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

**CRIMINAL PETITION No.9791 of 2014**

**ORDER :**

This Criminal Petition is filed by Petitioner/Accused under Section 482 Cr.P.C seeking to quash the private complaint proceedings in C.C. No.1 of 2014 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad which was filed by the 1st respondent for the offences punishable under Sections 409, 420 and 468 I.P.C.

2) The allegations as per the complaint averments in brief are that the petitioner while working as Joint Director, Defence Estates, Shillong attended the case filed by him in C.C. No.1204 of 2004 pending with the X Additional Chief Metropolitan Magistrate, Secunderabad filed against the 1st respondent and while attending the Court, he has drawn travel allowance and daily allowances without any authority of law and thereby he committed misconduct and dishonestly misappropriated the property entrusted to him.

3) Learned counsel for the petitioner contended that the present issue was complained to the Controller General of Defence Accounts, Government of India through letter dated 11.04.2011 and the same was lodged, that if there is any misconduct or dishonest misappropriation by the petitioner, it is for the Department to take disciplinary action against him. He further contended that the trial Court has no jurisdiction to take any action against the petitioner as the cause of action took place within the territorial jurisdiction of Gauhati, Assam and merely because pendency of C.C. No.1204 of 2004 in which the petitioner is the

complainant, it is purely abuse of process in entertaining the present case, that the present complaint is filed only to harass the petitioner since the petitioner filed C.C. No.1204 of 2004 against the 1st respondent.

4) Whereas the complainant/1st respondent of the private complaint case who is no other than accused in C.C. No.1204 of 2004 in which case the present quash petitioner as witness attended and deposed against him and filed evidence in the Court to attend during trial drawn the traveling allowance and daily allowance contrary to Rules in filing the private complaint for the offences punishable under Section 409, 420 and 468 I.P.C, now contends in opposing the quash petition that the grounds taken in the quash petition regarding locus standi of the complainant and want of sanction under Section 197 Cr.P.C for the Court to take cognizance and question of jurisdiction in the X Additional Chief Metropolitan Magistrate, Secunderabad saying the traveling allowance and daily allowance drawn at Guwahati where from he traveled to attend the Court in C.C. No.1204 of 2004 at Secunderabad are already raised by the Court before taking cognizance on the private complaint while returning the complaint petition and the same was represented by him saying it is a continuing offence, and under Section 179 Cr.P.C either the Court where act committed or consequences of the act follow any one got jurisdiction to try, that the accused quash petitioner while working as Joint Director in the State of Assam, traveled to Secunderabad to attend the Court in C.C. No.1204 of 2004 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad against the defacto-complainant as accused for the offences punishable under Sections 500 and 506 I.P.C and in that

connection when raised bills for T.A and D.A without entitlement, it is nothing but breach of trust, cheating and forgery for the purpose of cheating as it is to attend the Court at Secunderabad even drawn at Guwahati, the Secunderabad Court got jurisdiction since he violated the Rule 19(c) of the CCS (C) Rules, 1964 in drawing the amounts and regarding the sanction under Section 197 Cr.P.C. It is no way require saying that if he is a public servant and accepts a bribe there no sanction is required likewise for drawing the amount which he is not entitled so also there from for the breach of trust committed and so far as locus standi of the complainant concerned any one can set or put the criminal law in motion as held by the Apex Court in ***Subramanian Swamy V. Manmohan Singh*** in Civil Appeal No.1193 of 2012 for no any statutory bar to it and the complainant being a private person even as citizen he can maintain the complaint against the accused quash petitioner and crept public servant and the prosecution is not as contended for vindication of private grievance to quash but for the interest of society and the Apex Court in ***A.R.Antulay V. R.S.Nayak*** held that penal status are enacted for larger good of the society and right to initiate proceedings cannot be whittled down or circumscribed or fettered by putting into a straight jacket formulae of locus standi thereby sought for dismissal of the quash petition. He submitted written arguments in this regard, so also in regard to the ingredients of offences mentioned in the complaint taken cognizance by the learned Magistrate.

