HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.669 OF 2015

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CRIMINAL REVISION CASE No.2478 OF 2014

COMMON ORDER:

Criminal Petition No.669 of 2015 is filed under Section 482 Cr.P.C., by the Accused No.6 aggrieved by an order dated 01.12.2014 passed in S.R. No.2225 of 2013 in C.C. No.1100 of 2011 on the file of the X Additional Chief Metropolitan Magistrate at Secunderabad, wherein cognizance was taken against him under Section 120-B IPC and under Section 83 of the Registration Act, 1908.

Criminal Revision Case No.2478 of 2014 is filed under Sections 397 and 401 Cr.P.C., by the informant aggrieved by the order dated 01.12.2014 in S.R. No.2225 of 2013 in C.C. No.1100 of 2011 in not taking cognizance of the case against A-6 for the offences punishable under Sections 420, 467, 471 read with 120-B IPC and Section 81 of the Registration Act.

The facts in issue are as under :

Originally, the informant herein filed a private complaint under Section 200 Cr.P.C., which was referred to police under Section 156(3) Cr.P.C., and the same came to be registered as Crime No.120 of 2011 of Tukaram Gate Police Station. The police after investigation filed the charge sheet, which was taken on file against A-1 to A-5 for the offences punishable under Sections 418, 420, 406 and 120-B IPC Section 82 of the Registration Act, 1908. The same came to be numbered as C.C. No.1100 of 2011 on the file of X Additional Chief Metropolitan Magistrate at Secunderabad. The allegations in the complaint are that A-1 to A-4 claiming themselves to be absolute owners and possessors of a houses bearing No.3-7-227 and 3-7-228 situated in survey Nos.39 and 40 at Kakaguda, Secunderabad Cantonment, entered into an agreement of sale with the informant fixing the sale consideration at Rs.24 lakhs. It is alleged that the accused persons received the sale consideration and executed a registered agreement of sale-cum-G.P.A. with physical possession of the scheduled vacant property to the informant. Subsequently, the informant came to know that A-1 to A-4 have already executed a special power of attorney in favour of the five accused on 02.12.2010 and also executed a rectification deed in favour of A-5 on 09.06.2011. The allegations against the five accused are that they have suppressed the real facts and deliberately cheated the informant with a dishonest intention to cause wrongful loss. Pursuant to a complaint forwarded under Section 156(3) Cr.P.C., a case in Crime No.120 of 2011 came to be registered for the offences punishable under Sections 418, 420, 406 and 120-B IPC and Section 82 of the Registration act, 1908. During the course of investigation, the investigating agency informed the informant that the proposed accused (A-6) who was shown as L.W.7 was working as a Sub Registrar in the Registrar office, Hyderabad and they came to conclusion that the allegations are well founded against only five accused i.e., A-1 to A-5. Accordingly, a final report came to be filed against five accused only for the offences punishable under Sections 418, 420, 406 and 120-B IPC and Section 82 of the Registration Act, alleging that A-5 colluded with A-1 to A-4 and alienated the property by way of executing registered sale deed in the name of the informant to gain wrongfully and to cause wrongful loss to the informant.

