

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.384 of 2018

ORDER:

This Criminal Revision Case is preferred by the petitioners/accused aggrieved by the order dated 04.12.2017 in CrI.R.P.No.135 of 2015 passed by learned VI Additional District Judge, Kakinada whereby and whereunder the learned Judge allowed the Criminal Revision Petition filed by 2nd respondent/complainant and set aside the impugned order dated 07.07.2015 in C.C.No.380 of 2008 passed by learned III Additional Judicial First Class Magistrate, Kakinada and directed the said Magistrate to proceed with the matter in accordance with law.

2) The challenge in this proceedings is the jurisdiction of the III Additional Judicial First Class Magistrate, Kakinada to try the C.C.No.380 of 2008.

3) The brief facts of the complainant are that complainant—society called as Leprosy Eradication Organization (LEO) was started with the object of rendering health services and imparting health education and arranging free education to the children of HIV or Leprosy affected persons, orphans and street children, both in urban and rural areas and to create awareness about the spreading of diseases like Leprosy and AIDS and to do other philanthropic works.

a) The complainant—society was registered at Kakinada under the Societies Registration Act vide registration No.174/90 on 14.03.1990. D.David B.Rao was its Coordinator and Smt.VV.Victoria was the Chairperson initially. The organization was duly recognized by the Government of Andhra Pradesh under Ministry of Health and Medical Services.

b) The further averments of the complaint are that bank account for the society was opened in State Bank of India and also in Central Bank of India, Samalkot. Initially, it was to be operated jointly by the Chairman and its Administrator. Subsequently by resolution dated 15.12.1991 the Administrator was replaced by Secretary/Coordinator. The activities of the society were extended upto Guntur where an urban unit was opened. A1 became its Chairman and Sri David B.Rao was its Secretary and they were authorized to operate the bank accounts.

c) While so, an application for grant of voluntary scheme for Leprosy Eradication (SET) in rural and urban areas for 2005-2006 was submitted to Government of India on 04.03.2005 duly signed by A1 and D.David B.Rao. Prior to it, society passed a resolution dated 12.02.2005 authorizing A1 the then Chairman, to receive the funds and be accountable for the same being given by the Government and make official correspondence for the Guntur urban on behalf of organisation. It was also resolved that bank transactions should be

operated by both Chairman and Secretary under their joint signatures as usual.

d) The mother organisation that was registered at Kakinada established its office in Tuni in 1996 and started functioning since then. In the aforesaid application the Chairman was only authorized to function with regard to urban unit of Guntur.

e) The Government on the said joint application sanctioned an amount of Rs.2,75,440/- by way of grant-in-aid for Guntur urban unit and towards part of the amount a demand draft bearing No.019068 dated 26.11.2005 for Rs.2,06,580/- drawn on Bank of Baroda was sent in the name of the then Chairman Sri K.Abraham. A1 in one of the letters written by him to the District Registrar, Kakinada admitted to have received that amount.

f) The further case of the complainant is that A1 did not disclose the said fact to the governing body of the society or its Secretary and did not deposit that demand draft in any of the two bank accounts of the registered society. Instead, he formed a parallel society with the same name with his own family members, who are A2 to A5, and got it registered as society No.696/2005 as Guntur. He suppressed the factum of complainant society duly registered and functioning. He did so in collusion with A2 to A5 with the object of benefiting himself unlawfully by playing fraud not only on the society but also on the registration authorities.

g) On 06.12.2005, D.David B. Rao, Secretary gave a requisition to A1 requesting to convene the general body meeting in the month of December and to name the appropriate dates. Even after three reminders there was no response from A1, but ultimately on 06.01.2006 A1 sent a letter to the Secretary setting out a different agenda with 10 items fixing the date of meeting at Samalkot on 29.01.2006 to be informed to all the members. Since time was too short, the Secretary fixed general body meeting followed by governing body at the Head Office Tuni on 31.01.2006 and informed to all the members. The meeting was accordingly held and except the Chairman all other members attended. The Committee unanimously resolved to terminate the membership of the accused as he failed to pay the subscription due to the society for more than 3 years and failed to convene governing body atleast once in a year.

h) The further case of the complainant is that the amount received by the accused from the Government, which was primarily intended to be spent by the Society for the Guntur Urban area, has been misappropriated by the accused. Thus, all the accused conspired together and committed the said acts with a *mala fide* intention and hence they are liable to be punished under Sections 420, 406 and 120B IPC.

