

21.10.2017  
State by Sr.APP  
Accused  
For orders

### **ORDER**

The learned Sr. APP has filed application u/s.212 r/w 464 of Cr.P.C. It is the contention of the prosecution that the complainant is running a Max Motors bike showroom at building bearing No.2/6 situated at Dr. Rajkumar Road and accused No.1 was working as a cashier in the said showroom and at that time the accused has misappropriated an amount of Rs.1,31,52,770/- for the year 2009-10 and has misappropriated an amount of Rs.30 Lakhs during the year 2010-11 and totally he has misappropriated an amount of Rs.1,61,52,770/- and has committed criminal breach of trust and when the complainant got revised audit by CW8 they found that the accused has misappropriated a sum of Rs.2,24,36,701/- and has cheated the complainant and the said allegations is proved by the report

submitted by CW8 and the I.O. has filed charge sheet against the accused for the offences punishable u/s.408, 420 r/w 34 of IPC. So, the accused has committed criminal misappropriation of amount of Rs.1,31,52,770/- during the financial year 2009-10 and misappropriated an amount of Rs.30 Lakhs during the financial year 2010-11. So, the I.O. has to submit a separate charge sheet for each financial year. So, the I.O. has to submit a separate charge sheet for each financial year. So, the I.O. has to submit charge sheet pertaining to the year 2009-10 and 2010-11 separately. So, it is prayed to order for the return of charge sheet to the I.O. and to file separate charge sheet for each financial year.

2.The counsel for accused has filed objections to the said application by stating that, the investigation officer has thoroughly investigated the matter and filed charge sheet dated 13.09.2011. While investigating the matter the I.O. has recovered the entire documents from the Proprietor of the company and has recovered the original balance sheet for the

year 2009-10 and 2010-11 and the same have been numbered by the complainant police in PF No.25/2012. After filing the charge sheet this court was pleased to frame charge against the accused and accused pleaded not guilty and after lapse of 9 months which the charge has been recorded by this court the prosecution has filed this application seeking direction from this court to I.O. to refurnish the charge sheet as per the order i.e. separate charge sheet for the assessment year of 2009-10 and 2010-11. The alleged misappropriation of company money is not within the knowledge of accused No.1 and she was Cashier since 17 years with Max Motors on the basis of monthly salary and since 17 years there is no single allegation against the accused No.1 and accused No.1 has been falsely implicated in the case. If the trial is commenced on the present charge sheet no hardship or loss will be caused to the prosecution. So, for these reasons it is prayed to reject the application.

3.Heard both the sides.

4.The point that arise for determination is whether the application filed by Sr.APP deserves to be allowed?

5.My answer to the aforesaid point is in the "Negative" for the following:

### **REASONS**

6.On perusal of the charge sheet, it appears that, the complainant police have alleged that the complainant is running a bike showroom in a shop Max Motors situated at building No.2/6 at Dr.Rajkumar Road within the jurisdiction of Rajajinagar police station and at that time accused No.1 was a Cashier and accused No.2 was a Manager and accused No.1 has misappropriated an amount of Rs.1,31,52,770/- during the financial year 2009-10 and has misappropriated an amount of Rs.30 Lakhs during the financial year 2011-12 and totally he has misappropriated

an amount of Rs.1,61,52,770/- and when the complainant got revised audit by CW8 it found that the accused has misappropriated an amount of Rs.2,24,36,701/- and has cheated the complainant and committed criminal breach of trust. Further it is also alleged that, when the accused No.1 was working as a Cashier, accused No.2 was a Manager and was looking after the accounts and accused No.1 colluding with accused No.2 have not furnished the proper accounts and have cheated the complainant.

7.Learned Sr.APP has submitted that as it is the allegation of the complainant police that the accused has misappropriated an amount of Rs.1,31,52,770/- during the financial year 2009-10 and has misappropriated an amount of Rs.30 Lakhs during the financial year 2010-11 separate charge sheet have to be filed for each financial year. So, it is necessary to return the charge sheet to the I.O. with a direction to file separate charge sheet for each financial year.

8. On the other hand, the counsel for the accused has submitted that, already charge has been framed by this court and no hardship will be caused to the prosecution if the case is proceeded on the present charge sheet.

9. As per provisions of 212 of Cr.PC., when the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property. It shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219: Proviso Clause provides that the time included between the first and last of such dates shall not exceed one year. In the present case as the auditor has given a report

pertaining to the year ending on 31/03/2011 and as the auditor has not stated that for the financial year 2009-2010 and for the year 2010-2011, the accused has committed criminal misappropriation for such and such amount when the complaint is filed. So, considering the audit report, the omd audit report does not specifically speak about for which financial year, how much amount is misappropriated.

10. On perusal of the charge sheet it is alleged that the accused-1 has committed misappropriation for a sum of Rs.1,31,52,770/- for the year 2009-2010 and has misappropriated an amount of Rs.30,00,000/- for the financial year of 2010-2011 and thereby the accused has committed total misappropriation amount of Rs.1,61,52,770/- and when the complainant got revised the audit by CW.8, they found that the accused has misappropriated an amount of Rs.2,24,36,701/- and the said misappropriation has been supported by the audit report. Though in

the charge sheet it is alleged that the accused has committed misappropriation to the tune of Rs.2,24,36,701/- in total they have not specifically stated as to for which financial year the accused has misappropriated how much amount for the relevant financial years. Even on perusal of the audit report submitted by IO at the time of filing charge sheet wherein it is mentioned that, the auditor has examined the balance sheet as on 31/03/2011 and the trading and profit and loss account for the year ended on that date and on perusal of balance sheet shows an amount of Rs.2,24,36,701/- shown under the head sundry debtors suspense and the management has informed that over a period of time there has been defalcation of cash calculation and misappropriate account of the transactions. The management suspects fraud committed by the employees and it has been fraud in this connection. So, on perusal of the audit report it appears that the auditor after perusing the balance sheet for the year 2011 he has expressed opinion that Rs.2,24,36,701/-

has been shown under head sundry debtors expense. So it appears that, only on perusal of the balance sheet as on 31/03/2011, the auditor has expressed his opinion. So even the audit report is silent about the fact as to for which the financial year how much amount has been misappropriated by the accused. So when the charge sheet papers does not reveal as to for which the financial year how much amount has been misappropriated by the accused, it is not necessary to file separate charge sheet for each financial year as stated by prosecution. So considering the charge sheet papers I am of the opinion that the application filed by the Sr.APP is not maintainable. Therefore, aforesaid point is answered in the Negative and the following order is passed.

**ORDER**

Application filed by Sr.APP u/sec.212 of Cr.PC  
is hereby rejected.

**IV Addl.C.M.M. Bengaluru.**