The learned Magistrate perused the contents of final report, the material filed along with the charge-sheet and took cognizance of the same for the offences mentioned in the charge-sheet. At that stage, the informant filed a petition vide S.R. No.6553 of 2011 corresponding to Crl.M.P. No.2342 of 2012 under Section 173(8) Cr.P.C. requesting further investigation of the case against A-6 Sri Dinesh Dattar, who is the Sub Registrar. Notice was issued to Dinesh Dattar, the proposed accused, who was working as Sub Registrar. On receipt of the said notice, he filed a counter denying the allegations made therein and after referring to judgments of this Court and also that of Apex Court, contended that the provisions of Registration Act are not applicable to the case and that his action was a bonafide one with no malafide intention. After considering the rival submissions, the Court allowed the Crl.Petition S.R. No.6553 of 2011 and directed the Station House Officer, Tukaram Gate to continue further investigation and submit additional charge-sheet i.e., final report as contemplated under Section 176(3) Cr.P.C. It is to be noted that the said order and the procedure adopted by the learned Magistrate was never challenged. Pursuant to the directions given by the Court, the Investigating Officer conducted further investigation by recording the statement of the informant, that of one Sulaiman, who was working as District Registrar, Hyderabad and the statement of M.Manol Mathur, working as Senior Assistant in Sub-Registrar office. After perusing the documents, the police submitted a final report stating that there is no material to prove criminal conspiracy in the above sale transaction and that the allegations leveled against Dinesh Dattar were not proved. Thereafter, the Court issued notice to the informant. Pursuant to which, the petitioner and his counsel appeared before the Court and argued on the additional final report submitted by the investigating agency. When the Court directed the informant to enter into witness box and for recording the sworn statement, the informant stated that he need not enter the witness box and that the Court can peruse the material placed by the investigating agency to come to a conclusion as to whether any offence is made out or not. Accordingly, the Additional Chief Metropolitan Magistrate after perusing the contents of the first, second final report, the statements of the witnesses held that the allegations leveled against the respondent Dinesh Dattar asre prima facie well found under Section 120-B IPC and Section 83 of the Registration Act. Challenging the said order these two cases are filed before this Court.

The main argument advanced by the learned counsel for the petitioner in Crl.P. No.669 of 2015 is that the procedure adopted by the learned Magistrate in taking the complaint on file without recording the sworn statement is improper and incorrect. He submits that the procedure adopted by learned Magistrate in taking the case on file without recording the sworn statement of the informant but on perusing the contents of final report is totally illegal and perverse. He further submits that filing of protest petition itself is not contemplated under the Code and as such taking cognizance consequent thereto is per se illegal. He also submits that in the absence of any sanction under Section 197 Cr.P.C. the Court cannot take cognizance of the matter. He also relied upon the judgments of the Apex Court in **N.K.Ogle v. Sanwaldas @ Sanwalmal Ahuja** in support of his plea.

Per contra, the learned counsel for the respondent/informant opposed the application contending that the order under challenge does not suffer from any illegality and same cannot be said to be illegal or incorrect. Relying upon the judgment of the Apex Court in **M/s. India Carat Pvt. Ltd., v. State of Karnataka and another,** he submits that the procedure adopted by the Magistrate in taking cognizance is legal and valid. He further submits that the learned Magistrate erred in taking cognizance against the Sub-Registrar/A-6 only for the offence punishable under Section 120-B IPC and Section 83 of the Registration Act and that he ought to have taken cognizance for other offences punishable under the Penal Code and also under the Registration Act.

Before dealing with the same, it may be necessary to summarize the facts of the entire case.

As stated earlier a final report came to be filed by the police against A-1 to A-5 for various offences under the Indian Penal Code. On coming to know about the same, the informant filed Crl.Petition S.R. No.6553 of 2011 under Section 173(8) Cr.P.C. seeking further investigation against the Sub-Registrar. The said application was allowed. The police investigated into the matter and filed second final report stating that no case is made out against the Sub-Registrar. The said order of filing the second final report and the procedure adopted by the learned Magistrate in ordering further investigation pursuant to an application made by the informant was never challenged by the informant or by the accused. After filing of the second final report, the Court issued notice to the informant. He appeared through his counsel and submitted his arguments based on the material filed along with the second final report. It is to be noted that no protest petition was filed and as the informant refused to enter into the box for recording his sworn statement, the material collected by the Investigating agency during the course of investigation of second final report was looked into while taking cognizance of the case against the Sub Registrar. From the above, it is clear that neither a protest petition was filed by the informant nor was his sworn statement recorded while taking cognizance of the matter. Therefore, the argument of the learned counsel for the petitioner that in the absence of any provision for filing the protest petition the Magistrate erred in proceeding further without recording the sworn statement appears to be incorrect.

