

**The VSSN Mathigatta Co-operative Society Vs. M.L. Shivalingappa**

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**Court :** Karnataka

**Decided On :** Nov-06-2014

**Judge :** Anand Byrareddy

**Appeal No. :** Criminal Appeal No.671 of 2012

**Appellant :** The VSSN Mathigatta Co-operative Society

**Respondent :** M.L. Shivalingappa

**Judgement :**

(Prayer: This Criminal Appeal filed under Section 378(4) of the code of Criminal Procedure, 1973, by the advocate for the appellant praying to set aside the order dated 10.4.2012 passed by the Additional Civil Judge and JMFC., Chikkanayakanahalli in C.C.No.79/2005 - acquitting the respondent/accused for the offence punishable under Section 109(9) and (10) of Karnataka Co-operative Societies Act, 1959.)

1. A.1/2012 is allowed for the reasons stated. Special leave to appeal is granted. There is a delay of 12 days in filing the appeal. The same is condoned for the reasons stated. The respondent is represented. Hence, the appeal itself is considered on merits, having regard to the limited grounds on which the appeal is filed.

2. The appeal in its form, is misconceived. In that, the case of the appellant is that he is authorised to represent one V.S.S.N. Mathigatta Co-operative Society

Limited, Tumkur. The complaint is on behalf of the Society. It is apparently by inadvertence that the complaint is brought in the personal name of one D.T. Kempaiah who is said to have been authorised to bring the complaint in his capacity as a Co-operative Development Officer of Chikkanayakanahalli on behalf of the Society.

3. Secondly, it is noticed that insofar as the complaint was concerned, it was directed against the respondent herein who was said to be the erstwhile Secretary of the said Society. After laying down office on the expiry of his term, it transpires that he has failed to hand over books, securities, cash and other information which was in his custody. It is in this background, that on the basis of an audit report which had brought to light the lapses as aforesaid, the Society had taken a decision to initiate prosecution against the respondent, for violation of Sections 109 and 110 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity). The Trial Court is said to have taken cognizance of the complaint and on summons being served, the respondent had entered appearance and had raised certain preliminary objections.

The first objection was as regards the complaint not being in a valid form and that it could not be sustained and secondly, that it was without a prior sanction as required under Section 111 of the KCS Act, and hence it was contended that the complaint was not maintainable. The Trial Court has accepted both the reasons and has acquitted the accused.

4. Insofar as the first question whether the complaint could have been rejected the accused acquitted on the footing that the complaint was not brought through an authorised person or in the proper form, is no longer *res Integra*. The Supreme Court in the case of *MMTC Ltd . v. Medchl Chemicals and Pharma Limited*, (2002) 1 SCC 234. has laid down that any such infirmity would not be the basis for rejecting a complaint. The question whether it was validly brought by an authorised person, is to be decided in due course and not at the threshold.

However, there is apparently inadvertence in the complaint having been presented as if it was the complaint of D.T. Kempaiah, when he was merely an authorised person seeking to represent the Society. The complaint was of the Society and

ought to have been brought only in the name of the Society and duly represented by an authorised person. The question whether an authorization was in order, has also been held by the Supreme Court in the case of M.M.T.C. (supra), to be of little significance and that if it could be set right, it was a curable defect. Therefore, the question whether the complaint was brought by an authorised person could not have been a ground for rejecting the complaint and acquitting the accused. Consequently, any infirmity in the manner in which the complaint ought to be brought could even now be rectified by the appellant, who merely represents the Society, which is the true complainant.

Therefore, the appellant is well-advised to amend the complaint to be brought in the name of the Society, through its authorised representative.

5. Insofar the second point as to whether there was a need for a prior sanction is concerned, the court below has proceeded to hold that such a sanction was necessary, whereas the proviso to sub-section (2) of Section 111, of the KCS Act, would clearly indicate that no such prior sanction is necessary if the criminal complaint is against a delinquent for alleged misappropriation of funds of a Society detected during the course of an audit. In the present case on hand, it is not in dispute that it is pursuant to an audit report and findings thereon that the Society has thought it fit to bring an action against the respondent. Therefore, the court below was not justified in rejecting the complaint and acquitting the accused on the aforesaid grounds.

Consequently, the judgment of the court below is set- aside and the matter is remanded with liberty to the complainant to carry out such amendments as may be necessary to the complaint, and the same shall be proceeded with, in accordance with law.

In the event the complainant does not take the appropriate measures, the court shall, without any hesitation, reject the complaint and acquit the accused.

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