**E. Arvind Rao and Etc. Etc. Vs. State of A.P. and ors.**

**E. Arvind Rao and Etc. Etc. Vs. State of A.P. and ors.**

**SooperKanoon Citation** : sooperkanoon.com/447110

**Court** : Andhra Pradesh

**Decided On :** Oct-19-2001

**Reported in** : 2001(2)ALD(Cri)844; 2001(2)ALT(Cri)553; 2002CriLJ4487

**Judge** : T. Ch. Surya Rao, J.

**Acts** : Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 - Sections 11; Co-operative Societies Act; Indian Penal Code (IPC), 1860 - Sections 120B, 405, 406, 416, 420, 463, 465 and 471; Code of Criminal Procedure (CrPC) , 1974 - Sections 482

**Appeal No.** : Criminal Petn. Nos. 1968 of 2001 and 3817 of 2003

**Appellant** : E. Arvind Rao and Etc. Etc.

**Respondent** : State of A.P. and ors.

**Advocate for Def.** : Public Prosecutor, ;S. Sharath Kumar, Adv. for Respondent No. 2 in Cr.P. No. 1968/2001

**Advocate for Pet/Ap.** : B. Mahender Reddy and ;G. Dhanamjaya, Advs.

**Disposition** : Petition dismissed

**Judgement** :
ORDER

**T. Ch. Surya Rao, J.**

1. All these petitions can be disposed of together since they emanate from the same crime.

2. The petitioners herein, who are A. 1 to A. 3 in the crime that has been registered against them along with others in Crime No. 239 of 2001 of P.S. Saifabad for the offences punishable under Sections 406, 420, 465 and 471 read with Section 120-B of the Indian Penal Code, seek to quash the First Information Report. On a private complaint given by one K. Hanumantha Reddy, one of the respondents herein, before the Court of XV Metropolitan Magistrate, Hyderabad, and the same having been forwarded by the learned Magistrate to the Police for investigation, the case in Crime No. 239 of 2001 was registered against the petitioners herein and six others. The said Hanumantha Reddy is a permanent member in the Nizam Club, Hyderabad, - a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli ('the Act' for brevity). It is alleged, inter alia, in the complaint that A. 1 to A. 3 being the office bearers of the Club and A.4 being the member of the Managing Committee during the period from 1996 to 2000 allowed A.5 to A. 9 to have obtained their membership by misrepresentation, fabrication of false documents and evidence and thereby cheated the club. It is further alleged that A. 1 to A.4 who held important positions in the club instead of administering the affairs of the club in accordance with the rules keeping the dignity of the club abused their power and conspired with A.5 to A.9 collected huge amounts from them while passing receipts only for an amount of Rs. 2,000/ - each in their favour and enrolled them as permanent members of the club although on the basis of their credentials, antecedents and eligibility, they could not be enrolled as the members of the Nizam Club by fabricating and forging the documents and by creating false evidence in their favour and thereby cheated the club and committed criminal breach of trust.

3. A.1 and A.2 who knew that certain permanent members passed away and in their places their children could be enrolled as members of the club as per the rules, allowed A. 5 to enrol herself as member as the daughter of one Mr. G. S.

Reddy by impersonation; allowed A. 6 as member of the club as the daughter of one Mr. P. Ramachander Rao by impersonation; allowed A. 7 and A. 8 as members by false and forged documents by representing A. 8 as the daughter of one Mr. P. Laxminarayana Reddy by impersonation; and allowed A. 9 to become as long term temporary member. The forged documents submitted by A.5 to A.9 to become the members of the club are in the custody of A.2 and A.3. A.1 to A.4 are the key conspirators in the conspiracy. The individual acts committed by A. 1 to A. 9 according to the complainant amount to cheating, criminal breach of trust, forgery, and using the forged documents as genuine for the purpose of ultimately cheating the club.

4. The petitioners are now assailing the said case against them as it is sheer abuse of the process of the Court. The learned counsel appearing for the petitioners contend that the allegations made against these petitioners do not make out any case against them. It is their further contention that the allegations only touch the management of the affairs of the club and, therefore, the proper remedy is to file an original petition under Section 11 of the Act.

5. The learned counsel appearing for the unofficial respondent while countering the said contentions pleads that the allegations amply make out the offence alleged against the petitioners and even if there is a civil remedy available, that cannot be a ground to quash the criminal prosecution launched against them.

