

**IN THE HIGH COURT OF KARNATAKA AT**

**BENGALURU**

**DATED THIS THE 14<sup>TH</sup> DAY OF JULY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR**

**CRIMINAL REVISION PETITION NO. 204 OF 2014**

**BETWEEN**

C.M.CHANDRA SHEKAR,

...PETITIONER

(BY SRI. NITHIN GOWDA.K.C FOR SRI. PRASANNA KUMAR.P  
FOR REUNION PETITIONER, ADVOCATE)

**AND**

1. STATE OF KARNATAKA  
BY VIDHANA SOUDHA POLICE STATION,  
BANGALORE  
REPRESED BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,

DR.B.R.AMBEDKAR VEEDHI,  
BANGALORE-560001.

2. SRI. JAYARAM NAYAK

...RESPONDENTS

(BY SRI. THEJESH.P, HCGP, ADVOCATE)

THIS CRL.R.P., IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED 06.03.2014 PASSED BY THE IV ACMM, BANGALORE IN C.CNO.14593/13 THEREBY ALLOWING THE APPLICATION FILED BY THE ACCUSED U/S.319 OF CODE OF CRIMINAL PROCEDURE.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 03.07.2023, COMING ON FOR PRONOUNCEMENT, THIS DAY COURT PASSED THE FOLLOWING:

**ORDER**

This criminal revision petition is filed under Section 397 R/w Section 401 of the Code of Criminal Procedure, 1973 (for short, hereinafter referred to as 'Cr.P.C.') by CW.17/ accused No.2 challenging the order passed by the learned IV Additional C.M.M. at Bangalore, in C.C.No.14593/2013 dated 06.03.2014 on an application under Section 319 of Cr.P.C. whereby he summoned the revision petitioner/CW.17 as an accused.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the Trial Court.

3. The brief factual matrix leading to the case are that the Assistant Registrar of High Court of Karnataka has lodged a complaint with Vidhana Soudha Police Station in Crime No.31/2013 against accused No.1-Jayaram Nayak, Section Officer, Accounts Branch, High Court and the petitioner herein who was working Deputy Registrar and Drawing Officer of the High Court for the offences under

Sections 466, 464, 409 R/w Section 34 of IPC. As per the case of the prosecution, the complainant has sent a requisition to Accounts Branch for budget of a sum of Rs.66,67,000/- and then the Assistant Registrar of the Branch i.e., CW.6 requested the complainant to verify the accounts properly. On the basis of this information, the complainant personally verified the accounts and later he found that Rs.20,00,000/- has been misappropriated. It is alleged that the bill for amount of Rs.20,00,000/- was prepared by CW.18 and bill was signed by accused No.1 and the amount was withdrawn on 09.05.2013. It is also further asserted that there was no entry regarding the said withdrawal in the cheque encashment register of Accounts Branch. According to the prosecution, accused No.1 being the Section Officer was insisting CW.18-Second Division Assistant to prepare the bill, however CW.18 insisted for orders from Finance Committee and the Hon'ble Chief Justice. It is alleged that the amount was required for payment of postal stamps in Franking Machine. When CW.18 informed accused No.1 that the bills can be

prepared in the name of Post Master General, GPO for payment towards Franking Machine charges, then accused No.1 insisted that amount is urgently required and the file is with the Hon'ble Chief Justice and there shall not be any delay in the presentation of the cheque and he got encashed the amount. It is the specific assertion that the petitioner herein was Deputy Registrar has signed without verifying the records and without insisting the orders from Finance Committee and the orders of the Hon'ble Chief Justice. It is further the case that accused No.1 after obtaining the signature of the petitioner herein has presented the bill before the Treasury and obtained a cheque in favour of the Registrar General. According to the prosecution thereafter the petitioner herein being the Drawing and Disbursing Officer on behalf of the Registrar General gave authorisation to accused No.1 to encash the cheque for Rs.20,00,000/-. The receipt of the cheque was not entered in Encashment Register. In this regard, a complaint was lodged by the complainant with the prior permission from the Registrar General and the Chief

Justice against accused No.1 as well as petitioner herein who is shown as an accused No.2 in the FIR. Subsequently, the Investigating Officer investigated the matter and submitted charge sheet against accused No.1 alone while accused No.2 was shown as charge sheet witness CW.17.

4. Thereafter cognizance was taken and the process came to be issued against accused No.1 who has appeared and denied the charges.

5. During the course of the trial, complainant is examined as PW.1 and in his examination-in-chief, he has specifically asserted that accused No.1 as well as accused No.2 are responsible for misappropriation as accused No.2/CW.17 has no authority to prepare the bill without there being any sanction from the Finance Committee as well as the Hon'ble Chief Justice and the amount could not have been disbursed in person, but the cheque ought to have been obtained in the name of the Post Master General, GPO. On the basis of these aspects, accused No.1 during pendency of the proceedings filed an

application under Section 319 of Cr.P.C. to implead the petitioner/CW.17 as an accused No.2.

