Vs

State of A.P. and another

RESPONDENT

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**Date of Decision :** 05-07-1998

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 239  
Penal Code, 1860 (IPC) — Section 21, 409, 465, 477

**Citation :** (1998) 4 ALD 689 : (1998) 2 ALD(Cri) 195 : (1998) 2 ALT(Cri) 596 :  
(1999) 1 AnWR 132 : (1998) 2 APLJ 444

**Hon'ble Judges :** B. Sudershan Reddy, J

**Bench :** Single Bench

**Advocate :** Mr. P.M. Gopal Rao, for the Appellant; Public Prosecutor, for the Respondent

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**Judgement**

1. This Criminal revision case is filed by the petitioner-A1 assailing the legality of the order passed by the Special Court for trial of the offences under the A.P. Co-operative Societies Act, 1964, at Vijayawada, in Crl. M.P. No. 132/1998 in C.C. No. 1/97 dated: 30-04-1998.

2. The petition filed Crl MP.No.132/98 before the Special Court for trial of the offences under the A.P. Cooperative Societies Act, 1964 (for short "special Court") purporting it to be u/s 83-A of the A.P. Cooperative Societies Act (for short "the Act") read with Section 239 of the Code of Criminal Procedure (for short "the Code") praying the Court for discharging him from the case. The special Court after elaborate consideration of the matter rejected the petition filed by the petitioner.

3. The petitioner at the relevant time has been working as the Secretary of Sree Nethaji Primary Agricultural Cooperative Society, Katrenipadu, Musunuru, Krishna, District. He is alleged to have misappropriated, the funds of the Society during the financial years 1987-88 and 1991-92 and caused deficiency to the assets of the Society. On a report, the Police registered a case in Cr.No. 54/96 at

P.S., Musunuru under Sections 409, 465 and 477A IPC on 5-6-1996 and investigated into the same.

4. The special Court took cognizance of the same in C.C.No.1 of 1997, which is now pending inquiry and trial. In the said Calendar Case, the petitioner herein filed an application - CrI. MP. No.132/98 to discharge him. The petitioner raised the contention relating to sanction purported to have been granted by the Collector to prosecute him by stating that the Collector is not a competent person to grant sanction. It is also urged before the special Court that the complaint filed by the police is barred by limitation. The trial Court after hearing both sides, rejected the contentions advanced on behalf of the petitioner and accordingly dismissed the petition.

5. In this revision case, Sri P. Srinivas, learned Counsel appearing for the petitioner submits that the special Court at Vijayawada has no jurisdiction whatsoever in the matter to proceed against the petitioner, it is not conferred with the jurisdiction to try any offences arising under the Indian Penal Code. The special Court lacks jurisdiction to take cognizance of the case. It is urged that G.O.Ms.161, Agriculture and Cooperation (Coop. IV) Department, dated 11-3-1993 issued by the Government of Andhra Pradesh in purported exercise of its power u/s 83 of the Act conferred power on the special Court to try the offences under the said Act only, but not under the Indian Penal Code.

6. In the instant case, the charge-sheet would disclose commission of the offences punishable under Sections 409, 465 and 477A IPC. It is also urged that the petitioner herein is a public servant within the meaning of Section 21 IPC; and he can be prosecuted only after grant of sanction by the General Manager, District Cooperative Central Bank; but not under the sanction of the District Collector.

The Question Relating to Jurisdiction of Special Courts.

7. Section 83 of the Act is added by way of the A.P. Cooperative Societies (Third Amendment) Act, 1991. The Legislature took note of the fact that there has been several cases of mis-appropriation of funds by the employees and elected members of the Cooperative Societies. The Legislature further felt that the investigation, finalisation of disciplinary proceedings and prosecution have been taking years together. The Public Accounts Committee for 1978-79 is stated to have noticed the abnormal delays in finalisation of misappropriation cases and suggested suitable legislation for expediting the investigation and trial of the mis-appropriation cases. Accordingly, the Legislature thought it fit to amend the provisions of the Act and added Section 83 proposing to constitute as many special Courts as may be necessary for trial of the offences. Accordingly Section 83 of the principal Act has been substituted. It reads as under:

"Constitution of Special Courts: The Government may, for the purpose of providing speedy trial of the offences under this Act, or for, any offence committed by an officer, employees or any member of the Society punishable

under the Indian Penal Code, 1860, by notification, in the Andhra Pradesh Gazette constituted as many Special Courts as may be necessary for such area or areas as may be specified in the notification."