6. The quintessence of the allegations made in the complaint/FIR is that when certain permanent members of the Nizam Club died, A.1 to A.4 after having conspired together allowed A. 5 to A. 9 by false representation as children of the deceased members as members of the club to which otherwise they are not eligible to become after having collected huge amounts from them by passing only receipts to the extent of Rs. 2,000/- per member, and thus misappropriated the other unaccounted amount and cheated the club. In the view of the complaint, A. 5 to A. 9 are not eligible to become the members of the Nizam Club and, therefore, A.1 to A.4 allowed A.5 to A.8 to represent themselves as the children of the deceased members and in fact they are not, and in that regard they created the records. Thus, A.5 to A.8 impersonating as the children of the deceased members

of the club, got membership of the club, which in the ordinary course they could not have got.

7. There has been no gainsaying that the Nizam Club is one of the renowned clubs in the twin cities of Hyderabad and Secunderabad. It has been established and registered in accordance with the provisions of the Act. The club has its own rules and byelaws for its governance. The allegations levelled against the petitioners and others clearly touch the management or business of the club. Under Section 11 of the Act, in the event of any dispute arising among the Managing Committee or the members of the society in respect of any management or dissolution of the society any member of the society may file an application in the District Court concerned and the said Court after necessary enquiry shall pass appropriate orders. Therefore, it is open to the unofficial respondent who set the criminal law into motion, to file an application under Section 11 of the Act before the District Court for its adjudication about the mismanagement alleged, inter alia, in the complaint. That is an effective remedy available under civil law. In fact, in A.P. Football Association v. Kurnool District Football Association : AIR 1982 AP97 it was held that any dispute between the members of the Society and members of Managing Committee is a dispute regarding management and is not outside the scope of Section 11 of the Act.

8. The offences of conspiracy, misappropriation of funds, forgery, using the forged documents as genuine, and cheating have been alleged in these cases. The learned counsel appearing for the petitioners contend that the offence of the criminal breach of trust as defined under Section 405 of the Indian Penal Code has not been attracted in these cases inasmuch as there is no entrustment of the property or dominion over the property. In support of the said contention, reliance has been sought to be placed upon the judgment of the Apex Court in Velji Raghavji v. State of Maharashtra : 1965 CriLJ431 . The Apex Court in the said case held in para 6 thus :

Upon the plain reading of Section 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law, etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion, which every owner of property has over his property. But is not dominion of this kind, which satisfies the requirements of Section 405. In order to establish 'entrustment of dominion' over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.

9. The said judgment of the Apex Court has no application to the present set of facts. The Society cannot be equated with that of a partnership firm. The members of the Nizam Club are not partners. When the Members elected a Committee for the management of the club, they legitimately repose confidence in the Committee for an effective management of the affairs of the club. The Managing Committee will have dominion over the funds of the club by virtue of their positions as Manager, Secretary or other office-bearer of the Society, and in that capacity they are expected to deal with the funds of the club. Such a dominion over the funds of the club by the Managing Committee cannot be equated with that of the partners inasmuch as in the latter case the concept of ownership can be considered unlike in the case of the former. I am afraid; I cannot concur with the contention of the learned counsel appearing for the petitioners that it is not a case of criminal breach of trust. The reason is not far to seek and is that there has been specific entrustment of the affairs of the club to the Managing Committee by all the members of the club expecting the trust to be discharged in accordance with the rules and byelaws of the club. In the process, if there is any mismanagement and misappropriation of the funds, certainly such an act on the part of the members who are at the helm of affairs of the club will constitute the breach of trust and misappropriation of funds. Here is an allegation that having collected huge amounts from A. 5 to A. 9, the Managing Committee passed the receipts only to the extent of Rs. 2,000/- per member. The rest of the amount is alleged to have not. been accounted for. Similarly, there are allegations of creation or fabrication of records so as to use them as genuine documents and impersonation inasmuch as it is alleged that A. 5 to A. 7 being not the children of the deceased members of the club representing themselves as such obtained permanent membership of the club. The creation of documents, if any, to that end would certainly attract the

essential ingredients enjoined under Section 463 of the Indian Penal Code, and impersonation attracts the ingredients enjoined under Section 416 of the said Code. It is no doubt true that these acts which are now being complained would come within the ambit of the expression mismanagement for which there is an effective remedy under Section 11 of the Act, but it will not denude of its criminal outfit for the alleged misappropriation of funds of the club.

10. In Trisuns Chemical Industry v. Rajesh Agarwal : 1999 CriLJ4325 , the Apex Court held thus :

Quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions, Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in a very extreme cases.