6. Learned Magistrate by his order dated 06.03.2014 allowed the said application and present petitioner/CW.17 was arraigned as accused No.2. This order is being assailed in this revision.

7. Heard the arguments advanced by the learned counsel for the revision petitioner and the learned High Court Government Pleader for State. Though respondent No.2 impleaded in the revision, later on he did not contest the matter.

8. The main contention of the learned counsel for the revision petitioner/accused CW.17 is that it is accused No.1 who has misappropriated the amount and though the petitioner was shown as accused No.2 in the FIR, he was not sent for trial. It is further asserted that the State has seriously objected the application before the Trial Court and records disclose that there is no *mens rea* on the part of the revision petitioner. He would also contend that the

sanction was not obtained for prosecuting the present petitioner and the powers under Section 319 of Cr.P.C. are to be exercised sparingly when ultimately it is proved that if the evidence remains uncontroverted, it leads to conviction. He would contend that no such material evidence is forthcoming and hence, he has sought for allowing the revision by setting aside the impugned order.

9. *Per contra*, learned High Court Government Pleader for State would seriously opposes the petition contending that it is a misappropriation of the amounts of the High Court and the guilty, must be brought to books and *prima facie* there is sufficient material evidence and hence, he would seek for rejection of the revision petition.

10. Having heard the arguments and perusing the records, now the following point would arise for my consideration.

- 1) *Whether the order passed by the learned Magistrate on an application under Section 319 of Cr.P.C. is arbitrary, erroneous and illegal so as to call for any interference by this Court?*

11. There is no serious dispute of the fact that accused No.1 was working as a Section Officer in Accounts Branch-1 while accused No.2 was working as Deputy Registrar and was Drawing Officer. It is also not under the serious dispute that a DC bill for Rs.20,00,000/- was drawn by the Accounts Branch of the High Court and the bill was prepared by accused No.1 and signed by accused No.2 without their being any orders from Finance Committee of the High Court or from the Hon'ble Chief Justice. The contention is that the amount was urgently required for purchasing stamps. Admittedly, High Court is having Franking Machine and in such case, the cheque could have been issued in the name of Post Master General, GPO and the amount could have been released directly in his name for recharging the Franking Machine. But admittedly the cheque was drawn in the name of Registrar General and the present petitioner has authorized accused No.1 to withdraw the amount.

12. Admittedly in the instant case, the DC bill prepared for Rs.20,00,000/- was not placed before the

Finance Committee and sanction was also not obtained from the Hon'ble Chief Justice. Further admittedly, the said bill was signed by the present petitioner who was working as a Deputy Registrar of the Accounts Branch. Further it is evident that the proceedings about the requirement of the funds which in this case for buying postal stamps for Franking Machine in another section was required to be drawn and signed by the head of the said section which was in need of the funds. But admittedly in the instant case, the said proceedings were also signed by CW.17/petitioner herein. Further in the event of emergency, the cheque could not have been written in the name of Registrar General but it could have been in the name of Post Master General, GPO but that was also not done. Apart from that though the cheque was drawn in favour of Registrar General, present petitioner has signed it and then he authorized without there being any official memorandum to accused No.1 to withdraw the said amount. All these aspects have been specifically stated by PW.1 who is the complainant. Further all these aspects are

born out from the records and recitals of the complaint itself.

13. Admittedly, the revision petitioner has no authority to sign the proceedings for which DC bill was prepared but he did sign the proceedings without any application of mind. The proceedings are available at Ex.P.13. The manner in which the revision petitioner has dealt with DC bill without there being approval and sanction from the Finance Committee and Hon'ble Chief Justice and authorizing accused No.1 to withdraw the amount discloses that he was too negligent and his *mens rea*. The revision petitioner has given a go-by to the duties of a Drawing Officer while preparing the bill and signing the cheque. *Prima facie* there is material evidence to show that there is collusion and connivance between both the accused which has caused a loss to the tune of Rs.20,00,000/- to the High Court. Further this offence has occurred in the Accounts Branch of High Court itself and such facts cannot be taken in a casual way.

14. Much arguments have been advanced that there was no *mens rea* forthcoming on the part of the revision petitioner. But whether he had *mens rea* or not and whether he was negligent or reckless is only to be considered during the course of the trial.

15. Learned counsel for the revision petitioner has placed reliance on the decision in the case of ***Sarabjit Singh and another vs. State of Punjab and another*** reported in **(2009) 16 SCC 46** and invited the attention of the Court to the observations made in paragraph Nos.18 to 23. No doubt the powers vested under Section 319 is an extraordinary power, which is required to be exercised sparingly and for compelling reasons. But in the said case, it was an offence under Section 302 of IPC and there what is not stated in the complaint was tried to be brought on record in the evidence and hence, in that context those observations have been made. But in the instant case, the complaint itself is directed against the present petitioner also. There is sufficient material *prima facie* to show that there is no application of mind and

without authorization, the petitioner has also done certain material acts which has resulted in misappropriation. The Investigating Officer without ascertaining any of these aspects, mechanically proceeded to submit charge sheet only against accused No.1 by showing the present petitioner as CW.17. But there is no explanation as to what compelled CW.17 i.e., present revision petitioner herein to heed to the pressure of accused No.1 and what compelled him to authorize accused No.1 to draw the amount when he has no such powers. Hence, the said principles will not come to the aid of the petitioner in any way.

