

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 751 of 2016

ORDER:

Aggrieved by the order passed in CrI.M.P.No. 2636 of 2015 in C.C. No.388 of 2010 on the file of the VI Additional Judicial Magistrate of I Class, Guntur, wherein an application filed under Section 239 Cr.P.C., by the petitioners/A-5 and A-6 in the above case seeking discharge was rejected, the present Revision is filed under Sections 397 and 401 of Code of Criminal Procedure.

A complaint/charge-sheet under Section 22 of the Transplantation of Human Organs Act 1995 (for short "the Act") came to be filed by the complainant/State against the petitioners and 7 others for the offences punishable under Sections 120-B of Indian Penal Code and Sections 18 and 19 of A.P. Transplantation of Human Organs Act, 1995. The averments in the complaint show that these petitioners i.e., A-5 and A-6 are residents of Wadi, Akola, Maharashtra, A-4 and A-9 are residents of Faridabad, Haryana, and A-1 to A-3 are residents of Andhra Pradesh State. On 15.05.2000 at about 8.00 p.m., one Gottam Subba Reddy, V.A.O., Rentachintala, lodged a report before Rentachintala Police Station stating that Durgampudi China Venkat Reddy and Siddapuram Poli Reddy told him that they have gone to Delhi through Srinivasa Murthy of Guntur and Rinkireddy Satrugundu of West Godavari District to sell their kidneys to overcome their financial problems. One Doctor by name Amit Kumar is said to have operated upon them and removed their kidneys. It is said that kidneys were sold at the rate of Rs.50,000/- each. Basing on the same, a case in Crime No.18 of 2000 under Sections 420 and 326 IPC by Sub Inspector of Police, Rentachintala Police Station came to be registered.

The averments disclose that Accused 1 to 3 acted as agents and

conspired with the Doctors, who are A-4 to A-9, who were in search of persons, who intend to sell their kidneys. Accordingly, A-1 to A-3 met P.Ws.2 to 12 of Rentachintala and Kambhampadu villages, who were in debts. They lured and persuaded them to sell their kidneys to Doctors for Rs.50,000/- each to overcome their financial problems. The kidneys obtained from P.Ws.2 to 12 were used by the Doctors for transplanting them to rich patients, who paid exorbitant price to the Doctors. Accordingly, P.Ws.2 to 12 were taken to Delhi between February 1998 and April 2000, kept them in rooms at Badarpur, which were taken on rent by A-3 and A-4 and after conducting all the necessary tests on P.Ws.2 to 12, they were operated upon and kidneys were removed. The averments in the charge-sheet clearly disclose that A-6 with the assistance of A-5, A-7, A-8 and A-9 conducted the operations. One Dr. D.Koteswara Rao, Associate Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, examined P.Ws.2 to 12 and issued medical certificates about the age of the scars/wounds on them. Similarly, Dr.Surya Kumari, Professor of Urology, Government General Hospital, Guntur examined P.Ws.2 to 12 and certified that the left kidneys of P.Ws.2 to 12 have been removed surgically. It is said that the Doctors/Accused, who performed the operations have not registered their Nursing Home/Hospital for removal of the kidneys as required under Section 14 of the Act. They also have no certificate of registration to carry out the transplantation of human organs. Basing on these allegations, the police filed the charge-sheet/complaint.

After hearing bothsides and taking into consideration the rival contentions and the judgments rendered on the issue, the learned Magistrate dismissed the applications filed for discharge. Challenging the same, the present Revision is filed.

The learned counsel for the petitioners mainly submits that in view of Section 22 of the Act, no Court shall take cognizance of an

offence except on the complaint made by the appropriate authority concerned or any Officer authorized in his behalf by the Central Government or by the State Government or as the case may be the appropriate authority. He submits that since the proceedings came to be initiated at the instance of V.R.O., who is not authorized under Section 22 of the Act to file a report, the Court could not have taken cognizance of the offence. He further submits that the investigation was done in a perfunctory manner as the averments in the charge-sheet do not anywhere indicate, police visiting Delhi and finding out as to whether the petitioners have licence to conduct operation and also as to whether the said premises can be used for performing operations.

On the other hand, the learned Public Prosecutor opposed the application contending that the averments in the charge-sheet do make out a case against the petitioners and no illegality is committed by the Court in taking cognizance of the case. He took me through various provisions of the Act and the provisions of Cr.P.C., to show that complaint/charge-sheet was filed by an authorized person.

In order to appreciate the scheme of Transplantation of Human Organs Act, it may be useful to see intention of the legislature for enactment of the Act and also certain provisions of the said Act. The Transplantation of Human Organs Act was enacted by the Parliament for the regulation of removal, storage and transplantation of human organs over Therapeutic purpose and for prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto. Section 2(b) of the Act defines appropriate authority to mean, "the appropriate authority appointed under Section 13 of the Act." Chapter IV of the Act deals with appropriate authority. Section 13 occurring therein reads as under :

Section 13. Appropriate Authority - (1) The Central Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification, one or more officers as Appropriate Authorities for the purposes of this Act.

(3) The Appropriate Authority shall perform the following functions, namely:-

(i) to grant registration under sub-section (1) of Section 15 or renew registration under sub-section (3) of that section;

(ii) to suspend or cancel registration under sub-section (2) of section 16;

[(iii) to enforce such standards, as may be prescribed,-

(A) for hospitals engaged in the removal, storage or transplantation of any human organ;

(B) for Tissue Banks engaged in recovery, screening, testing, processing, storage and distribution of tissues;]

(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action;

[(iva) to inspect Tissue Banks periodically;]

(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow-up medical care to persons who have undergone transplantation and persons from whom organs are removed; and

(vi) to undertake such other measures as may be prescribed.