4) The petitioners/accused challenged the jurisdiction of the Court at Kakinada. According to them, no part of alleged offence did take place in the territorial jurisdiction of any of the Criminal Courts in

Kakinada. In that context, when they raised the issue, III Additional Judicial First Class Magistrate, Kakinada in whose Court C.C.No.380 of 2008 was pending, passed order dated 07.07.2015 wherein while referring the facts of the complaint and Section 181 Cr.P.C. in general and sub-section (4) of Section 181 in specific, held that his Court has no jurisdiction to try the case and passed the order accordingly.

5) The 2nd respondent/complainant then preferred CrI.R.P.No.135 of 2015 before the VI Additional District Judge, Kakinada challenging the order of III Additional Judicial First Class Magistrate, Kakinada. In the impugned order the VI Additional District Judge, Kakinada held that the trial Court at Kakinada was very much having jurisdiction. His observations were that:

- (i) *Admittedly, the registration of the society of the complainant with Registrar of Society dated 14.03.1990 vide registration No.179/90 has taken place under the name and style Leprosy Eradication Organisation, Samalkot. It is also an admitted fact that said society has accounts in SBI and Central Bank, Samalkot to be jointly operated by the chairman and Secretary. According to the complainant, the mother organisation registered at Kakinada and established its office at Tuni in 1996.*
- ii) *As per the averments in complaint, an application for grant of voluntary scheme for Leprosy Eradication (SET) in rural and urban areas for 2005-2006 was submitted to Government of India on 04.03.2005 duly signed by A1 as the Chairman and D.David B.Rao as Secretary and prior to it a resolution was passed on 12.02.2005 authorising A1 to*

receive the funds and be accountable for the same being in aid given by the Government, make official correspondence for Guntur unit only. It was also resolved that bank transactions should be operated by the Chairman and Secretary under their joint signatures as usual. As per the complaint, the society opened accounts in SBI, and Central Bank, Samalkot to be operated by A1 and its administrator initially and subsequently by resolution the administrator was replaced by secretary/coordinator.

(iii) In addition to the above, there was an averment that in a letter written by A1 to the Registrar of Kakinada, he admitted to have received Rs.2,06,580/- bearing DD No.019068 dated 26.11.2005 and therefore, A1 has to account for it by way of depositing the same in any of the accounts maintained by the society as referred to above.

6) The learned VI Additional District Judge referred Section 181(4) Cr.P.C. and observed that the trial Court misunderstood the concept of the above proviso inasmuch as the latter part of the proviso would clearly show that **“any part of the property which is the subject matter of the offence was received or retained or was required to be or accounted for by the accused person.** He further observed that by virtue of said clause, an offence of criminal misappropriation and criminal breach of trust may be inquired into or tried by the court within whose jurisdiction the offence was committed or any part of the property which is the subject matter of the offence was received or retained or was required to be or accounted for by the accused person and therefore, in the instant case, since A1 was required to account for the amount received by him

from the Central Government by depositing in any of the two banks of the mother organization and since he allegedly failed to do so, the offence of criminal misappropriation allegedly committed by him could be tried by the III Additional Judicial First Class Magistrate, Kakinada as the said Court will have territorial jurisdiction to conduct the trial. The learned District Judge held that III Additional Judicial First Class Magistrate committed an error in holding that he did not have jurisdiction.

Hence the instant CrI.R.C. at the instance of petitioners/accused.

7a) Severely castigating the impugned order, learned counsel for petitioners would firstly argue there was no specific averment in the complaint to the effect that amount received by A1 was required to be deposited in any of the bank accounts of the mother organization and without such specific plea, it cannot be said that the Court at Kakinada can get jurisdiction to try the offence.

b) Secondly, he would argue that the amount is not meant for complaint's organisation and since A1 has a separate organisation, such amount was meant for the said organisation and therefore, no offence at all was committed and even if in the perception of the complainant, A1 has not accounted for the said amount, a complaint would be maintainable in the Court at Guntur but not at Kakinada.

c) Thirdly and alternatively, learned counsel would submit that in case the Court do not agree with his argument and come to the conclusion that Court at Kakinada alone will have jurisdiction to try the criminal case, since A1 being octogenarian and suffering with old age ailments, his attendance in the trial Court for each adjournment may be dispensed with.

8) Learned counsel for 2nd respondent/complainant, on the other hand, supported the impugned order.

9) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this Criminal Revision Case to allow?”