It is also required to notice that Section 83-A of the Act, notifies Procedure and powers of the Special Courts.

8. The object of creating and establishing Special Courts is manifestly clear. The Government is authorised to constitute and establish special Courts with a view to have speedy trial of the offences under the provisions of the Act or any offence committed by an officer or employee or any member of the Society punishable under the Indian Penal Code. Any interpretation of Sections 83 and 83-A of the Act is to be in the back-ground of the purposes, object that is sought to be achieved by the Legislature in amending the Act. The notification issued by the Government in purported exercise of power u/s 83 of the Act is required to be appreciated in the same background. It is settled law that if two views of construction of a provision is possible, the one which promotes and furthers the object for which the provision is enacted is to be adopted. The anomaly, if any, apparent by a plain reading of the provision has to be avoided and the provision should be so construed in a manner advancing the purpose for which the provision has been enacted. There is no dispute whatsoever with regard to the fact that the Government is authorised to issue a notification constituting as many special Court as may be necessary for such area or areas as may be specified in the notification for the purposes of providing speedy trial of the offences under the provisions of the Act or for any offences committed by an officer, employee or any member of the Society punishable under the Indian Penal Code.

9. Learned Counsel appearing for the petitioner had made an attempt to urge that the expression used in Section 83 "or for any offence committed by an officer ..... punishable under the Indian Penal Code" would suggest that the Government has to issue a notification constituting the special Courts for trial of the offences under the provisions of the Act or for any offences committed punishable under the Indian Penal Code. According to the learned Counsel, the Government is authorised to constitute Special Courts either for trial of the offences under the provisions of the Act or for any offences punishable under the Indian Penal Code. It cannot issue any notification constituting the Special Courts for the offences punishable under the Act, as well as under the Indian Penal Code. In my considered opinion, no provision in an Act can be read de hors its context and by ignoring the object for which the provisions are enacted. The whole object of substituting Section 83 in the Act is to avoid delays in investigation and finalisation of misappropriation cases. The word "or" is required to be understood in its appropriate context and should be read as "and or for any offence committed". The Government is thus entitled to constitute special Courts for the purpose of providing speedy trial of the offences, under the provisions of the Act committed by any officer, employee or member of the Society and the

offences punishable under the Indian Penal Code committed by such officer or employee or Member of the Society. Such a reading would be in conformity with the scheme of the Act. Any other construction would defeat the very purpose of incorporating Section 83 with a view to have speedy trial of the offences relating to mis-appropriation of the funds of the Cooperative Societies by its Officers, Employees or members of the Society.

10. Now let us have a look at the notification issued by the Government:

(G.O.Ms.No.161, Agriculture and Cooperation (Co-op. IV), 11th March, 1993)

In exercise of the powers conferred u/s 83 of the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964), the Governor of Andhra Pradesh hereby accords sanction for the constitution of the two Special Courts one at Hyderabad and the another at Vijayawada for the speedy trial of offences under the Act relating to Co-operative Societies.

The jurisdiction of the Special Courts shall be as follows:

(i) The Special Court constituted at Hyderabad shall have the jurisdiction to try the cases arising in the following Districts.

(1) Adilabad, (2) Warangal (3) Nizamabad (4) Karimnagar (5) Medak (6) Mahabubnagar (7) Nalgonda (8) Ranga Reddy (9) Hyderabad (10) Khammam (11) Chittoor (12) Anantapur (13) Cuddapah and (14) Kurnool.

(ii) The Special Court constituted at Vijayawada shall have the jurisdiction to try the cases arising in the following Districts.

(1) Srikakulam (2) Visakhapatnam (3) Vizianagaram (4) West Godavari (5) East Godavari (6) Krishna (7) Guntur (8) Prakasham and (9) Nellore.

