

KAUK610003672018



**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT HONNAVARA**

**PRESENT : SRI KUMARA G. B.COM. L.L.B.  
SENIOR CIVIL JUDGE AND JMFC  
HONNAVARA**

**CRIMINAL CASE NO.35/2018  
DATED THIS THE 23<sup>RD</sup> DAY OF JANUARY, 2023**

**COMPLAINANT : - STATE OF KARNATAKA,  
REPRESENTED,  
POLICE SUB-INSPECTOR,  
HONNAVARA POLICE STATION.**

**(REPRESENTED BY ASSISTANT  
PUBLIC PROSECUTOR)**

**-VERSUS-**

**ACCUSED : - 01. SRI SHANKAR,  
S/O KRISHNA BHAT,  
AGED ABOUT 48 YEARS,  
OCC: AGRICULTURIST,  
R/AT SALKOD VILLAGE,  
HEGGARMAKKI, TQ: HONNAVARA.**

**02. SRI SHRIDHAR,  
S/O VASUDEV HEGDE,  
AGED ABOUT 34 YEARS,  
OCC: SRI KARIKAN PARAMESHWARI  
CO-OPERATIVE SOCIETY, SALKOD  
CLERK,  
R/AT SALKOD VILLAGE,  
HEGGARMAKKI, TQ: HONNAVARA.**

**(A-1 IS REPRESENTED BY SRI MLN,  
ADVOCATE & A-2 IS REPRESENTED BY  
SRI SGH, ADVOCATE)**

**ORDER ON APPLICATION FILED BY ACCUSED NO.2 UNDER SECTION 227/239 OF CRIMINAL PROCEDURE CODE, 1973.**

The applicant-accused No.2 has filed an application under section 227 of Criminal Procedure Code, 1973 for discharging him for the offences punishable under section 379, 381, 403, 406, 408, 409, 467, 468 read with section 34 of Indian Penal Code, 1860.

02. It is stated in the application that the complainant police have filed false charge sheet against accused No.2 for the offences punishable under section 378, 379, 381, 403, 406, 408, 409 and 411 of Indian Penal Code, 1860 without making proper investigation. It is further stated that the complainant had filed same complaint before the Assistant Registrar of Co-operative Society. It is further stated that the complainant police filed false charge sheet without getting the report of Assistant Registrar. It is further stated that the complainant police have not produced any material evidence against accused No.2 relating to the commission of alleged offences. It is further stated that there are no grounds against accused No.2 for framing charges. For the above said reasons accused No.2 has prayed to discharge him for the alleged offences.

03. Subsequent to filing application, accused No.2 has filed memo on 13-12-2018 for treating the application filed by him under section 227 of Criminal Procedure Code, 1973 as the application filed under section 239 of Criminal Procedure Code, 1973.

04. The learned APP filed objection to application filed by accused No.2 contending that the application is not maintainable either in law or facts and the contents of application or false and far away from truth. It is further contended that the concerned police have registered the case against the accused No.1 and 2; conducted the investigation; collected the material evidence and recorded the statement of witnesses and filed the charge sheet against the accused No.1 and 2 as sufficient materials available against them pertaining to commission of the alleged offences. It is further contended that after perusal the charge sheet, this court has taken cognizance; registered criminal case against accused No.1 and 2 and secured their presence. It is further contended that accused No.1 and 2 in collusion with each other in order to misappropriate the funds of Sri Karikana Parameshwari Agricultural Co-operative Society, accused No.2 has stolen the blank cheque signed by CW-1 and 6 for use of the same in urgency; accused No.2 has handed over the cheque to accused No.1 and accused No.1 has fabricated and prepared it for Rs.12,00,000/- and encashed it and thereby the accused have committed the alleged offences. It is further contended that there are sufficient prima-facie materials available on record to presume that accused No.1 and 2 have committed the alleged offences and there are sufficient materials available to frame the charges. It is further contended that at the stage the accused cannot be discharged as innocent without the full pledged trial. For the above said reasons the learned Assistant Public Prosecutor has prayed to dismiss the application filed by accused No.2.

05. Heard the arguments advanced by Sri SGH, the learned counsel appeared for accused No.2 and the learned Assistant Public Prosecutor.

