

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION Nos.3853, 3854, 3858, 3860, 3861,
3876, 5032 of 2015

COMMON ORDER :

Crl.P.No.3853 of 2015:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to quash the case in Crime No.33 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad. Initially this case was registered as Crime No.7/14-15 by Railway Kodur Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the disclosure-cum-seizure panchanama and seized 80 bottles of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 as per the proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

2) Crl.P.No.3854 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.45 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad. Initially this case is registered as Crime No.26/14-15 by Rajampet Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the disclosure-cum-seizure panchanama and seized 123 bottles

of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 as per the proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

3) Crl.P.No.3858 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.34 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad. Initially this case is registered as Crime No.9/14-15 by Railway Kodur Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the disclosure-cum-seizure panchanama and seized 80 bottles of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and accordingly the Government issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases by re-registering the cases again. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 in proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

4) Crl.P.No.3860 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.32 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad.

Initially this case is registered as Crime No.6/14-15 by Railway Kodur Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the panchanama and seized 768 bottles of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 as per the proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

5) Crl.P.No.3861 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.44 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad. Initially this case is registered as Crime No.25/14-15 by Rajampet Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the panchanama and seized 125 bottles of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 as per the proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

6) Crl.P.No.3876 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.43 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad. Initially this case is registered as Crime No.24/14-15 by Rajampet Police Station for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968 basing on the panchanama and seized 125 bottles of non duty paid IMFL liquor. Subsequently the case was entrusted to C.I.D for detailed investigation and issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 as per the proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

7) Crl.P.No.5032 of 2015:

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the case in Crime No.51 of 2014 of P.S. C.I.D, Andhra Pradesh at Hyderabad registered for the offences punishable under Sections 34(a) of A.P. Excise Act, 1968 and Section 8(b)(ii) of A.P. Prohibition Act. As per the panchanama dated 05.12.2014, the petitioner confessed during the course of investigation stating that he secure spurious liquor for disbursement in connection with 2014 general elections and that he approached one Appu of Chennai who arranged three lorry loads (3000 cartons) of Impact grain whisky, that the liquor was transported to Chittoor by Pardhasaradhi Suresh of

Pondicherry and Rajendra Nirmal Kumar, Bangalore, that the stocks were received by Excise officials viz., E.Vijay Kumar and Shankaraiah who were also shown as accused, that they handed over stocks to A-2 for distribution in Kollagunta and other places of Karveti Nagar Mandal of Chittoor District.

Subsequently, the Government issued G.O.Ms.No.270, dated 09.07.2014 to deal with such cases by re-registering the cases again. All the excise cases were re-numbered pursuant to the memo dated 01.09.2014 in proceedings in C.No.6128/C-31/CID/2014 issued by the Additional Director General of Police, C.I.D, Andhra Pradesh, Hyderabad.

8) In all the above cases, the petitioner contended that these cases were entrusted to the C.I.D of Hyderabad Police Station for thorough investigation which should be completed within the period of two months, that the name of the petitioner is not shown in any of the initial F.I.R, that even though the G.O specifically fixes two months' time to complete the investigation, the same has not been completed and the period has not been extended by the Government, that neither the stocks were seized from the possession of the petitioner nor the petitioner was caught while transporting the illicit liquor, that the petitioner has absolutely no concern whatsoever with the excise business, that the petitioner has been falsely implicated at the instance of the police by the persons who are inimical to the petitioner in politics, that the C.I.D has followed a strange procedure by

re-registering the crimes in other cases and inventing confessions which cannot form the basis for issuance of F.I.R and prayed to quash the proceedings.

9) It is the contention of the learned Public Prosecutor that in all the above cases the C.I.D has registered the cases by giving fresh numbers only which is the permitted procedure and nothing contra to law muchless to impugn therefrom and the investigation has to be completed since in progress and any delay in investigation, seizure of the IMFL stock from other accused and its impact on complicity of accused herein are all the matters in issue to be decided during the course of trial and this Court cannot go into disputed facts in issue at this stage from prima facie accusation to investigate and prayed to dismiss the petitions.

