

**THE HON'BLE SRI JUSTICE K.C.BHANU**  
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**CRIMINAL REVISION CASE No.1789 OF 2010**  
**And**  
**CRIMINAL REVISION CASE No.1903 of 2010**

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**COMMON ORDER:**

These two Criminal Revision Cases are directed against the orders, dated 09.09.2010 in CrI.M.P.Nos.680 and 540 of 2010 in C.C.No.5 of 2010 respectively on the file of the Metropolitan Sessions Judge, Hyderabad, whereunder and whereby, the petitions filed by the petitioners herein/A-7 and A-4 under Section 239 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'.) for their discharge were dismissed, since as per the material filed by the police, *prima facie* case is made out against them.

2. The brief facts that are necessary for proper disposal of the present Criminal Revision Cases may be stated as follows:-

A1 is the Secretary, A2 is the President, A3 is the Vice President, A4 is the Assistant Secretary, A5 is the Treasurer and A6 to A9 are the Directors of Telegraph Traffic Employees Cooperative Credit Society, (for short, 'the society') situated at DTO Compound, Koti, Hyderabad. While A1 was working in the Society since 1988 as a Full Time Secretary, the other accused were elected during the year 2000. Their duties are to attend the General Body meetings, monthly meetings, obtaining approval of accounts, joining of new members, removal of members and waiver of loans to deceased members, finalisation of audit report in general body meetings etc. The further duties of the directors in the board are to finalise the loan applications along with the Secretary, prepare the annual reports and balance sheet along with the Secretary in the Society. A1 is the full time employee of the society, who is vested with the total financial power of the society and having the cheque powers and he alone is entitled to encash the

cheques, depositing of cheques into their bank account. The Society is having bank account bearing No.300 in Hyderabad District Cooperative Urban Bank Limited, Nampally. A1 is empowered to accept cash and cheques from members and depositors and issue Fixed Deposit Receipts, payment of interest and all cash transactions. He is responsible for maintenance of cash books and other registers. The society was last audited by the District Cooperative Audit Officers during the financial year 2006-07, who issued audit certificate. As per the society rules, the society is empowered to collect deposits ten times of the paid up share capital plus reserve funds. During the financial year 2006-07, their paid up share capital is Rs.63,99,642/- and the reserve funds are Rs.7,22,654/-. So, the society is empowered to collect deposits to a tune of Rs.6,47,19,074/-. In the general body meeting, it is alleged that all the accused collected deposits to a tune of Rs.52 crores from 5,600 members and non-members and cheated them by misappropriating the funds of the society and diverted the society funds, and purchased the properties, thereby all the accused have committed offences punishable under Sections 420, 406, 409 I.P.C. and Section 5 of the A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short, 'the Act').

3. Learned Senior Counsel Sri C. Padmanabha Reddy, representing Sri C. Praveen Kumar, learned counsel appearing for A7 contended that there is no allegation against A7 that he even participated in the management of the society so as to prosecute him for the offence punishable under Section 5 of the Act; that there is no allegation that the petitioners with the common intention or common object have entered into criminal conspiracy with other accused so as to misappropriate the funds of the society; that it is specifically alleged in the charge sheet that A1 with the connivance of A10 and A11 misappropriated the funds of the society and that since the society is completely owned by the State Government, Section 5 of the Act has

no application to the present facts and initiation of the present proceedings is nothing but abuse of the process of law.

4. Sri M.R.K.V. Prasad, learned counsel appearing for A4 contended that as per the society bye-laws, A1 has managed the financial affairs of the society and the petitioner-A4, who is the Assistant Secretary, is nothing to do with the management or functions of the society and that the bye-laws are approved by the Registrar of Societies and therefore, the present proceedings against the petitioner and other office bearers is nothing but abuse of process of law.

5. On the other hand, the learned counsel appearing for the 1<sup>st</sup> respondent, who is the *de facto* complainant, contended that it is not a society owned and controlled by the State Government; that some members formed the society, which is being managed according to the bye-laws of the society; that there was an official nominee of the State Government and that the *mensrea* is not one of the essential ingredients for the offence punishable under Section 5 of the Act and however, if any financial institute commits default, it is punishable under Section 5 of the Act and that they were attending the Board meetings and accepting all financial transactions and, therefore, all of them have shared the common intention with a view to cause loss to the society by playing fraud on the members and hence, there are no grounds to quash the proceedings.

6. There cannot be any dispute that the revisional powers of this Court under Sections 397 and 401 of Cr.P.C. are truncated. Unless a finding is perverse or illegal or improper, ordinarily this Court would not interfere with the same. A finding can be said to be perverse, if it is not based upon any material on record to substantiate the same. The petition was filed under Section 239 of Cr.P.C. to discharge the accused. At that stage, the Magistrate has to see whether the charges against the accused are groundless, upon considering the arguments

of the prosecution, the defence and the material, namely the First Information Report, the statements of witnesses recorded by the police during the course of investigation and also the allegations in the charge sheet. At this stage, the allegations in the charge sheet or any material filed by the prosecution cannot be tested or weighed so as to find the accused guilty of the offences punishable under any of the provisions of penal law. A charge can be said to be groundless, if there is no material to frame or substantiate the said charge. The contention of the learned counsel for the petitioners is with regard to commission of offence under Section 5 of the Act where any financial establishment defaults in return of deposits, whether in cash or kind, or defaults in payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of such financial establishment, including the promoter, manager, member of the financial establishment shall be punishable with imprisonment. As seen from this provision, the *mensrea* appears to be specifically excluded as one of the ingredients of the offence. If the financial establishment commits default either in cash or in payment of interest or deposit, every person, who is responsible for management of the financial establishment is liable for prosecution.