5) Heard the learned counsel for the petitioner and the respondents and perused the material on record.

6) In the present case, the 1st respondent filed a private complaint against the petitioner, at the cost of repetition, for the

offences stated supra alleging that he drawn traveling allowance from Shillong where he was working for attending and daily allowances while he was attending the court adjournments in C.C. No.1204 of 2004 at Secunderabad, Andhra Pradesh (the then) without entitlement. The 1st respondent stated in the cause title as a social activist. Being a social activist at best he can complain the misappropriation or any misconduct, if any by the petitioner, to the superior authorities of the petitioner to take necessary disciplinary action. It is not in dispute the complaint made to the superiors and they did not take any cognizance worth against him for action by initiating any departmental enquiry for the traveling allowance and the daily allowance drawn by him.

7) If any grievance being a social activist or any social worker, he can at best report the same to the Police for registering a crime and not a case, if it is a crime against the Society and for public good but maintained the private complaint under the guise that it is in the public good. Even taken from what he referred of the expression of ***A.R.Anthulay*** (supra) on locus standi, it is not in dispute that earlier the quash petitioner/accused herein as witness deposed against the defacto-complainant herein in the criminal case C.C. No.1204 of 2004. It is clear there from of there is some animosity between them as it is not a case in relation to defamation and criminal intimidation. It is clear from the guidelines laid down by the Apex Court in **State of Haryana v. Bhajan Lal**[1] that where the prosecution maintained is out of vengeance with any spite or ill-will and not a bonafide prosecution to vindicate any real grievance by the victim or in the public interest. It is also one of the considerations to quash the criminal proceedings which cannot be allowed to set the scores under that

guise. Leave as it is his attending to the Court permitted by the superiors by paying T.A and D.A is as an official purpose. Unless considered as an official purpose, he cannot be paid T.A and D.A by the superior or drawing officer as the case may be. Once such is the case and even a complaint to the superiors remained with no action with no illegality on his part, it is hardly sustainable of criminal prosecution of him for said drawal of T.A and D.A that too by the complainant herein who was accused in the case, where the quash petitioner accused attended as a witness from Shillong to Secunderabad and deposed and in that connection drawn the T.A and D.A. This Court need not go into by conducting a probe as to such sanction of T.A and D.A and considering his attending the Court as official purpose, if any, is correct or not but for at best to consider whether such drawal is with any *mensrea* and guilty intention to have wrongful gain, dishonestly and fraudulently or the like with deception to attract any of the ingredients of the offences for which the learned Magistrate taken cognizance under Sections 409 and 420 or 468 I.P.C. Once such is the case even his drawing the amount for the official purpose and traveling so as part of official duty for prosecution of him, sanction under Section 197 Cr.P.C required which is undisputedly lacking and it cannot be equate, from the written arguments of the complainant of taking a bribe no way require sanction even it is while discharging official duty as drawing T.A and D.A for official duty permitted and attended. As such, leave about the correctness which this Court need not go by sitting against of such officially permitting to travel and to draw. Apart from it, the official purpose permission and drawing of T.A and D.A are from Shillong where he was working within the State of Assam and merely because he traveled with that to Secunderabad to depose, nothing can be attracted any part

of cause of action arising at Secunderabad to maintain at Secunderabad. All these objections even taken on the private complaint while return and any representation made to the trial Court by the complainant/1st respondent that is not be all and end all that too in the absence of accused herein and without hearing and at that stage that does not arise and that no way takes away his right, he is entitled to raise the same and the Court is necessitated to consider said contentions and there is a force in the contentions referred supra. The contention of the criminal proceeding for all the reasons discussed above is nothing but abuse of process and is liable to be quashed.

8) In the result, the Criminal Petition is allowed and all the proceedings in C.C. No.1 of 2014 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad are quashed. The bail bonds of the petitioner/accused, if any, shall stand closed. Consequently, miscellaneous petitions, if any pending, shall stand closed.

_____

Dr. B. SIVA SANKARA RAO, J

31.08.2015
ksh

---

[1] AIR 1992 SC 604