10) Heard and perused the material on record including the A.P. Police Standing Orders and the decisions placed reliance on both sides.

11) Coming to the decision in ***Imtiyaz Ahmed V. State of U.P***^[1] it was observed that the High Court's exercising inherent jurisdiction either under Section 482 Cr.P.C or in revision under Section 397 Cr.P.C or writ jurisdiction under Article 226 of the Constitution of India in stay of investigation or enquiry/trial in criminal proceedings though extraordinary in power, only to exercise sparingly with due caution to permit ends of justice and to prevent abuse of process and in such case, such matters to be disposed of expeditiously and preferably within six months in giving the directions.

12) Coming to the other decision relying upon ***State of Haryana V. Bhajanlal***^[2] among the guidelines, the scope of F.I.R when to be quashed laid down that is referred.

13) Coming to the other expression relied in ***Babubhai V. State of Gujarat***^[3] it is in dealing with second F.I.R when permissible if the incident or the crime of the first one to the second is different are permissible and otherwise if the further complaint subsequent to registration of F.I.R, in connection with same or connected offence of same incidents which are parts of the same transaction not permissible and in that context observed though re-investigation is permissible to order, ordinarily further investigation cannot be ordered as a fresh investigation by ***denovo***. It is observed that it ordinarily excludes the Courts interference but in extraordinary or exceptional cases where there is gross abuse of power and failure of justice for the Court under Section 173(8) and 482 Cr.P.C direct *denovo* investigation if earlier investigation is biased or suffer from irregularities or causes serious prejudice to any party including to quash the charge sheet filed pursuant to vitiated investigation in ordering *denovo* or fresh investigation since investigation must be fair, transparent and judicious.

14) The other decision relied is ***Pulukuri Kotaiah V. Emperor***^[4] on the scope of Section 27 of the Indian Evidence Act in saying the fact discovered used in this section embraces the place from which the object is

produced and the knowledge of the accused as to this, and the information given must relate distinctly to the fact in saying in an information supplied by accused in custody of “*I will produce a knife concealed in the roof of my house*”, does not lead to discovery of knife as knives were discovered many years ago. But it leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant but if to the statement the words added with which I stabbed ‘A’ are inadmissible as do not relate to discovery of the knife in the house of the informant. It is observed further that condition necessary to bring Section 27 of the Indian Evidence Act into operation is that the discovery of the fact must be deposed to and there upon so much of the information as relates distinctly to the fact thereby discovered may be proved to lend guarantee to the fact discovered in consequences of the information given as true to allow it to be used in evidence to what extent of it is admissible depends on exact nature of the fact discovered to which such information is required to relate.

15) The expression placed reliance is ***Himachal Pradesh Administration V. Sri Om Prakash***^[5] there while dealing with other aspects in a murder case depending on circumstantial evidence as to the burden of proof, presumption on facts and law and benefit of doubt and approach of Court, use of the finger prints report; coming to

the scope of Section 27 of the Indian Evidence Act of fact discovered held does not include psychological or mental fact but discovery of concealed article is a fact discovery if incriminating article produced from accused. It was observed at para Nos.13 and 14 of the judgment referring to ***Pulukuri Kotaiah*** supra also that fact discovered must refer to a material fact to which the information directly relates. In order to render the information admissible, the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What should be discovered is the material fact and the information admissible is that which he has caused that discovery so as to connect the information and the fact with each other as the cause and effect. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. A witness said to be cannot be discovered if nothing is to be found or recovered from whom as a consequence of the information furnished by the accused and the information which disclosed the identity of the witness will not be admissible.