06. Upon hearing the arguments and on perusal of the case papers, the following points arisen for determination:

**POINTS**

***01. Whether the charges leveled against the accused are groundless?***

***02. Whether the accused made out grounds for discharging them by exercising the power under section 239 of Criminal Procedure Code, 1973?***

***03. What order?***

07. My findings to the above points are as follows:

***Point No.1 : In the negative,  
Point No.2 : In the negative and  
Point No.3 : As per the final order for the following:***

**REASONS**

**08. POINT NO.1 & 2:-** These points are inter-linked with each other.

The discussion and reasoning revolves around the same set of facts. Hence both this points have been taken together for joint discussion for avoiding repetition of discussion and reasoning.

09. The allegations made against the accused No.1 and 2 is that accused No.1 was working as director and accused No.2 was working as clerk in Karikana Parameshwari Agricultural Co-operative Society. It is alleged that CW-1 who was the President and CW-6 who is working as Chief-Executive Officer of the said society have signed on blank cheque and kept in their

officer for the purpose of using the same in emergency for the official purposes. It is further alleged that on 29-09-2016 accused No.2 in collusion with accused No.1 in order to misappropriate the public funds stolen cheque leaf No.666227 and handed over the same to accused No.1. It is also alleged that accused No.1 filled the blank cheque leaf for Rs.12,00,000/-; presented the same through his banker on 01-10-2016 and encashed it. It is also alleged that accused No.1 and 2 have with common intention stolen the cheque and fabricated it in order to cheat the society and accused No.1 and 2 have misappropriated the public funds and thereby they have committed the alleged offences.

10. Basing on the complaint lodged by CW-1 who is the Present of Karikana Parameshwari Agricultural Co-operative Society, Salkod, Police Sub-Inspector, Honnavara Police has registered the case in their police station Crime No.415/2016 on 14-11-2016. Subsequently the Investigation Officer proceeded to society; conducted spot panchanama; visited to drawee bank and seized the cheque. The Investigation Officer also recorded the statements of witnesses, collected documentary evidence and filed the charge sheet against the accused No.1 and 2 on 14-11-2016 for the alleged offences.

11. Before going to assess the materials placed on record, let me state the principles to be followed by the court while dealing with an application filed for discharge under section 239 or 245 of Criminal Procedure Code, 1973. When a case is instituted on a police report, the accused can maintain

an application under section 239 of Criminal Procedure Code, 1973. Similarly if the case is instituted otherwise than on police report, the accused can maintain an application under section 245 of Criminal Procedure Code, 1973. It is well settled that the court while dealing with an application filed for discharge has to consider only the sworn statement of the witnesses or the materials placed by the prosecution and not the materials placed on record from the accused side. It is also well settled that if at all the court feels after perusing the materials placed on record that there is a strong suspicion that the accused had committed the offence, charges have to be framed. At the stage of considering the application filed for discharge the court shall not weigh the evidence as done in the trial. Keeping in mind all these well settled principles of law let me consider the applications filed by the accused along with the materials placed on record from the complainant side.

12. It could be seen from the case papers that the Investigation Officer has conducted spot panchanama in the complainant society on 15-11-2016 in the presence of CW-2 and 3 wherein the alleged cheque was alleged to have been stolen by accused No.2. The Investigation Officer also conducted the seizure panchanama at Canara District Central Co-operative Bank Ltd., Salkod in the presence of CW-2 and CW-4 on 21-12-2016 and seized the cheque No.666227 dated 26-09-2016. The Investigation Officer also recorded the further statement of CW-1 on 06-06-2018 and statements of witnesses on various dates. The Investigation Officer also collected the other relevant and material documentary evidence. The cheque and account extracts of the society prima-facie disclosed that Rs.12,00,000/- has been

debited to the account of society and credited to the account of accused No.1 on 10-10-2016. The witnesses statements prima-facie shows that CW-1 and 6 have kept the signed blank cheque in their office for urgent official use when they were not in station; the same has been stolen by accused No.2 who was working as clerk in the said society and he handed over the same to accused No.1; accused No.1 prepared it for Rs.12,00,000/- in order to cheat the society and he has presented it in his bank and Rs.12,00,000/- has been credited to his account.

