

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2830 OF 2013

ORDER:

Heard learned counsel for petitioner/ defacto complainant and counsel for respondents/ accused Nos.1 to 9 and also public prosecutor representing State of Andhra Pradesh and perused the material on record.

2) The petitioner herein filed the Criminal Petition under Section 482 Cr.P.C impugning the order dated 01.05.2009 passed in CrI.M.P. No.807 of 2007 in C.C. No.9 of 1998 on the file of Judicial First Class Magistrate at Siddipet, Medak District, filed under Section 91 Cr.P.C to call for the documents i.e., Day Books, Ledger Books and income tax assessments from the year 1994 to 1998 from accused persons for proper adjudication of the case. The Criminal Case is pending against accused Nos.1 to 9 in C.C. No.9 of 1998 for the offences punishable under Sections 147, 342, 365, 368 and 403 IPC. Wrongly or rightly, the learned Magistrate allowed the said application, which is at the stage of PW.1's examination, which was conducted in-part and coming for continuation. In fact, the prayer is virtually directing the accused persons to produce the material allegedly with the accused so as to be used by the complainant to exhibit and use against accused saying as favourable to the case of the complainant—PW.1. The complainant can win or lose his case on his own strength as per the basic concept of criminal law.

3) Article 20 (3) of Constitution of India clearly speaks no one can be compelled to witness against himself. The right of silence of accused is as one of the cardinal principles of criminal law recognized and the accused persons need not even disclose much

less produce any material against them, unless they volunteer. Even for arguments sake, there is an order without challenge by accused covered by the said order of the Magistrate, as said order no way takes away the protection provided by article 20 (3) to accused, the petitioner herein cannot be considered to compel the accused to produce any material with them to complaint to use by incriminating the accused. As also held by the Apex Court in ***Goutam Kundu vs State of West Bengal***^[1] where a case in relation to submission of the blood samples regarding paternity of even accused failed to comply or to submit to the order of the Court to provide blood sample, the only course left open to the Court is to draw only adverse inference, for nothing to compel the accused contrary to the fundamental right of the accused.

4) Having regard to the above, the application in directing the accused to comply the order cannot be considered by this Court invoking Section 482 Cr.P.C, more particularly, when the law is settled by the judgment of the constitution Bench of the Apex Court in ***State of Bombay vs Kathi Kulu Oghad***^[2] that later relied in ***State of Gujarat vs Shyamlal Mohanlal Choksi***^[3].

5) Coming to the decision placed reliance by the petitioner of ***Om Prakash Sharma vs Central Bureau of Investigation, Delhi***^[4], there is nothing to show the application was filed and order was passed under Section 91 Cr.P.C against the accused therein to produce any document to use against such accused. Thus the petition deserves dismissal.

6) Accordingly and in the result the appeal is dismissed with no costs.

7) As a sequel, miscellaneous petitions if any pending in

this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.05.02.2016
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[\[1\]](#) (1993) 3 SCC 418

[\[2\]](#) AIR 1961 SC 1808

[\[3\]](#) AIR 1965 SC 1251

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