16) The other decision placed reliance is ***Uday Bhan V. State of U.P.***^[6]. It is in relation to a theft case accused facing charges on the scope of Section 27 of the Indian Evidence Act of disclosure by accused observed that, so much of the statement made by a person accused of an offence and in custody of a police officer whether it is a

confessional or not, as relates distinctly to the fact discovered is admissible and discovery of a fact includes, the object found, the place from which it is produced and the knowledge of the accused as to its existence. The evidence in regard to the discovery of a box or key of the box produced by him from a pond near his field and the key is fitted to upon the lock of box of the complainant, same is admissible under Section 27 of the Indian Evidence Act, even handing over of the key is not a confessional statement but finding of the key of the complainant with accused and recovery of the stolen box shown by the accused from the pond which are probable, by also placed reliance and referring to ***Pulukuri Kothaiah*** supra and the expression in ***Lachman Singh V. State***^[7] and ***Rama Krishnan Mithanlar Sharma V. State of Bombay***^[8].

17) Here the crux is the confession of a co-accused of the same trial in the respective crimes whether within the purview of Section 27 of the Indian Evidence Act and if so, whether it is within the purview of Section 30 of the Indian Evidence Act against co-accused of same crime. In Crime No.51 of 2014 the petitioner/accused himself confessed about his securing spurious liquor etc., though in some of the crimes there is a seizure from disclosure from other persons showing the complicity of the petitioner/accused also which is under investigation, to the extent of admissibility under Section 30 of the Indian Evidence Act, leave about same is a

substantive evidence or requires corroboration further to it and what is the corroborative material that could be revealed from investigation.

18) All these aspects were covered by a common order in CrI.P.No.5664 of 2015 and batch disposed of by this Court on 10.12.2015.

19) It is thus not the mere question of law but a mixed question of fact and law with reference to the contents of the disclosure statement/s of the co-accused in some of the cases and of the the petitioner in Crime No.51 of 2014 respectively that to be decided to appreciate with reference to it and the law is fairly settled that when the entire material is not before the Court or complicated or disputed questions of fact involved, the Court must be slow in quashing the proceedings invoking the inherent powers under Section 482 Cr.P.C, in the absence of prima facie holding continuation of the investigation and final report is abuse of process.

20) The Apex Court in ***State of M.P. V. Surendra Kori***^[9] held that when facts are incomplete and hazy or where material collected not produced for consideration or where factual and legal issues involved are of wide magnitude and incapable of being seen in its true perspective without sufficient material being placed before the Court for quashing or where the material discloses a further investigation is required of the crime for nothing to

show on a bare reading of the report with material on record, there is no accusation to investigate, quashing normally to be refrained in such matters.

21) Having regard to the above, at this stage of the investigation is pending and not finalised, it is difficult to say that the disclosure statement or seizure is the only evidence. It is not even to say there is no prima facie accusation on reading of F.I.R with other existing material as on date to quash.

22) Coming to the contention of the G.O.Ms.No.270, dated 09.07.2014 to complete the investigation within two months that non-adherence thereto, in the absence of showing the same as a statutory mandate and any deviation to annul the crime proceeding or to stop further investigation and even from the A.P. Police Standing Orders Volume III, Chapter 44 either while empowering under 861(a) or otherwise of any time stipulation, this Court feels just to subserve the ends of justice while disposing of the applications in directing to complete the investigation within two months and file final report. Remedy is left open in the event of filing final report within said time and any cognizance taken therefrom or even otherwise for non-adherence to the time stipulated herein in the absence of showing any cogent reasons for extension, liberty is given by virtue of this order to move afresh.

23) In the result, all the criminal petitions are disposed of

in directing the investigating agency to complete the investigation within two months from the date of receipt of this orders and file final report. The petitioner is therefrom giving liberty to file fresh applications respectively in the event of filing final report within the stipulated time and any cognizance taken therefrom or even otherwise for non-adherence to the time stipulated herein in the absence of showing any cogent reasons for extension by virtue of this order to move afresh.

24) Miscellaneous petitions, if any pending, in all the criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.05.01.2016

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[\[1\]](#) (2012)2 SCC 688

[\[2\]](#) (1992) Supp.1 SCC 335

[\[3\]](#) (2010)12 SCC 254

[\[4\]](#) 1947 PC 67

[\[5\]](#) (1971)1 SCC 249

[\[6\]](#) AIR 1962 SC 1116

[\[7\]](#) AIR 1952 SC 167

[\[8\]](#) AIR 1955 SC 104

[\[9\]](#) (2012)10 SCC 155