The question now would be; “Whether a Magistrate has got power to take cognizance basing on the material placed before him by the investigating agency while referring the case as false?”

In **Moraboina Venkatesu v. State of A.P.** the Apex Court held as follows :

“At this stage it would be useful to refer to another judgment of the Apex Court delivered by a Bench of three Judges in M/s. India Carat Private Limited v. State of Karnataka and another , wherein the Court after referring to the provisions of the Code and the judgment of the Apex Court in Abhinandan Jha v. Dinesh Mishra and H.S.Bains v. State , held as under : The position is now well settled that upon receipt of police report under Section 173(2) CrPC, a Magistrate is entitled to take cognizance of the offence under Section 190 1(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statement of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of the process to the accused. Section 190 1(b) CrPC does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out against the accused. The Magistrate can ignore the conclusions arrived at by the Investigating Officer and independently apply his mind to the facts emerged in the investigation and take cognizance of the case, if he thinks fit, in exercise of powers under Section 190 1(b) of the Code.

The Apex Court in Uma Shankar Singh v. State of Bihar and another , while dealing with the powers of the Magistrate under Section 190(1)(b) of the Code held as follows; The Magistrate is not bound to accept the final report filed by the Investigating agencies under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities without holding any separate enquiry on the basis of the police report itself. The learned Judges proceeded to state that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC.

On 18.07.2013 a Constitutional bench of the Apex court in Dharam Pal v. State of Haryana considered the conflict of opinion expressed in the Kishori Singh, Rajinder Prasad, Swil Limited, Kishun Singh and Ranjith Singh. One of the arguments advanced in the said case was that on receipt of a police report, in a case triable by a Court of Sessions, the learned Magistrate has no other function but to commit the case for trial to the court of Session, who could only resort to Section 319 of the Code to array any other person as an accused. Answering the said argument, the Apex Court held as under : The view expressed in Kishun Singhs case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(3) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(3) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross -examined on behalf of the accused."

In **Motilal Songara v. Prem Prakash @ Pappu** the Apex Court held as under :

"In view of the aforesaid enunciation of law, we are of the considered view that the order taking cognizance cannot be found fault with. We may hasten to clarify that the learned Additional Chief Judicial Magistrate has taken cognizance on the basis of facts brought to his notice by the informant and, therefore, he has, in fact, exercised the power under Section 190(1)(b) of the Code."

From the judgments of the Apex Court above, it is clear that the learned Magistrate can ignore the conclusions arrived at by the investigating agency and independently apply his mind to the facts emerging in the investigation and take cognizance of the case in exercise of the power under Section 190(1)(b) Cr.P.C. Therefore, it is clear that if the Magistrate is satisfied from the material placed before him that a prima facie case has been made out against a person, who is not charge-sheeted, is authorized to take cognizance of the same against him and deal with in accordance with law.

The next question that arises for consideration is ; "Whether sanction under Section 197 Cr.P.C. is necessary before initiating prosecution against the accused i.e., the petitioner herein?"

A Constitutional Bench of the Apex Court in **Matajog Dobey Nand Ram Agarwala v. H.C.Bhari** dealing with facts of the said case observed as follows:

"Before coming to a conclusion whether the provisions of Section 197 will apply, the Court must come to a conclusion that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the Course of the performance of his duty."

1. Dealing with offences under Sections 420 and 406 and 161 IPC, the Apex Court in **Om Kumar Dhankar v. State of Haryana,** held that an offence of cheating can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of his official duty. Hence, it is held that the sanction for prosecution is not required.

2. I n **Om Prakash v. State of Jharkand** the Apex Court held that protection under Section 197 is available when the accused does something while acting or purporting to act in discharge of his official duty.

