

APHC010475912021

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI



TUESDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE HARINATH.N

CRIMINAL PETITION NO: 7000 OF 2021

Between:

Smt. Mylam Kalpana, W/o. Sobhan Babu, 42 years, Occ. Jr. steno. R/o.H.No. 19-12-151, Baiuragipatteda, Tirupati, A.P.

...PETITIONERS/ACCUSED

AND

1. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High court of Andhra Pradesh, at Amaravathi
2. Kalla Janardhana Naidu, S/o. K.doraswamy Naidu, aged 53 yrs, occ. DSP, ACB, Tirupathi R/o.D.No. 8-98/4, 4th Cross Royal Nagar, Tirupathi, Chittoor District, A.P.

...RESPONDENTS/DEFACTO COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court please to quash all further proceedings in C.C.No.459/2021 on the file of the III Additional Judicial Magistrate of First Class, Tirupati in the interest of justice.



IA NO: 2 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in C.C.No.459 of 2021 on the file of III Additional Judicial Magistrate of First Class, Tirupati.

Counsel for the Petitioner : SRI KANDA SRINIVASU

**Counsel for the Respondents No.1 : PUBLIC PROSECUTOR (AP) AND
SRI S M SUBHANI (SC FOR ACB AND SPL PP)**

The Court made the following ORDER :



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3457]

**TUESDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE HARINATH.N

CRIMINAL PETITION No.7000 OF 2021

Between:

1. SMT. MYLAM KALPANA,, W/O. SOBHAN BABU, 42 YEARS,
OCC. JR. STENO. R/O.H.NO. 19-12-151, BAIURAGIPATTEDA,
TIRUPATI, A.P.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, AT
AMARAVATHI
2. KALLA JANARDHANA NAIDU, S/O. K.DORASWAMY NAIDU,
AGED 53 YRS, OCC. DSP, ACB, TIRUPATHI R/O.D.NO. 8-98/4,
4TH CROSS ROYAL NAGAR, TIRUPATHI, CHITTOOR
DISTRICT, A.P.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court please to quash all further proceedings in C.C.No. 459/2021 on the file of the III Addl. Judicial Magistrate of First Class, Tirupati in the interest of justice.

IA NO: 1 OF 2021

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to dispense with the filing of the certified copy of the C.C.No. 459/2021 on the file of the III addl. judicial magistrate of first class, tirupati and to pass.

IA NO: 2 OF 2021

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in C.C.No. 459/2021 on the file of III Addl. Judicial Magistrate of first class, Tirupati pending disposal of this criminal petition in the interest of justice.

Counsel for the Petitioner/accused:

1.KANDA SRINIVASU

Counsel for the Respondent/complainant(S):

1.S M SUBHANI (SC FOR ACB AND SPL PP)

2.PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE HARINATH. N**CRIMINAL PETITION No.7000 of 2021****ORDER :**

1. The petitioner is seeking quash of CC.No.459 of 2021 on the file of III Additional Judicial Magistrate of First Class, Tirupati for the alleged offence under Section 409, 477-A and 420 of IPC. The petitioner is the sole accused.
2. Sri.L.Veera Reddy, the learned senior counsel appearing for the petitioner submits that even if the entire allegations in the charge sheet are taken to be true, the offence under Section 409 IPC cannot be made out against the petitioner. It is submitted that the petitioner while working as a Stenographer in the Anti Corruption Bureau Office at Tirupati is alleged to have misappropriated an amount of Rs.6,65,000/- from the secret service account.
3. The 2nd respondent filed a complaint alleging that the petitioner had used cheque leaves from the cheque book bearing serial Nos.963251 to 963350 and cheque book bearing serial Nos.797416 to 797515. It is alleged in the complaint that the 2nd respondent after returning from Covid-19 Bundobust he noticed the discrepancies in the amounts mentioned in the counter foils and that he secured photocopies of cheque leaves bearing Nos.963321, 963336 and 963349 and on verification it was found

that the petitioner withdrew an amount of Rs.7,14,600/- as against Rs.49,600/- thereby misappropriated an amount of Rs.6,65,000/-.

4. The learned senior counsel further submits that the petitioner is working in the cadre of Stenographer and that she is not the custodian of the cheque books nor is she the drawing authority for withdrawing the amounts from the bank.
5. It is submitted that there is no consistency in the stand of the prosecution in alleging that the petitioner committed criminal breach of trust to a tune of Rs.7,84,600/- as is mentioned at para No.5 of the charge sheet and at the concluding paragraph of the charge sheet it is stated that the petitioner misappropriated an amount of Rs.14,95,850/-. In the complaint it is alleged that the petitioner misappropriated an amount of Rs.6,65,000/-.
6. It is also submitted by the learned senior counsel that the respondent/authorities failed to obtain sanction for prosecution as is mandatory under Section 197 of Cr.P.C., It is submitted that the petitioner was discharging her duty as a Stenographer and was assisting the Officers in other office works as and when called upon by the Superior Officers. It is submitted that the bank work was entrusted to the petitioner and on the instructions of the senior officers the petitioner was assisting the officers as per their narrations. It is submitted that the alleged misappropriation is

unfounded as no evidence is collected from the banker and the police in their investigation have not recorded the statement of the banker. It is submitted that out of the 17 witnesses statements were recorded by the police, 14 listed witnesses are working in the ACB and two witnesses are from the Revenue Department in whose presence the alleged confession statement of the accused was recorded. Apart from, the investigating officer of the case.