11. In Vitoori Pradeep Kumar v. Kaisula Dharmaiah 2001 AIR SCW 2286 : 2001 Cri LJ 4948, the Apex Court in a short judgment held thus :

The impugned proceedings is in relation to an allegation of an offence of cheating under Section 420 of the Indian Penal Code. The so-called civil suit is a suit for specific performance. We see no justification on the part of the High Court under such circumstances to direct that criminal proceedings should be quashed.

12. In Lalmuni Devi (Smt.) v. State of Bihar 2001 (1) Andh LT (Cri) 219 : 2001 AIR SCW 2504 held in para 8 thus :

There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained.

The Apex Court relied upon its former judgment in Trisuns Chemical's case (1999 Cri LJ 4325) (referred to supra).

13. The law is, therefore, now well settled. Civil profile which is discernible from the factual matrix of the case should not outweigh the criminal outfit. Merely because a given set of facts would give rise a civil profile as well as a criminal profil, the criminal case cannot be quashed at the threshold on that premise, inasmuch as each is an independent remedy, but not mutually exclusive.

14. It is the contention of the learned counsel appearing for the petitioners at this juncture that the act on the part of the petitiorters if any is an act by the society and it cannot be an individual act. In support of the said contention, reliance is sought to be placed upon the judgment of the Apex Court in Daman Singh v. State of Punjab : [1985]3SCR580 . It has been held in the said judgment as excerpted hereunder thus :

Once a person becomes a member of a co-operative society, he loses his individually qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.

That was a case where the power of the Registrar under the Co-operative Societies Act to amalgamate the societies has been questioned. In the process, when the relevant provisions have not envisaged any notices to the individual members of the society before such amalgamation, the Apex Court held that once a person becomes a member of the society, he loses his individually qua the society. Therefore, no separate individual notice need be given to the members of the society. The said judgment of the Apex Court is not germane for consideration in the context of these cases.

15. It has been contended before me on behalf of A.3 that he was not the office bearer of the club at the relevant time. A reference has been made in this regard in respect of the dates on which A. 5 to A. 9 enrolled as permanent members of the club. In the wake of the allegations of conspiracy, such contention loses its significance. At any rate, it is a question to be considered with reference to the evidence adduced on the point. The process of sifting evidence so as to adjudicate the liability or otherwise of a person against whom an allegation has been . made cannot be undertaken in an application seeking to quash the proceedings on the premise of an abuse of the process of the Court. The law on the point is well settled. In the present case, a reference can profitably be made to the judgment of the Apex Court in Medchl Chemicals and Pharma (P) Ltd. Biological E. Ltd. : 2000 CriLJ1487 . The Apex Court in the said judgment held as follows :

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis for the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegation would not be gone into by the court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial. So the question is : Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused?

In fact the Apex Court has placed reliance upon its earlier judgment in Trisuns Chemical's case (1999 Cri LJ 4325).

16. It is thus obvious that at the stage of exercising the jurisdiction under Section 482 of the Code of Criminal Procedure, to see whether it is an abuse of the process of the Court or not, the Court cannot engage itself in sifting evidence or to examine the facts critically so as to know the truth or otherwise of the allegations made in the complaint. What is expected at that stage is to see whether the allegations made in the FIR or complaint or the charge sheet, as the case may be, remain uncontroverted, would make out a prima facie case or not and it is neither permissible to add something to the averments made in the complaint nor to subtract anything there from. In the process, the Court should have a holistic view of the averments in the complaint.

17. Turning to the factual matrix, the allegations made in the F.I.R., would prima facie attract the offences of misappropriation of funds, breach of trust, forgery, using the forged documents as genuine and cheating by impersonation. Merely because an application can be filed under Section 11 of the Act alleging mismanagement of the affairs of the club, which in fact is also an effective and efficacious remedy available on the civil side, that right will not exclude the criminal outfit. If the allegations are proved or found to be true eventually, they attract the criminal consequences notwithstanding the existence of the civil liability. Those who are responsible for such acts have also to face the criminal ramifications. So the existence of civil as well as criminal profiles in a given set of facts cannot permit the mutual exclusion of one or the other. It must be a case where what was a clear civil profile has been purposefully converted into a criminal outfit. Equally, it must be a case where allowing the criminal prosecution is nothing but a sheer

abuse of the process of the Court. In the wake of this settled legal position, the request of the petitioners for quashing the proceedings at the threshold, having regard to the factual matrix in this case, cannot be countenanced.

18. For the foregoing reasons, these Criminal Petitions shall fail and they are dismissed accordingly.