3. In **General Officer Commanding v. C.B.I.** the Court held that Sanction under Section 197 does not extend its protection cover to every act or omission done by public servant in service, but restricts its scope of operation to only those acts or omissions, which are done by a public servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty, then

it must be held to be official to which applicability of Section 197 Cr.P.C. cannot be disputed. The Court further held that all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective of umbrella of requirement of sanction. The issue of sanction becomes a question of paramount importance when a public servant is alleged to have acted beyond his authority or his acts complained of are in dereliction of the duty.

From the judgments of the Apex Court referred to above, it is clear that the protection under Section 197 would be available to an accused if the acts done by him were in discharge of his duties. Every act done by him purported to be in discharge of official duty, cannot have protection under Section 197 Cr.P.C. To deal with the said aspect it may be necessary to refer to the allegations made against the accused.

The averments in the final report and the material placed before the court coupled with the contents of the order passed by the learned Magistrate would show that the Sub-Registrar registered the special power of attorney executed by A-1 to A-4 in favour of A-5 on 02.10.2010. He was the same Sub-Registrar who registered the rectification deed on 09.06.2011 in favour of A-5 and the sale deed bearing Doc.No.1354/2011 which was presented on 04.06.2011. It is the case of the informant that the Sub-Registrar Colluded with the accused by registering a time barred document viz., after expiry of statutory period of 120 days without obtaining condonation of delay. It appears that the procedure adopted by the Sub-Registrar is against Section 23 of the Registration Act, which is mandatory in nature. Apart from that the record reveals that without condoning the delay, he got registered the document and sent it to the District Registrar for condonation of delay. The order of condoning the delay was passed after registration of the document which according to the petitioner is totally contrary to the procedure adopted by law. According to him, the Sub-Registrar ought to have forwarded the petition to the District Registrar well in advance of the registration and they ought to have collected the penalty prior to registering the document. It is thus contended that these acts strengthen the allegation of collusion between A-1 to A-5 and the Sub-Registrar in suppressing the facts in registering the documents infavour of the informant.

From the above, it can be said that the acts of the accused in conspiring with the accused 1 to 5 cannot be said to be an act done by him in discharge of his duties or purporting to have done in discharge of his duties. At this stage of this case, the Court has only to see whether any prima facie case is made out against the accused. It cannot weigh the material available on record and probe deep into the defence taken by the accused. Suffice it is, if a prima facie case is made out against the accused. Since the act complained of *prima facie* appear to have been done by the accused, the order taking cognizance needs no interference. Hence, this Court is of the view there are no merits in the Criminal Petition and the same is dismissed.

Insofar as Criminal Revision is concerned, the issue that arises for consideration is; "Whether the court was right in taking cognizance only for the offences punishable under Section 120-B IPC and Section 83 of the Registration Act against the petitioner and not under Sections 420, 467, 471 read with 120-B IPC and Section 81 of the Registration Act, 1908?"

As seen from the record, the court took cognizance of the case only for the offences punishable under Section 120-B IPC and Section 83 of the Registration Act. Whereas the charge-sheet was filed against A-1 to A-5 for the offences punishable under Sections 418, 420, 406 and 120-B IPC and Section 82 of the Registration Act. It may not be proper for this Court at this stage to say as to whether the other offences alleged against the petitioner are made out or not since the same may influence the Magistrate at the time of framing charges, if any opinion is expressed with regard to non taking of cognizance for the offences mentioned. Since cognizance is taken for the offences under Section 120-B IPC and Section 83 of the Registration Act, the learned counsel for the informant can always bring it to the notice of the Court at the time of framing of the charge, the material available for framing charges under other Sections of law also. Giving liberty to raise objection at the time of framing of charges and without expressing any opinion as to the applicability or non-applicability of the offences punishable under Sections 418, 420, 406 read with 120-B IPC and Section 81 of the Registration Act, the Criminal Petition is dismissed of and the Criminal Revision is disposed of.

Accordingly, the Criminal Petition is dismissed whereas the Criminal Revision is disposed of.

As a sequel to it, miscellaneous petitions, pending if any in these criminal revisions, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:22.04.2015

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