7. When the allegation of misappropriation by resorting to fabrication of cheques is made against the petitioner, the case cannot sustain the scrutiny of trial in absence of the statements of the banking officials who passed those cheques which were allegedly manipulated by the petitioner.
8. It is submitted that the petitioner is reinstated and is working as a Stenographer at Tirupati in the same department without any blemish. It is also submitted that the petitioner has been victimized being the lowest cadre employee in the office and has been made a scapegoat by the 2nd respondent. It is submitted that the petitioner is framed in the false case with no evidence to substantiate the allegations.
9. The learned counsel for the petitioner places reliance on the judgment passed by this Court in the matter of **Kopisetty**

Nagaraju Vs. The State of Andhra Pradesh and others¹. The mandatory requirement of sanction under section 197 of Cr.P.C., was upheld by the Court and as no sanction was obtained before filing the complaint, the case was quashed by this Court. The learned counsel for the petitioner also places reliance on **Amal Kumar Jha Vs. State of Chattisgarh and Anr²**, **Rakesh Kumar Mishra Vs. State of Bihar and Ors³**, **G.C.Manjunath & Others Vs. Seetaram⁴** in all these judgments the Hon'ble Supreme Court had held that when an Officer acts under the purported exercise of official powers, they are entitled to protection under Section 197 of Cr.P.C., It was also observed that Section 197 of Cr.P.C., does not explicitly mention the requirement of good faith, such a condition is implied and is expressly included in several other statutes that offer protection to public servants from civil and criminal liability.

10. The learned standing counsel appearing for the respondent submits that the protection under Section 197 Cr.P.C., cannot be extended to the petitioner as the petitioner had resorted to misappropriation of office funds and her role as a Stenographer

¹ CRLP.No.750 of 2019, decided on 18.02.2025

² AIR 2016 SUPREME COURT 2082

³ AIR 2006 SUPREME COURT 820

⁴ Criminal Appeal No.1759 of 2025, dated 03.04.2025

would not entitle the petitioner to commit offences under Section 409, 477-A and 420 of IPC.

11. It is submitted that misappropriation cannot be considered as an act which was bound to be committed by the petitioner during the course of her employment. At the same time, it is fairly conceded by the learned standing counsel that no sanction was obtained before filing the complaint.
12. The learned standing counsel for the respondent places reliance on **N.Bhargavan Pillai (Dead) By LRs and another Vs. State of Kerala**⁵, the Hon'ble Supreme Court held that sanction under Section 197 of Cr.P.C., is not a condition precedent for an offence under Section 409 IPC. **D.T.Virupakshappa Vs. C.Subash**⁶, the Hon'ble Supreme Court held that sanction could be obtained before commencement of trial. **Inspector of Police and another Vs. Battenapatla Venkata Ratnam and another**⁷, the Hon'ble Supreme Court on the facts of that case indulgence of the officers in cheating, fabrication of records of misappropriation cannot be said to be in discharge of their official duty. Their official duty is not the fabricating the records or permit evasion of payment of duty and cause loss of revenue.

⁵ (2004) 13 SCC 217

⁶ (2015) 12 SCC 231

⁷ (2015) 13 SCC 87

13. Heard the learned senior counsel appearing on behalf of petitioner and the learned standing counsel for the state. Perused the material on record.
14. The petitioner is facing offence under Section 409, 477-A and Section 420 of IPC for making Section 409 of IPC applicable to the petitioner, she ought to have been entrusted with property in her capacity of a public servant and she must have committed criminal breach of trust in respect of that property. On the facts of this case, the petitioner was employed as a Stenographer and even as on the date of filing of the complaint against the petitioner, she was working as a Stenographer.
15. It is evident from the material on record, that the petitioner is not the custodian of the cheques. It is also not the case of the prosecution that the petitioner is the authorized signatory for operating the bank account and to draw the cheques. The 2nd respondent is the authorized signatory who could have operated the account. In such circumstances, there is no entrustment of the cheques to the custody of the petitioner for coming to a conclusion that the petitioner misused those entrusted cheques and resorted to commission of offences under Section 409 IPC.
16. The counter filed by the 2nd respondent is exactly as stated in the charge sheet. The entire counter also does not indicate initiation

of or pending of any departmental enquiry/action against the petitioner. The counter also reiterates the contents of the complaint. The counter is filed by LW.1 who is the complainant and in absence of any corroborating evidence and in absence of seizure of the cheque leaves as material objects for the purpose of trial, mere statements of the witnesses belonging to the same department cannot be relied upon on the face of it.

