
(2001) 09 AP CK 0073

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 220 and 221 of 1999

V. Nageswara Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Citation : (2001) 2 ALD(Cri) 564 : (2001) 2 ALT(Cri) 355 : (2002) CriLJ 3323

Hon'ble Judges : Gopalakrishna Tamada, J

Bench : Single Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Gopalakrishna Tamada, J.—These two petitions are filed for quashing of the proceedings in C.C. Nos. 68 of 1997 and 67 of 1997 respectively on the file of the Special Court for Cooperative Cases, Vijayawada.

2. The petitioner in both the matters is the same and the point involved is the same and as such both are disposed of by passing a common order.

3. The State, represented by the Inspector of Police, Bhogapuram Circle, Vizianagaram District, laid a charge sheet in the above cases against five persons, of whom the petitioner herein is arrayed as one of the accused. It is alleged in the charge sheet that the petitioner herein along with others in conspiracy misappropriated certain amounts and thus committed the offences punishable under Sections 120-B and 409 of the Indian Penal Code.

4. Learned counsel for the petitioner Mr. E.V. Bhagiratha Rao contends that the very charge sheet is nothing but an abuse of the process of court and is liable to be quashed as the surcharge proceedings which were initiated against the petitioner under the provisions of Section 76(1) of the A.P. Co-operative Societies Act, 1964, though were held against him by the original authority by an order dated 29-2-1984, the same was set aside in Cooperative Tribunal Appeal No.6 of

1994 on 12-12-1994 and that in view of the fact that the surcharge proceedings were held in his favour, no prosecution can be launched against him. The other contention raised by Mr. Bhagiratha Rao is that the Cooperative Tribunal located at Vijayawada has no jurisdiction as the alleged offence had taken place at Bhogapuram and the Court at Bhogapuram alone has got jurisdiction to try the offence.

5. The learned Public Prosecutor contended that there is no prohibition to file a charge sheet against a person even if the surcharge proceedings ended in his favour and she relied upon two Judgments of our High Court in D. PRABHAKAR REDDY v. DISTRICT COLLECTOR¹ and P. NARASIAH v. P. RAJ REDDY². So far as the second contention that the Court at Bhogapuram alone has jurisdiction and the charge sheet filed before the Cooperative Tribunal at Vijayawada is to be quashed is concerned, the contention of the learned Public Prosecutor is that the Special Courts are constituted u/s 83 of the A.P. Cooperative Societies Act and that the procedure and powers of the Special Courts are prescribed u/s 83-A of the Cooperative Societies Act. It is further submitted that u/s 83 of the Act, any offence, whether it is an offence punishable under the provisions of the A.P. Cooperative Societies Act, 1964 or an offence punishable under the provisions of the Indian Penal Code, can be tried by the Special Court constituted under the said provision. But, u/s 83-A of the Act, the Special Court, on an application made by the Registrar or the person authorised by him or an officer or any member of the Society, can take cognizance and try the offence under the Cooperative Societies Act.

6. So far as the first submission of Mr. E.V. Bhagiratha Rao, i.e., as the surcharge proceedings ended in favour of the petitioner, criminal prosecution cannot be launched, is concerned, this Court in D. Prabhakar Reddy's case (1 supra) clearly held thus:

"Merely because there is a possibility of initiating proceedings u/s 60(1) of the Act, based upon the Inspection Report u/s 52 of the Act there can be no legal objection to the initiation of criminal proceedings. In law, there is no bar to or prohibition against initiating criminal proceedings if so warranted by the facts of the case. The proceedings contemplated u/s 60(1) of the Co-operative Societies Act is entirely a different proceeding. The said proceedings are in the nature of Recovery Proceedings and after conducting enquiry contemplated under the Act, order for recovery of the amounts alleged to have been misappropriated can be passed. The launching of prosecution, however, is for punishing a person if the facts are established for offences under the Penal Code. As already noticed above, there is no legal bar to or prohibition against initiating criminal proceedings when on similar facts surcharge proceedings u/s 60(1) of the Act can also be taken. Whether simultaneous criminal proceedings and surcharge proceedings u/s 60(1) are desirable or appropriate are matters with which we are, however, not concerned in these proceedings. No surcharge proceedings u/s 60(1) of the act have been initiated against the petitioner, as yet. "(Para 6)

Further, in P. Narsaiah's case (2 supra), this court held thus:

"It is next contended that since there is alternative procedure for surcharging the delinquent u/s 60, the authority has no jurisdiction. The proceedings under Sections 60 and 61 are different, distinct, and are unconnected with each other. It is always open to the authorities to take proceedings either u/s 60. Merely because there is power to take action u/s 60 to surcharge the delinquent, the power u/s 61 is not taken away. Therefore, mere existence of the power for surcharge u/s 60 does not take away the power of arbitration u/s 61 which is in the nature of civil proceedings for recovery of the liability for the duplicating (sic) of the estates of the Societies by misappropriation by the officer. Accordingly, I hold that the second contention is not valid."

7. In view of the said legal position, there is no prohibition to initiate criminal proceedings against the petitioner.

8. The contention that the Court at Bhogapuram alone has jurisdiction and the complainant i.e., the Inspector of Police, Bhogapuram Circle, Vizianagaram District, is not an authorised officer, is concerned, the offences alleged against the petitioner are punishable under Sections 120-B and 409 of the Indian Penal Code i.e., criminal conspiracy and criminal breach of trust by a public servant. The specific averment in the complaint is that A-1 with the active assistance of the petitioner herein has misappropriated a sum of Rs.1,02,400-38 paise of the society by showing disbursement to the persons who are not members of the society and to the persons who have not actually taken the loans. So, the distinction between Sections 83 and 83-A drawn by the learned Public Prosecutor is accepted and in this particular case, the charge sheet is laid by the Inspector of Police for the offences punishable under the Indian Penal Code and as such it cannot be contended that the Cooperative Tribunal at Vijayawada has no jurisdiction.

9. In the result, both the petitions are dismissed.