7. What is 'financial establishment' is defined under Section 2(c) of the Act and reads that any person, a group of individuals accepting the deposit under any scheme or establishment or any manner, but does not include a Corporation or a Cooperative Society, owned or controlled by any such State or Central Government or a banking company as defined under Clause-(c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949).

8. A perusal of the said provision makes it clear that a cooperative society, completely owned or controlled by a State Government, cannot be brought under the purview of the Act and such a cooperative society is not liable for the prosecution for any one of the offences

under the Act. No material is filed to show that the Telegraph Traffic Employees Cooperative Credit Society is owned or controlled by the State Government.

9. Learned counsel for the *de facto* complainant contended that it is a private society and there is no nominee from the State Government to look after the affairs of the society. Therefore, at this stage, the issue whether the cooperative society is owned or controlled by the Government of Andhra Pradesh cannot be decided and it is a matter left open to be decided by the trial Court.

10. It is not in dispute that A4 is the Assistant Secretary and A7 is the Director of the society. If they are to be prosecuted for the offence under Section 5 of the Act, it must be shown that they are responsible for the management of the affairs of the financial establishment. If it is shown that they are actively participating in the management of the affairs of the society, then it is sufficient to proceed further against them. The allegation in the charge sheet would go to show that the duties of the Directors and other office bearers are to attend the General Body meetings, monthly meetings and obtain approval of the accounts, joining of new members, removal of members, waiver of the loans to deceased members, finalisation of the audit report etc., in the General Body Meetings. It is also one of the duties of office bearers to finalise the loan applications, prepare the annual reports, balance sheets along with the secretary. Therefore, all the office bearers of the society are vested with the major powers to control the management of the society. Unless they properly manage the society or misappropriate or commit any acts that cause loss to the society or commit default in payment of interest or any other amount, it would be an offence punishable under Section 5 of the Act. Therefore, the contention of the learned counsel for the petitioner in CrI.R.C.No.1903 of 2010 that as per the bye-laws, A1 alone is responsible for the entire management of the society cannot be accepted at this stage. The

powers of the other elected members of the society and their role with regard to the financial aspects have to be determined or resolved by placing necessary evidence before the trial Court, particularly with reference to the bye-laws of the Cooperative Societies. Simply because bye-laws have been approved by the Commissioner of Cooperative Societies, that does not mean the Commissioner of Cooperative Societies has a role to play in the society. The powers and functions of the executive committee of the cooperative society have to be resolved in during trial. Therefore, that aspect of the case has to be determined basing on the evidence that may be adduced by the prosecution. Therefore, at this stage, it cannot be decided solely basing on a particular bye-law conferring power on A1 to deal with the financial aspects of the society.

11. With regard to the offences under Sections 420, 406 and 409 of I.P.C. are concerned, it is specifically alleged that the members of the Board failed to check the records so as to take necessary action against the Board of Directors for misappropriating the public money to the tune of Rs.26 crores. It is not in dispute that the society is having 5,600 members from whom allegedly huge amounts were collected, which is beyond the share capital. The depositing of amount collected from several persons should not be ten times more than share capital. By virtue of its share capital, though the society can collect the amount to a tune of Rs.6,47,19,074/-, still they have collected deposits to the tune of Rs.52 crores from all the members. Therefore, the petitioners, *prima facie* played fraud on the members by collecting huge deposits. When the amount has not been lent contrary to the bye-laws of the society, it cannot be said that it is misappropriated. When there is endorsement that the capital must be used for a particular purpose and the amount so collected has not been used other than the purpose for which it was collected, it amounts to a criminal breach of trust. Therefore, the allegations in the complaint makes out a *prima facie*

offence. The documents filed along with the charge sheet are sufficient to frame charges. Framing of the charges are not shown to be a ground less. Hence, the learned trial judge has rightly dismissed the petitions to discharge A4 and A7. Hence, there are no grounds to interfere with the same. The observation made hereinabove are only for the purpose of disposal of the present cases and uninfluenced by any observations herein, the trial Court shall dispose of the case in accordance with law.

12. In so far as the offence under Sections 420, 406 and 409 of I.P.C are concerned, it is a matter of evidence whether the petitioners shared the common intention or common object with other accused or they have connived with the other accused so as to cause loss to the society and committed the offence are required to be decided by the trial Court during the course of trial only. At this stage, *prima facie* evidence is collected by the investigating agency to show that all the office bearers including the directors of the Cooperative Society are not discharging their duties as per the powers conferred on them in accordance with law. Therefore, all these aspects are left open to be decided by the trial Court.

13. Accordingly, both the Criminal Revision Cases are dismissed.

14. Miscellaneous Petitions, if any, pending in these Criminal Revision Cases shall stand dismissed.

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**K.C.BHANU, J**

30<sup>th</sup> March, 2012  
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**THE HON'BLE SRI JUSTICE K.C.BHANU**

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