

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

WRIT PETITION No.8690 OF 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, prays for quashment of FIR.No.38 of 2010 on the file of Police Station, Alair, Nalgonda District.

2. Heard learned counsel for the petitioner, learned Government Pleader for the 1st respondent and Sri N.Purushotham Reddy, learned counsel for the 2nd respondent, apart from perusing the material available before the Court.

3. On a complaint made to the Tahsildar, Alair, Nalgonda District, by the 2nd respondent herein, the Tahsildar, Alair, addressed a letter bearing No.A/2387/2010, dated 31.03.2010 to the Sub-Inspector of Police, Alair. Basing on the said letter and the panchanama enclosed with the same, the Station House Officer, Alair, registered a Crime in FIR.No.38 of 2010 on 31.03.2010, for the alleged offence under Section 381 of the I.P.C. At the time of filing the writ petition, petitioner herein was working as a Medical Officer, Beedi Workers Welfare Fund Dispensary, Alair, Nalgonda District.

4. Broadly there are two contentions raised in the present writ petition by the learned counsel for the petitioner namely:

1) in view of the civil disputes between the petitioner and his brother-in-law, the 2nd respondent herein was planted and was made to give a false complaint and acting upon the same, police registered the instant crime; and 2) there are no ingredients of Section 381 of the I.P.C. in the case of the prosecution.

5. On the otherhand, it is vehemently contended by the learned Government Pleader that in the absence of any abuse of process of law, the instant First Information Report cannot be quashed at this stage and the petitioner herein has to face the enquiry and trial. It is further submitted by the learned Government Pleader that the case of the prosecution attracts the provisions of Section 381 of the I.P.C.

6. It is submitted by the learned counsel for the 2nd respondent, on instructions, that innocently and unknowingly, the 2nd respondent herein made a complaint to the Tahsildar and after realising realities, on 05.04.2010, the 2nd respondent herein made a representation to the Tahsildar bringing to his notice the realities in the issue. It is a settled and well established proposition of law that the jurisdiction of this Court under Article 226 of the Constitution of India is required to be utilized and used very sparingly while dealing with the cases pertaining to quashment of First Information Reports. Unless the prosecution amounts to abuse of process of law and does not attract the provisions of the law, the

jurisdiction under Article 226 cannot be permitted to be invoked.

7. In the instant case, there is absolutely no dispute on the reality that only on the report of the 2nd respondent herein, the respondent authorities acted and followed by panchanama, registered the present crime. The said crime was registered on 31.03.2010. It is also required to be noted that the 2nd respondent submitted a representation on 05.04.2010 to the Tahsildar, stating that he was forcibly made to give complaint against the petitioner by the brothers-in-law of the petitioner in view of property disputes. It is further evident from the said letter that after realising the falsity in the same, he submitted the said representation dated 05.04.2010 to the Tahsildar, Alair.

8. Yet another contention raised by the counsel for the petitioner is that, at relevant point of time, the petitioner was in-charge of the dispensary and he was the medical officer of the unit, as such, the provisions of Section 381 of the I.P.C., under which the police registered crime, do not attract the case of the prosecution and there are no ingredients of the said provision of law. In this context, it may be appropriate to refer to the provisions of Section 381 of the I.P.C., which reads as under:

“381. Theft by clerk or servant of property in possession of master:-- Whoever, being a clerk or

servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. While referring to the above said provision of law, it is the submission of the learned counsel for the petitioner that under the said provision of law only when clerk or servant commits theft in respect of the property in possession of the master or employer, then only the said provision would apply and in the instant case, the petitioner herein being the in-charge of the dispensary was in possession of the property, as such, the said provisions cannot be made applicable. This Court finds sufficient force in the said submission of the learned counsel for the petitioner. It is also submitted by the learned counsel that the petitioner herein retired from service on attaining the age of superannuation and he is also given appointment on contract basis by the Government.

10. In view of the above reasons, this Court is of the considered opinion that the further continuation of the prosecution against the petitioner undoubtedly tantamounts to abuse of process of law. Accordingly, writ petition is allowed, quashing the prosecution launched against the petitioner vide FIR.No.38 of 2010 on the file of Police Station, Alair, Nalgonda District.

11. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

05.12.2016

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