17. Of the 17 listed witnesses, LWs.1 to 14 are officers were working in ACB and LWs.15 and 16 are the panchayatdars, LW.17 is the investigating officer. It is surprising to note that LW.6 states that he worked as D.S.P., ACB, Tirupati from 16.01.2019 to 19.07.2019 and that he issued certain cheques and that he knew the cheating of accused. LW.7 states that he worked as DSP., ACB, Tirupati from 27.01.2018 to 01.08.2018 and as Additional Superintendent of Police till 30.06.2019 and that he knew the cheating of accused. LW.8 states that he worked as D.S.P., ACB, Tirupati from 29.08.2018 to 25.11.2018 and that he issued certain cheques and that he knew the cheating of accused. LW.9 states that he worked in ACB, Tirupati from 21.10.2015 to 22.10.2019 and that he issued certain cheques and that he knew the cheating of accused. LW.10 states that he worked as FAC/D.S.P., ACB, Tirupati from 20.07.2019 to December, 2019 and that he issued certain

cheques and that he knew the cheating of accused. LW.11 states that he worked as D.S.P., ACB, Tirupati from February, 2014 to 28.01.2018 and that he issued certain cheques and that he knew the cheating of accused. LW.12 states that he worked as D.S.P., ACB, Tirupati from the year 2010 till the year 2012 and that he issued certain cheques and that he knew the cheating of accused.

18. It is equally surprising to note that none of the listed witnesses who worked in the ACB from various periods from 2010 to 2019 having stated that they knew the cheating of the accused, none have ever filed any complaint against the petitioner from the year 2010 onwards. As such, the statements of LWs.1 to 14 would have to be considered as the statements of interested witnesses belonging to the same department and of those officers who earlier worked in the same office.

19. The investigating officer has neither recorded the statement of bank official nor has collected the fabricated cheques as material objects, which were allegedly misused by the accused for encashment. There is no evidence on record available to substantiate the claim of the prosecution that the petitioner had misappropriated the amounts by fabricating the cheques. In absence of either a statement from the banker or the cheques as presented and as allegedly en-cashed by the petitioner, the

allegation of offences under Section 409, 477-A and 420 of IPC cannot be made out against the petitioner.

20. Admittedly, the petitioner was not the custodian of the cheques nor was she the authorized signatory of cheques. The allegation of misappropriation by a Stenographer who is alleged to have acted on the instructions of her Superiors. Sanction under Section 197 Cr.P.C., ought to have been obtained prior to filing of the complaint.

21. That apart, for satisfying the ingredients under Section 409 of IPC there is no entrustment of the property to the petitioner, which is allegedly misappropriated by the petitioner. Mere allegations and statements of about 14 officers of ACB cannot drive in the needle of suspicion beyond all reasonable doubt against the petitioner.

22. Except for the mediators before whom the confession panchanama was drafted there are no other independent witnesses. It is surprising to note that the investigating officer did not feel it necessary to record the statement(s) of the banker or thought it prudent to summon the original cheques which were allegedly presented by the petitioner for misappropriating the funds of the secret service account.

23. This Court is of the considered view that the petitioner has been implicated in the case without there being any admissible piece of evidence for substantiating the allegations against the petitioner. Relegating this matter for trial would only extend the ordeal of suffering and the stigma of the pendency of a criminal case against the Government employee.

24. Accordingly, the criminal petition is allowed and CC.No.459 of 2021 on the file of III Additional Judicial Magistrate of First Class, Tirupati is hereby quashed.

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

SD/- G.HELAKAIDU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

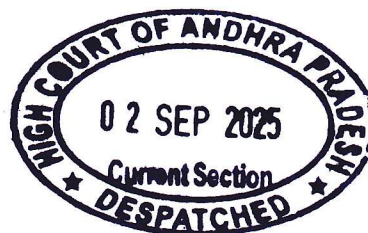
1. The III Additional Judicial Magistrate of First Class, Tirupati, Chittoor District.
2. One CC to Sri. Kanda Srinivasu, Advocate [OPUC]
3. One CC to Sri. S.M.Subhani, (SC for ACB and SPL PP) Advocate [OPUC]
4. Two CCs to Public Prosecutor, High Court of Andhra Pradesh at Amaravathi.
[OUT]
5. Two C.D Copies.

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HIGH COURT
DATED:05/08/2025

ORDER
CRLP NO. 7000 OF 2021



CRIMINAL PETITION IS ALLOWED.