

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF
ANDHRA PRADESH**

CRIMINAL PETITION No.794 of 2015

Between:

Vikas Kulkarni

... Petitioner

and

The State of Telangana rep. by its Public Prosecutor and
another

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 31-07-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | 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.794 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner/Accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.2224 of 2014 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Miyapur, Cyberabad which is the outcome of Crime No.1316 of 2013 registered for the offences punishable under Section 497 and 420 I.P.C

2) Heard the learned counsel for the petitioner/accused and also the 1st respondent-State represented by the Public Prosecutor before admission, before notice to the 2nd respondent/defacto-complainant and perused the material on record.

3) The quash petition in CrI.P.No.649 of 2014 is pending before this Court impugning the registration of the F.I.R against the accused for the offences punishable under Section 497 and 420 I.P.C. This Court as can be seen from the record, interim stay of investigation granted in the above crime in so far as the offence punishable under Section 420 I.P.C only. So far as the investigation for the offence under Section 497 of I.P.C is left open. There was no any order of not to arrest even. On perusal of the order, it is very clear that pending criminal petition, further investigation shall not be precluded.

4) The police are at best entitled to investigate the case but for so far as the offence under Section 420 I.P.C concerned but for

other offence mentioned in the F.I.R, apart from any other offence that direct if noticed during the investigation. The charge sheet filed is under Section 420 I.P.C. on 26.12.2014 vide inward No.7223/2014 and the learned Magistrate, it appears, taken cognizance for the offence under Section 420 and 497 I.P.C both and order to issue summons to the accused by posting the matter to 28.01.2015. It is the said cognizance, now impugned in the present petition. Though the Court can differ with the police final report, non-taking or taking cognizance for any additional offence or those offence not charged by police even in the final report under Section 173 Cr.P.C, by virtue of the power under Section 190 Cr.P.C. The filing of the charge sheet or taking of cognizance so far as the offence under Section 420 I.P.C per se not sustainable as there was an order of interim stay of investigation for the offence under Section 420 I.P.C.

5) Having regard to the above, in the order of taking cognizance of the offence under Section 497 of I.P.C by the learned Magistrate survives. The cognizance was taken long back and the matter is undisputedly at the stage of hearing for charges under Section 240 Cr.P.C. Therefore, the petitioner is given liberty to file an application under Section 239 Cr.P.C if there are no grounds to frame charge for the offence under Section 497 I.P.C. for the learned Magistrate to hear and pass an independent order on own merits either to charge or no charge only from the prosecution material vide ***State of Orissa V. Debendranath***

Padhi^[1]. Since the Criminal Petition No.649 of 2014 is withdrawn and the same was dismissed as withdrawn, in the event of framing of charges for the offence punishable under Section 497 I.P.C, if any further grievance is left open to the petitioner.

Further, the police are not precluded to make further investigation and file any supplemental charge sheet under Section 173(8) Cr.P.C for any offence made out under Section 420 I.P.C from which any further right of accused is left open.

6) With the above observations, the criminal petition is disposed of. As a sequel, miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.07.2015
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[\[1\]](#) (2005)1 SCC 568