

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.8183 of 2015

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% Dated 22.09.2015

Kollapudi Gangadhar S/o.Penchalaiah

....Petitioner

VERSUS

\$ The State of Andhra Pradesh, Rep. by its Public Prosecutor,

High Court of Judicature at Hyderabad

For the State of Telangana and the State of Andhra Pradesh

Through Indukurpeta Police Station

SPSR Nellore District

and another.

... Respondents

! Counsel for Petitioner: Sri M. Subba Reddy

^ Counsel for Respondent No.1: Public Prosecutor (A.P.)

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> HEAD NOTE:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CRIMINAL PETITION No.8183 of 2015

-
Between :

Kollapudi Gangadhar S/o.Penchalaiah

... Petitioner

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor,

High Court of Judicature at Hyderabad

For the State of Telangana and the State of Andhra Pradesh

Through Indukurpeta Police Station

SPSR Nellore District

and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 22.09.2015

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8183 of 2015

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ORDER :

This criminal petition is filed by the petitioner/A.1 under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.107 of 2015 on the file of the IV Additional Judicial First Class Magistrate, Nellore, for the offences punishable under Section 420 IPC and Sections 3 and 7 of the Coastal Aquaculture Authority Act, 2005 (for short, 'the Act').

2. Heard the learned counsel for the petitioner/A.1 and the 1st respondent-State represented by the Public Prosecutor, before admission and before ordering any notice to the 2nd respondent.

3. Perused the material on record including the order of this Court (another Bench) in dismissing the anticipatory bail application of the petitioner dated 16.02.2015 in CrI.P.No.261 of 2015, wherein he was given liberty to surrender before the learned Magistrate and move for regular bail.

4. The above crime is registered on the report of the 2nd respondent-*de facto* complainant-Assistant Director of Fisheries, Nellore, being the competent authority, under Section 15 of the Act. After filing of final report by the police, the learned Magistrate has taken cognizance for the offences referred supra. .

5. A perusal of the record shows prima facie there is no application of the offence under Section 420 IPC, it is otherwise even premature, more particularly for the reason that Section 15 of the Act says no court shall take cognizance unless there is a written complaint filed by the competent Authority. Even the 2nd respondent herein is the competent authority and the procedure to be adopted to take cognizance of the offence under Section 14 of the Act for violation of Section 13(1) of the Act is by filing a complaint before the learned Magistrate under Section 200 Cr.P.C. to adopt the procedures contemplated under Sections 200 to 204 Cr.P.C. for taking

cognizance, if any, under Section 190 Cr.P.C., there from and not for giving of police report, registering of crime and taking of cognizance by Magistrate there under from police final report. Needless to say, any IPC offences shall be in addition to the provisions of the special statute covered only by private complaint. Usually, in dealing with an offence under Section 420 IPC and Section 138 of N.I.Act, both penal provisions are sustainable, if the same arise out of private complaint, but not by police report for the bar under Section 138 of N.I.Act, for the police to report and take cognizance by the Magistrate.

6. Having regard to the above, the cognizance taken by the Magistrate and the procedure followed by him are quashed. However, it is made clear that the competent authority concerned under Section 15 of the Act can maintain a private complaint before the learned Magistrate concerned to proceed against the accused persons concerned, who ever they may be, for the penal consequences under the Act along with IPC by virtue of this order.

7. Accordingly, this criminal petition is allowed.

8. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

22nd September 2015.

L.R. copy to be marked – Yes.

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