16. Learned counsel for the revision petitioner has further placed reliance on a decision in the case of ***Brindaban Das and others vs. State of West Bengal*** reported in **(2009) 3 SCC 329** and invited the attention of the Court to paragraphs Nos.25 to 30. Again, the said case is pertaining to the offence under Section 302 of IPC. Again, in the said case, the name of the petitioner therein was not found in FIR and it is observed that Court is

required to consider whether such evidence subsequently adduced would be sufficient to convict the person being summoned. But in the instant case, the complaint itself is against the petitioner and he was given a clean chit by the Investigating Officer without considering his duties. Hence, the said principles will not come to the aid of the petitioner in any way.

17. Learned counsel for the revision petitioner further placed reliance on a decision in the case of ***Ram Singh and others vs. Ram Niwas and another*** reported in ***(2009) 14 SCC 25*** and invited the attention of the Court to paragraph No.20 of the said decision. There was an observation in the said case regarding error committed by the High Court in proceeding against the petitioner only on the mere existence of *prima facie* case. Again, the said case was pertaining to criminal trial wherein the accused being summoned subsequently in respect of an assault. But this is a case based on documentary evidence. Admittedly, the petitioner is a Drawing Officer and he exceeded his powers in signing the

bill without there being an approval by the Finance Committee as well as the Hon'ble Chief Justice. Apart from that further without there being any authorization, he authorized the accused No.1 to receive the amount in cash. Hence, the facts and circumstances in the above reported decision being entirely different cannot be made applicable to the case in hand wherein the *prima facie* documentary evidence itself discloses the responsibilities of the revision petitioner/accused.

18. Learned counsel for the revision petitioner further placed reliance on a decision in the case of ***Dilawar Singh vs. Parvinder Singh Alias Iqbal Singh and another*** reported in **(2005) 12 SCC 709** and in the case of ***Paul Varghese vs. State of Kerala and another*** reported in **(2007) 14 SCC 783** and argued that in the absence of sanction, prosecution itself is void. However, both these citations are pertaining to the offence under the provision of the Prevention of Corruption Act, 1988 wherein sanction is mandatory under Section 19(1) of the said Act. But in the instant case, the offence of

misappropriation was committed by the Officers of the High Court who were working as a Drawing Officer and Section Officer and it is not their part of the duty and hence, the question of sanction does not arise at all. The act committed by the accused cannot be said to be part of the duty or in the course of discharge of the duty, but it is beyond the said aspects. Hence, the said principles will not come to the aid of the petitioner in anyway.

19. The other contention raised by the petitioner is that the State itself has opposed the application before the Trial Court. But however, merely because the State has opposed the application before the Trial Court it will not give an authority to the revision petitioner to claim innocence. If the evidence remains unchallenged, it will definitely lead to the conviction of the petitioner also as he was Drawing Officer and certain acts were without authorization and without sanction. He is required to explain those aspects and there is *prima facie* sufficient evidence to proceed against the accused.

20. The other contention raised by the learned counsel for the revision petitioner is that the cognizance was taken by the learned Magistrate, when the charge sheet was submitted against accused No.1 alone. But it is settled law that the cognizance is taken of an offence, but not of the accused. Further merely because Investigating Officer has committed an error, whether knowingly or unknowingly that does not help the petitioner to take a shelter and the State itself through learned APP ought to have filed an application under Section 319 of Cr.P.C but that application was moved by accused. Who has moved the application becomes irrelevant but the ultimate consideration is that a just and fair trial is required to be held. The petitioner if he is so confident, he can put forward his defence and prove his defence to show his innocence during trial. Apart from that now it is also submitted, he is retired and when he is retired, the question of sanction also does not arise at all. The learned Magistrate has rightly appreciated all these aspects in proper perspective and has rightly allowed the application.

No illegality or infirmity is found with the order of the learned Magistrate and the petitioner being holding a key post is required to have responsibility and his behaviour clearly discloses that he has not shown any diligence towards his duty. Under such circumstances, order passed by the learned Magistrate cannot be said to be erroneous or illegal so as to call for any interference by this Court. As such the point under consideration is answered in the negative and as such petition being devoid of any merits does not survive for consideration. Accordingly, I proceed to pass the following:

ORDER

The petition stands dismissed.

Send back the entire records of the Trial Court to the concerned Court immediately along with copy of this order as the proceedings have been stalled in its entirety due to summoning of the records.

**Sd/-  
JUDGE**

SSP