

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.15398 of 2015

ORDER:

This writ petition filed under Article 226 of the Constitution of India prays for quashment of C.C.No.124 of 2015 on the file of the I Metropolitan Magistrate, Vijayawada.

2. Heard Sri N.Vijay, learned counsel for the petitioner, learned Government Pleader appearing for Respondents 1 and 3 and Sri P.Kamalakar, learned counsel for Respondent No.2, apart from perusing the material available on record.

3. The 2nd respondent lodged a complaint with the Station House Officer, Penamaluru Police Station, Krishna District on 18.4.2014 and the police registered FIR No.187/2014 for the alleged offences under Sections 406, 420, 468, 120-B r/w section 34 IPC and the Investigation Officer filed final report dated 10.1.2015, referring the case as 'civil nature'. Thereafter the 2nd respondent filed a complaint under Section 200 of Cr.P.C., on the file of the Court of the I Metropolitan Magistrate, Vijayawada, praying the court to differ from the final report filed by the Police, Penamaluru in Crime No.187/2014 and to take cognizance of the case under Sections 120-B, 406, 420, 467, 468, 471 r/w 34 IPC and to examine the complainant and witnesses and to issue process to the accused and to punish the accused according to law.

4. The learned Magistrate on 22.4.2015 passed the following order:

“Complainant present.

Heard the counsel for the complainant. Perused the documents and sale deed's submitted in CF.No.1638/15. On consideration of documents submitted by the complainant and as per sworn statements of LW1, 2, 3, there is a prima facie case made out against Accused 1 to 23 for the offence punishable U/Sec.120-B, 406, 420, 467, 468, 471 r/w 149 IPC. Issue summons to Accused

No.1 to 23 posted to 14.5.2015 and numbered as C.C.No...../2015. Issue notice to A1 to 23 through R.P. and through SHO, Penamaluru as on put of process posted to 14.5.2015”.

5. In the above back ground the present writ petition came to be filed, praying this Court to quash C.C.No.124/2015.

6. This Court on 2.6.2015 in W.P.M.P.No.20058 of 2015 granted interim stay of all further proceedings in C.C.No.124/2015. Seeking to vacate the said order, now W.V.M.P.No.2073 of 2015 has been filed by the 2nd respondent, supported by a counter affidavit.

7. In the present writ petition, initially the contentions of the learned counsel for the petitioner are two fold i.e. 2nd respondent, without disputing the final report of the Station House Officer, Penamaluru dated 10.1.2015 filed under Section 173(8) of the Code of Criminal Procedure, cannot maintain private complaint in respect of the same offence and the learned Magistrate could not have taken complaint on file and issued process without examining the final report filed by the police.

8. By virtue of W.P.M.P.No.29140 of 2015, the writ petitioner has been permitted to file additional affidavit. While reiterating the contents of the same, it is argued by the learned counsel for the petitioner that the Criminal Case, C.C.No.124 of 2015 filed on the file of the I Metropolitan Magistrate, Vijayawada basing on the authorization by the Board of Directors of the complainant company passed on 1.12.2013, authorising P.Krishna Babu is not valid and the complaint is not maintainable. It is the further submission of the learned counsel that there is discrepancy in the ratio of shares mentioned in the Memorandum of Understanding dated 19.2.2008 in between the complainant/2nd respondent and A2 to A23 and the said contradiction is sufficient to reject the complaint. It is further argued that the complainant did not mention as to how A2 to A23, who admittedly possess 58% share can be charged for the offences under

Sections 406, 420, 467 & 471 IPC and the complainant cannot rely on unregistered photostat copy of MOU in view of the registered GPA dated 8.8.2008 and 16.8.2008.

9. Learned counsel for the petitioner takes the support of the following judgments:

- (1) **Maksud Saiyed v. State of Gujarat and others**^[1]
- (2) **Anil Kumar and others v. M.K.Aiyappa and another**^[2]
- (3) **Priyanka Srivastava and another v. State of Uttar Pradesh and others**^[3]
- (4) **GHCL Employees Stock Option Trust v. India Infoline Ltd.**^[4]
- (5) **Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others**^[5].

10. While reiterating the averments in the counter affidavit, it is contended by the learned counsel for the vacate petitioner/2nd respondent herein in the writ petition that there is no statutory and legal bar for filing complaint under Section 200 of Cr.P.C. without filing the protest petition and the learned Magistrate did not commit any error in entertaining the private complaint and issuing process to the accused. It is also the submission of the learned counsel for the 2nd respondent that in the private complaint also the 2nd respondent prayed the Court to differ from the final report. It is also contended that the prima facie allegations in the complaint alone are amenable for examination at this stage and the same indicate commission of offence by the accused, as such, the present writ petition under Article 226 of the Constitution of India is not the remedy. It is also the contention of the learned counsel that the writ petitioner herein cannot plead on behalf of the other accused and the same cannot form the basis for seeking quashment.

In support of his submissions and contentions, the learned counsel for the 2nd respondent places reliance on the following judgments.

- (1) **H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh v. State (Union Territory of Chandigarh)**^[6].
- (2) **M/s India Carat Pvt. Ltd. v. State of Karnataka and another**^[7].
- (3) **Rakesh and another v. State of Uttar Pradesh and another**^[8].
- (4) **U.P. Pollution Control Board v. Mohan Meakins Ltd. and others**^[9].
- (5) **Dy.Chief Control of Imports & Exports v. Roshanlal Agarwal and others**^[10].
- (6) **Jagdish Ram v. State of Rajasthan and another**^[11].
- (7) **Adalat Prasad v. Rooplal Jindal and others**^[12].
- (8) **Subramaniam Sethuraman v. State of Maharashtra and another**^[13].
- (9) **Mahavir Prashad Gupta and another v. State of National Capital Territory of Delhi and others**^[14].

11. In the above back drop, now the issue that arises for consideration of this Court is__

“Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?”

12. A reading of the pleading available on record clearly and categorically demonstrates that obviously the petitioner is aggrieved by the order of the learned Magistrate in taking cognizance of the complaint. In the judgment in **Mahavir Prashad Gupta and another** (*supra* 14) the

apex Court at paragraph 4 held that there was no justification for invoking Article 226 of the Constitution of India when certain specific provisions are available in the Code of Criminal Procedure.

13. In **State of Haryana v. Bhajan Lal**^[15] the Hon’ble apex Court held that the power is required to be exercised very sparingly in rarest of rare cases. In view of availability of alternative remedy to the petitioner herein under the provisions of the Code of Criminal Procedure, this Court is not inclined to entertain the present writ petition under Article 226 of the Constitution of India and also not inclined to go into the merits of the writ petition.

14. For the foregoing reasons, the Writ petition is dismissed. However, the petitioner is given liberty to assail the order passed by the learned Magistrate, taking cognizance of the case, by availing the alternative remedy. As a sequel, pending miscellaneous applications, if any, stand closed. There shall be no order as to costs.

A.V.SESHA SAI,J

Date:26.10.2015
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[1] (2008) 5 SCC 668
[2] (2013) 10 SCC 705
[3] (2015) 6 SCC 287
[4] (2013) 4 SCC 505
[5] (1998) 5 SCC 749
[6] (1980) 4 SCC 631
[7] (1989) 2 SCC 132
[8] (2014) 13 SCC 133
[9] (2000) 3 SCC 745
[10] (2003) 4 SCC 139
[11] (2004) 4 SCC 432
[12] (2004) 7 SCC 338
[13] (2004) 13 SCC 324

[\[14\]](#) (2000) 8 SCC 115

[\[15\]](#) AIR 1992 SC 604