

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.368 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in C.C.No.1265 of 2013 on the file of VIII Metropolitan Magistrate, Cyberabad at Rajendranagar, Hyderabad.

2) The *defacto* complainant is a retired Government Head Master whereas the accused is in-charge Mandal Education Officer, Moinabad Mandal. The complaint of the complainant is that on the eve of his impending retirement on 30.06.2009, the accused handed over the service register to the complainant on 07.04.2009 and on verification the complainant could know that accused deliberately made wrong entries with respect to earned leave and other leaves with an intention to cause him monetary loss and also to harass mentally. On 08.04.2009 he brought to the notice of accused about the discrepancies and wrong entries in respect of his leave account in his service register, but the accused became outrageous and shouted on him and also abused him. Thereafter, on 09.04.2009 the complainant approached the District Educational Officer, Ranga Reddy District with an application and also forwarded the copies of complaint to Regional Joint Director, School Education, Hyderabad; Collector, Ranga Reddy District; Director of School Education, A.P. and Principal Secretary of School Education for necessary action, but there was no use because of influence of accused. Hence, he filed a private complaint before the VIII Metropolitan Magistrate, Rajendranagar against the accused for the offences under Sections 477A, 406 and 506 IPC and the same was forwarded to the police, Moinabad PS under Section 156(3) Cr.P.C. After investigation the police filed a final report stating that on verification it was found that certain wrong entries were made by mistake by the accused and there was no bad intention. The Investigating Officer thus prayed the Court to treat the case as '*mistake of fact*' and issue proceedings accordingly. Thereafter, the complainant filed a protest petition in CrI.M.P.No.839 of 2012 before the VIII Metropolitan Magistrate, Cyberabad at Rajendranagar, Hyderabad. After recording his evidence the learned Magistrate allowed the petition on 16.09.2013 and took cognizance of the case against the accused for the offences under Sections 477A, 406 and 506 IPC and issued NBW against

him.

3 a) Refuting the allegations, learned counsel for petitioner mainly argued that entire complaint allegations even if accepted to be true, would at best disclose that there were some shortcomings in maintaining leave account of the complainant and allegations do not disclose any *mens rea* on the part of the petitioner/accused to warrant criminal prosecution and therefore, the continuation of criminal proceedings would amount to abuse of process of law.

b) Secondly, he argued that the trial Court committed a grave error in taking cognizance of the case without insisting the complainant to produce the sanction as required under Section 197 Cr.P.C. from the concerned authority since the accused was a public servant and the alleged offence was committed during discharging public duties. Hence, the criminal proceedings are vitiated by procedural irregularity. He thus sought for quashment of proceedings.

4) Per contra, while opposing the petition, learned Additional Public Prosecutor and learned counsel for 1st respondent/complainant vehemently opposed the petition and argued that the lapse on the part of accused was a deliberate one but not a mistake and further, in spite of the request made by the complainant, the accused refused to consider his prayer for rectifying the entries which shows his criminal mind and hence he is liable for prosecution. They argued as if the accused retired from service and hence no sanction is required as contended.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** On a perusal of the complaint, chief affidavit of the petitioner and order of the trial Court, this Court is of the considered view that the points of objection raised by the petitioner/accused are worth perusal while framing charges by the trial Court. Hence, the petitioner is given liberty to approach the trial Court and file discharge application and put-forth all the defences available to him under law, in which case the trial Court shall pass an appropriate order on merits expeditiously.

7) Accordingly, this Criminal Petition is dispose of.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 01.04.2015

Note: L.R. Copy to be marked Yes /No

Murthy