10) **POINT**: The provision of law deciding jurisdiction of the trial Court is undoubtedly Section 181 Cr.P.C. which reads thus:

181. Place of trial in case of certain offences:

(1) *Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.*

(2) *Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.*

(3) *Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.*

(4) *Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.*

(5) *Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.*

This, Section 181(4) says that any offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or **any part of the property which is the subject of the offence was received or retained or was required to be returned or accounted for by the accused person.**

a) The above provision would give an understanding that so far as the offence of criminal misappropriation or criminal breach of trust is concerned, several courts at several places will assume jurisdiction i.e.

the court within whose jurisdiction the offence was committed; the court within whose jurisdiction any part of the property which is the subject matter of the offence was received or retained; and most importantly, the court within whose jurisdiction the subject property was required to be returned or accounted for by the accused person.

b) It should be noted that the words “*accounted for*” were added to the main provision on the recommendation of Law Commission in its 41st report.

11) Be that it may, since it is the case of the complainant that A1 having received the draft, was required to account for the same to the mother organization by way of depositing the same in any one of the bank accounts belonging to mother organization but failed to do so and thus committed the offence of criminal misappropriation, it has to be seen whether the complainant has made such specific averment in the complaint.

12) A perusal of complaint would show that in para-2 it is mentioned thus:

“Para-2: The complainant society was registered at Kakinada under the Registration of Societies Act vide Registration No.174/90 on 14.03.1990. Sri D.David B.Rao was its coordinator and Smt.VV. Victoria was the chairperson initially. The organisation was duly recognized by the Government of A.P. under Ministry of Health and Medical services.”

Then, in para-3 the complainant mentioned as follows:

“Para-3: The bank account for this Society was opened in the State Bank of India, Samalkot and also in the Central Bank of India, Samalkot. It was, initially, to be operated jointly by the Chairman and Administrator, subsequently by resolution dated 15.12.1991 of the society, Administrator was replaced by Secretary/Coordinator.”

Then, in para-6 the complainant stated thus:

“Para-6: Prior to submission of that application the complainant society passed a resolution dated 12.02.2005, authorizing the 1st accused as the then chairman to receive funds and be accountable for the same to be granted in aid by the Government of India and made official correspondence for the Guntur Urban Unit only on behalf of the organisation. It is also resolved that the bank transactions should be operated by both the Chairman and the Secretary under their joint signatures as usual.”

13) Therefore, the conjunctive study of Paras-2, 3 and 6 of the complaint would give an understanding that the complainant society was registered at Kakinada and the organisation was holding bank accounts for the society in the State Bank of India and also in Central Bank of India, Samalkot to be operated jointly by the Chairman and Administrator and subsequently by resolution dated 15.12.1991 of the society, the Administrator was replaced by Secretary/Coordinator. Para-6 would further reveal that even prior to the submission of application to the Government of India, Ministry of Health and

Family Welfare, the complainant society passed a resolution dated 12.02.2005 authorising A1 the then Chairman to receive the funds and to account for the same on behalf of organisation. It was also resolved bank transactions should be operated by both the Chairman and Secretary under their joint signatures as usual.

14) Now, the grievance of the complainant is that A1 having received the bank draft for a sum of Rs.2,06,580/- and having admitted to have received the said amount in his letter to the District Registrar, Kakinada did not account for the same. Thus, according to the complainant, A1 in collusion with A2 to A5 has committed the offence of criminal misappropriation. So far as the jurisdiction aspect is concerned, as already stated supra, the offence of criminal misappropriation can be tried by the **court within whose jurisdiction the amount was required to be returned or accounted for by the accused person.**

15) In that view of the matter, it is needless to emphasize, as already observed by the learned VI Additional District Judge, Kakinada, the trial Court at Kakinada is having jurisdiction to try the said case. The III Additional Judicial First Class Magistrate, Kakinada unfortunately failed to appreciate the latter part of sub-section (4) of Section 181 Cr.P.C in proper perspective. Therefore, the argument of learned counsel for petitioners that no specific averment was made in the complaint cannot be countenanced.

16) The second argument of learned counsel is that the amounts sent by the Central Government is not intended for mother organization at Kakinada but it was intended to the organization established by A1 at Guntur. Of course, this appears to be contention of A1 and he can establish his plea in his defence during trial. The validity of the said plea cannot be tested while deciding the jurisdiction of the Court at this stage.

17) In view of above discussion, this Court finds the order dated 04.12.2017 in CrI.R.P.No.135 of 2015 passed by the VI Additional District Judge, Kakinada as impregnable and no perversity or irregularity was involved therein. Sofaras the alternative submission of learned counsel for petitioners is concerned, he may move an appropriate application before the trial Court seeking relief and the trial Court shall pass an appropriate order thereon. Since the CC is of the year 2008, the trial Court is directed to complete the trial and pass the judgment expeditiously but not later than four months from the date of receipt of a copy of this order.

18) Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 28.02.2018

Murthy