13. The learned counsel for the accused No.2 has filed the present application for discharge of accused No.2 stating that accused No.2 has not committed the alleged offences. He argued that the society has already filed similar complaint before the Assistant Registrar of Co-operative Society and the same was decided and disposed by the Assistant Registrar and therefore accused No.2 cannot be tried once again for the similar offences. He further argued that it is a dispute among the society and the members and the same is covered under section 70 of Karnataka Co-operative Societies Act and therefore accused No.2 cannot be tried. He has drawn the attention of this court to section 70 of Karnataka Co-operative Societies Act.

14. At the stage I would like to reproduce section 70 of Karnataka Co-operative Societies Act. It reads as follows:-

**70. Disputes which may be referred to Registrar for decision:**

***(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises:-***

***(a) among members, past members and persons claiming through members, past members and deceased members, or***

***(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society, or***

***(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or***

***(d) between the society and any other co-operative society, or a credit agency.***

***such dispute shall be referred to the Registrar for decision and no civil or labour or revenue court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.***

***(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:-***

***(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;***

***(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;***

***(c) any dispute arising in connection with the election of a President, Vice-president, Chairman, Vice-chairman, Secretary, Treasurer or Member of Committee of the society.***

***(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society [notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947);***

***(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or***

***deceased servant or by its committee, past or present whether such loss be admitted or not.]***

***(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.***

15. A bare reading of section 70 of Karnataka Co-operative Societies Act, it makes it clear that the dispute among members of the society; among the members and the society and between the society and the managing committee pertaining to constitution, management or the business of the society, civil court or labour court or revenue court or industrial tribunal shall have no jurisdiction to try the cases. Nowhere in the said section the jurisdiction of the criminal courts are ousted. Therefore if at all any allegation is made by the society against its employees or members as to commission of offences, certainly the jurisdictional criminal court is empowered to try the alleged offences. The civil dispute among the members and the society covered under section 70 of the act, but trying of offences alleged to have been committed by the members or employees of the society is not covered under section 70 of Karnataka Co-operative Societies Act. Therefore I am of the clear opinion that section 70 of Karnataka Co-operative Societies Act has no application to the present case on hand as the present case is initiated alleging that accused No.1 and 2 who are the member and clerk of the society have committed the alleged offences.

16. The oral and documentary evidence placed on record by the Investigation Officer, prima-facie shows that accused No.1 and 2 have

colluded with each other in order to cheat the society; accused No.2 stolen the blank cheque signed by CW-1 and 6 which was kept in the office for the official urgent use; accused No.2 handed over the same to accused No.1; accused No.1 prepared it with dishonest intention in order to cheat the society for Rs.12,00,000/-; presented it through his banker and the same was encashed and thereby accused No.1 and 2 have committed the alleged offences. It appears at this stage that the accused No.1 and 2 being the member and servant of the society might have dishonestly stolen and prepared the cheque for Rs.12,00,000/- in order to cheat the society and thereby they have misappropriated the society funds as Rs.12,00,000/- which was already credited to the account of accused No.1 and the same has been used by him.

17. The learned counsel for the accused No.2 argued that the society was due a sum of Rs.12,00,000/- to accused No.1 pertaining to supply of some materials; the questioned cheque has been issued by the society in his favor for repayment of amount due to him and therefore the accused No.1 and 2 have not committed any offences. In order to give finding on these points detailed trial is necessary. Without the full pledged trial, it can't be decided at the stage. Under these facts and circumstances of the case at the stage I am of the opinion that sufficient materials are available against accused No.1 and 2 to proceed further and to frame charges. The allegations made against accused No.1 and 2 are not groundless and hence I am of the opinion that accused No.2 not made out grounds for discharging him by

exercising the power under section 239 of Criminal Procedure Code, 1973.

Hence I am answering to ***point No.1 and 2 in the negative.***

**18. POINT NO.3:-** In view of findings to point No.1 and 2 and for the discussion made above and reasons assigned, I proceed to pass the following:

**ORDER**

***The application filed by the accused No.2 under section 227/239 of Code of Criminal Procedure, 1973 is hereby rejected.***

***(Dictated to the stenographer, transcribed by her, corrected, then signed by me and pronounced in the open court on this 23<sup>rd</sup> day of January, 2023)***

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