Section 18 of the Act deals with punishment for removal of human organ or tissue or both without authority and Section 19 of the Act deals with punishment for Commercial dealings in human organs. The punishment prescribed for commercial dealings in human organs shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees.

Section 22 of the Act deals with cognizance of the offence. It states that no court shall take cognizance of an offence under the Act except upon a complaint made by -

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the court.

The word "complaint" as referred to in Section 22 of the Act is not defined in the Act. Therefore, one has to fall back upon the definition of the word "complaint" as defined in Code of Criminal Procedure. Section 2(d) of the Criminal Procedure Code defines complaint as follows:-

"Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

A combined reading of the above provisions indicate that under Section 22 of the Act, a Court cannot take cognizance of offence under this Act except upon a complaint made by appropriate authority or an officer authorized in this behalf by the State Government or the State Government or as the case may be an appropriate authority. As stated earlier, the learned counsel for the petitioners mainly contended that in view of the bar imposed under Section 22 of the Act, Court could not have taken cognizance based on a charge sheet filed by the police after investigating into a report lodged by a V.R.O. Had it been a case where investigation was done pursuant to a report given by V.R.O., and filing of a charge-sheet thereunder things would have been quite different. But, here is a case where the police initially registered the Case in Crime No.18 of 2000 pursuant to a report given by the V.R.O., for the offences punishable under Sections 420 and 326 IPC only. No case was registered under the provisions of the Transplantation of Human Organs Act. Realizing the gravity of the offence and having regard to the provisions of the Act, the Additional Director General of Police issued orders in C.No.13/ADGP/CID/2000 dated 17.05.2000, entrusting the D.S.P., C.I.D. Prakasam District to take up further

investigation. Pursuant to G.O.Ms. No.143 dated 20.04.2000 Health, Medical and Family Welfare (M1) Dept., Govt., of A.P., appointed Superintendents of Police of the District concerned as appropriate authority in addition to the Director of Medical Education, Hyderabad, for investigation and filing complaint before the Court for violation of the provisions of the TOHO Act. Thereafter G.O.Ms.No.260 dated 26.06.2001 of Health Medical and Family Welfare (M1) Department also came to be issued making certain amendments to the G.O.Ms.No.143 of Health, Medical and Family Welfare (M1) Department dated 20.04.2001 incorporating the S.P., C.I.D., as an appropriate authority for the purpose of investigation and filing of a complaint before the Judicial First Class Magistrate under the provisions of A.P. Transplantation of Human Organs Act, 1995. Having regard to the above G.O., the Additional D.G.P., C.I.D., Hyderabad, vide Memo C.No.311/C4/CID/2000 directed the complainant i.e., Superintendent of Police, C.I.D., Hyderabad to investigate and file charge-sheet/complaint.

The record reveals that the investigation was done by the complainant, who is a Superintendent of Police, C.I.D., Hyderabad, and the complaint also shows that it was filed by the State of Andhra Pradesh, represented by Superintendent of Police, C.I.D., Hyderabad. The investigation was done by the complainant viz., Deputy Inspector General of Police, C.I.D., Hyderabad. The said complaint does not anywhere indicate that it was a charge-sheet/final report filed under Section 173 Cr.P.C.

Though the learned counsel for the petitioners laid much stress on the judgment of Apex Court in **Jeewan Kumar Raut v. Central Bureau of Investigation** ^[1] in support of his case, but in my view the same may not apply to the case on hand. It was a case where the Apex Court was dealing with a situation as to whether the provisions of Section 167(2) of the Code are applicable to a case, registered under

the Transplantation of Human Organs Act. In the said case, police investigated into the matter and filed a final report under Section 173(2) of Cr.P.C. Situation on hand is different. In the instant case, the complaint came to be filed by Superintendent of Police, C.I.D., Hyderabad after being authorized by the State Government as required under Section 13(2) of the Act. Hence, the argument of the learned counsel for the petitioners that the Court could not have taken cognizance of the complaint filed for the offences under TOHO, cannot be accepted.

Insofar as the argument of the learned counsel for the petitioners that the police failed to conduct investigation on proper lines and that none of the Investigating Officers visited Delhi to find out the genuineness or otherwise of the Doctors and also the Hospital where surgeries were done, the same in my view cannot be accepted. L.Ws.28 and 29, who are the Sub-Inspector and Inspector of Police, Hazrath Nizamuddin Railway P.S., New Delhi speak about seizure of Anesthesia machine and Electric koti machine used in kidney removal from plot No.4374 in Gurgaon belonging to Dr.Amith Kumar. Similarly L.W.30 speaks about A-4 taking his house bearing No.380-P, Sector 14, Gurgaon on rent. None of the statements of the witnesses recorded by police under Section 161 Cr.P.C., were filed by the learned counsel for the petitioners to show that the police have not conducted the investigation in a proper manner. Hence, the argument of the learned counsel for the petitioners cannot be accepted. Even otherwise it may not be a ground to discharge the accused as it involves number of factual aspects which have to be decided only during the course of trial.

In view of the aforesaid findings, this Court is of the view that the order under challenge warrants no interference and the Revision is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed. As a

sequel to it, miscellaneous petition pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 06.04.2016
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[\[1\]](#) (2009 Law Suit (SC) 1221),