

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION Nos.5892 and 6427 of 2015

% 17-11-2015

CRIMINAL PETITION No.5892 of 2015

#G.S.V. Krishna Rao

....Petitioner

Vs.

\$ The State of A.P. rep. by its Public Prosecutor and another

.... Respondents

CRIMINAL PETITION No.6427 of 2015

#Y.Nirmal Kumar

....Petitioner

Vs.

\$ The State of A.P. rep. by its Public Prosecutor and another

.... Respondents

!Counsel for the Petitioners : Smt.V.Dyumani

Counsel for the Respondents: Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

1. (2008)5 SCC 668
2. (2013)10 SCC 705
3. (2015)6 SCC 439
4. (2015)6 SCC 287

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.5892 & 6427 of 2015

COMMON ORDER :

These two criminal petitions are filed by petitioners/Accused
Nos.1 and 2 respectively under Section 482 Cr.P.C to quash the

proceedings in Crime No.65 of 2015 of Markapur Police Station, registered for the offences punishable under Sections 420, 468, 471, 472 & 120-B, read with 34 I.P.C which is the outcome of a private complaint filed by the 2nd respondent herein and the same was forwarded for investigation under Section 156(3) Cr.P.C.

2) The 1st accused G.S.V.Krishna Krishna Rao is the Assistant General Manager, and the 2nd accused is the Chief Manager-cum-Authorised Officer, Andhra Bank, Somajiguda branch at the time alleged offence. The 2nd respondent is the complainant, who filed a private complaint on 04.05.2015 before the learned Judicial Magistrate of the First Class, Markapur in C.F.R.No.3649/2015 for the above said offences alleging that the complainant is doing civil contracts and also owning lands in Markapur town of Prakasam District, that one M.V.B.Narayana of P.S.V.Constructions Private Limited with office at Tarnaka also a native of Markapur town, also undertake civil contracts, the complainant approached said M.V.B.Narayana in connection to obtain loan through him and they want to undertake works in Public Health Department, Water Supply Scheme of Markapur and to obtain loan from Bank, as the complainant came to know that said Narayana of P.S.V. Constructions doing Rs.50.00 crores worth civil contract at Chennai and the Andhra Bank, Somajiguda also granted Rs.10.00 Crores loan and he stated he can obtain loan from the bank and asked the complainant with his partners Sivareddy and K.Mohan Reddy to come to Andhra Bank, where they met 1st accused, Assistant General Manager and complainant and others explained to him about the contract works they want to undertake at Markapur, requirement of loan of Rs.6.00 crores and the 1st accused, Assistant General Manager readily accepted for the proposal to lend and asked security for the loan and the complainant stated got immovable properties to give security and the Assistant

General Manager, 1st accused wanted to get the original documents for obtaining the loan and also that they have to sign on blank papers, that on 15.03.2012 original documents of complainant and his partners Siva Reddy and K.Mohan Reddy were handed over to the Assistant General manager, 1st accused, and they signed on blank un-written papers and proformas which are printed with blanks and on some papers through P.S.V. Constructions of M.V.B.Narayana, whereunder complainant could not conceive the plan of A-1, Assistant General Manager and not thought of they were going into well laid trap of Assistant General Manager including M.V.B.Narayana and P.S.V. Constructions, they could not secure the civil contract works of Markapur Public Health Department Water Supply Scheme, thereby the complainant and the partners wanted to take back the papers from the Assistant General Manager, A-1 same were not returned and the efforts to secure back in November-December of 2012 and January, 2015 became futile which shows the Assistant General Manager-A-1 deceived and cheated the complainant from the inception in keeping the document with him and having fed up with the attitude of him, complainant gave a representation dated 09.04.2013 requesting him to return the documents and after 90 days on 02.07.2013 to his great shock and surprise demand notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) received as if the complainant stood as guarantor for the earlier loan obtained by P.S.V. Constructions Private Limited, even though the complainant and his partners no way concerned and responsible for the loan, in A-1 created a fabric of lies and on 28.08.2013 the complainant and others gave a strong reply to the Assistant General Manager through their counsel by denying allegations of they stood as surety to the P.S.V constructions and requested to drop the demand notice and return the documents, else to take legal recourse and there was no reply from

the A-1, Assistant General Manager and it is A-1 that induced A-2, Chief Manager to give paper publication in Sakshi Telugu daily of Prakasam District on 05.02.2015 stating that properties of the complainant were attached and Bank has taken possession of the properties pursuant to the documents deposited on 15.03.2012. Though both the accused fully aware of the fact otherwise and their publication is false and they colluded together in hatching the plan and are therefore liable for the offences. The learned Magistrate on the said private complaint by order of even date 04.05.2015 endorsed as follows:

“Complaint filed, this Court forwarded to S.H.O Markapur Town Police Station for registration under Section 156(3) Cr.P.C and file report by 26.05.2015”.