11. It is submitted by the learned Counsel for the petitioner that even the Government had chosen to accord sanction for the constitution of two Special Courts one at Hyderabad and the other at Vijayawada "for the speedy trial of offences under the Act relating to Cooperative Societies". It is urged that the said notification does not create or constitute any special Court whatsoever to try the offences alleged to have been committed by an officer, employee or a member of the Cooperative Society punishable under the provisions of the Indian Penal Code. The Special Court constituted at Vijayawada, if at all, can try only such of those offences arising under the provisions of the Act. The learned Counsel places reliance upon Section 79 of the Act and submits that only those offences enumerated in Section 79 could be tried by the special Courts constituted by the Government at Hyderabad and Vijayawada.

12. It is not possible to accede to the submissions made by the learned Counsel for the petitioner. In the instant case, the Court, where the charge-sheet is laid by the prosecution, is a Court of Judicial Magistrate of First Class. Even without any notification whatsoever, the said Court could have taken cognizance of the offences punishable under Sections 409, 465 and 477A IPC, alleged to have been

committed by the petitioner. Even if the same was not notified and constituted as a special Court to try the offences whatsoever under the provisions of the Act, the said Court could have had the jurisdiction to try the offences under the Act. It is in this context, Section 83 acquires significance. Subsection (2) of Section 83-A declares that notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act and further declares that every offence under the Act for the purpose of the Code of Criminal Procedure to be a cognizable offence and accordingly mandates that the Special Court shall in the trial of cases before it follow the procedure prescribed by the Code of Criminal Procedure. So what follows is that all the offences arising under the provisions of the A.P. Cooperative Societies Act are made cognizable offences and the Special Court is conferred with the jurisdiction to try all such offences arising under the Act. As an abundant caution, the Legislature thought it fit to declare that notwithstanding anything in the Code of Criminal Procedure the Special Court shall have jurisdiction to try the offences arising under the provisions of the Act. The Court of the Judicial Magistrate of First Class, which was designated and constituted as a Special Court would have had the jurisdiction, at any rate, to try the offences punishable under the Indian Penal Code. The only requirement was conferment of additional jurisdiction to try the offences arising under the provisions of the A.P. Cooperative Societies Act. The notification issued by the Government in purported exercise of its power u/s 83 of the Act would have to be read and understood in the back-ground of Sections 83 and 83-A of the Act and for the purpose of which they were brought into existence in the statute.

13. Therefore, it is not possible to agree with the submission that the Special Court is not conferred with the jurisdiction to try the offences punishable under the provisions of the Indian Penal Code. In fact, in a given case, the same facts may give rise to an offence punishable under the provisions of the Act, as well as under the provisions of the Indian Penal Code. The very authorisation given by Section S3 of the Act to the Government to notify and constitute Special Courts is for the purpose of speedy trial of the offences of misappropriation of funds of the Cooperative Societies committed by its officers, employees and Members.

14. For all the aforesaid reasons, the contention that the Special Court has no jurisdiction whatsoever to proceed with the trial and inquiry against the petitioner in C.C.No.1 of 1997 relating to the offences punishable under the Indian Penal Code is rejected.

#### The Question Relating to Sanction

15. Section 129-A of the Act makes every officer and employee of a Cooperative Society to be a public servant within the meaning of Section 21 of the Indian Penal Code.

16. Even according to the petitioner, the District Collector is stated to have granted the required sanction on 26-7-1993. According to the learned Counsel,

only the General Manager of the District Cooperative Central Bank could have granted the sanction as he is under the control of the General Manager, as per Rule 72(5) of the A.P. Cooperative Societies Rules, 1964. It is in this context, the trial Court observed as to whether the petitioner is a public servant strictly under the control of the District Cooperative Officer or the General Manager of the District Cooperative Central Bank would have to be decided during the course of inquiry and trial. The Special Court rightly observed that it would not be appropriate at this stage to decide the said question, as it would be necessary to go into the service particulars of the petitioner to find out as to which authority appointed him and allotted him to the Cooperative Society, where he was working at the relevant time of alleged mis-appropriation. It would also be a question of fact required to be ascertained as to whether he was permanently allotted to work in the Society where he is alleged to have committed the offences" punishable under the Indian Penal Code. It is not a case where there is no sanction at all. It is a case involving ascertainment as to whether the appropriate authority accorded sanction. This question is left open and the petitioner is entitled to take the plea at the time of trial, which shall be decided by the trial Court in accordance with law.

17. In the result, the criminal revision case fails and it is accordingly dismissed.