3) A perusal of the said complaint averments are crystal clear of a weaved story in fact, at its very face shows for if at all there is any cheating but for the two bank officials, from the very complaint averments show the main perpetrator M.V.B.Narayana of P.S.V. Constructions as a co-accused however not so shown that is one of the important aspects. Apart from it had really the complainant and his two partners referred supra not deposited the title deeds as guarantors for P.S.V Constructions represented by M.V.B.Narayana for the loan availed for the works, they could not have keep quite all through from the year 2012 without even issuing notice; even from so saying of it is through said Narayana with whom they got friendship and acquaintance, they approached the bank to arrange for loan and given the title deeds in anticipation of getting contract work of Public Health Department Water Supply Scheme of Markapur, which could not be get by them, even within no time therefrom allegedly asking for return of the documents from April or May, 2012 including with no progress for not returned for the alleged demands including in November and December, 2012 and January, 2013; what made them

to wait without even notice. What they claimed of a representation to return the documents dated 09.04.2013 allegedly issued and in so saying they did not file any proof of sending notice and acknowledgement. What are the enclosures 1 to 7 of the complaint show a zerox copy of the alleged letter dated 06.04.2013 filed and legal notice was dated 02.07.2013 received from accused by complainant and their reply only on 28.08.2013. It is absurd to believe without even sanction they deposited the title deeds and put signatures in empty blank printed and unfilled papers in March, 2012 at the instance of so called M.V.B.Narayana. It is not even stated, for arguments sake, as to what meddled bank officials A-1 and A-2 to obtain from him being a stranger but for stood as guarantor to P.S.V. constructions to take the documents and to retain and with what motive and what made him to believe so also to his two partners to part with and to sign. The learned Magistrate basically did not apply his mind.

4) A perusal of the material shows, it is a false weaved story introduced by the complainant who is real accused if at all along with his partners, if any, availed the benefit of loan by standing as guarantors to P.S.V. Constructions of M.V.B.Narayana and the loan not repaid when bank invoked proceedings of SARFAESI Act later, weaved the false story with some ingenuous in order to repay the bank officials to bring them and to curse them to terms. Thereby to a naked eye from a bare reading, it shows a false complaint by abusing the provisions and process of law to mulct in litigation unnecessarily by invoking the criminal proceedings against the bank officials. The learned Magistrate did not even apply his mind a little judiciously in forwarding simply for the sake of asking the said complaint under Section 156(3) Cr.P.C without assigning any reason for police to register the crime and to investigate.

5) It shows said reference is by non-application of mind and nothing but mechanical which is contrary to law as laid down by the Apex Court in **Maksud Saiyed V. State of Gujarat**^[1], that was followed in para 11 of **Anil Kumar V. M.K.Aiyappa**^[2] and the same affirmed by the three Judges' bench in **Ramdev Food Products V. State of Gujarat**^[3] and reiterated in **Priyanka Srivastava V. State of U.P.**^[4] of application of judicial mind is required even to refer under Section 156(3) Cr.P.C a private complaint for police investigation by consideration of the facts of the case on hand and the order though not a detailed one expresses the views of Magistrate, not suffice of mere statement of his gone through the complaint, documents and heard complainant, unless same by judicial application of mind reflects in the order, same is liable for setting aside. Further even the Apex Court in **Priyanka Srivastava** supra by judgment dated 19.03.2015 laid down guidelines to be followed which include enclosing of proof regarding any giving of police report for entertaining a private complaint, besides filing of affidavit of full disclosure of facts without any suppression of material facts. The learned Magistrate did not even verify said compliance before entertaining the complaint muchless to refer to police for investigation and suffice to say, same is liable to be set aside.

6) Accordingly, the quash petitions are allowed by quashing the proceedings in Crime No.65 of 2015 of Markapur Police Station in respect of the petitioners/accused Nos.1 and 2 herein. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015

N.B.: L.R copy to be marked
(b/o) ksh

[\[1\]](#) (2008)5 SCC 668

[\[2\]](#) (2013)10 SCC 705

[\[3\]](#) (2015)6 SCC 439

[\[4\]](#) (2015)6 SCC 287