

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.3943 OF 2016

ORDER:

1. This Criminal Petition is filed by the petitioner-A3 under Section 482 Cr.P.C seeking to quash the proceedings against him in C.C.No.107 of 2015 on the file of the IV Additional Magistrate of First Class, Nellore, for the offences punishable under Sections 420 r/w 34 IPC and Sections 3 and 7 of the Coastal Aquaculture Authority Act, 2005 (for short, 'the Act').

2. Heard and perused the material available on record.

3. The crime in the above C.C. was registered on the report of the 2nd respondent-de facto complainant-Assistant Director of Fisheries, Nellore, being the competent authority, under Section 15 of the Act. After filing of final report by the police, the learned Magistrate has taken cognizance for the offences referred supra.

4. The learned Counsel for the petitioner submitted that A1 in the above C.C. filed Crl.P.No.8183 of 2015 before this Court seeking to quash the proceedings against him in the above C.C. and this Court allowed the said Criminal Petition vide order dated 22.9.2015 quashing the cognizance taken by the Magistrate and the procedure followed by him, and therefore, the petitioner cannot be prosecuted.

5. The order in Crl.P.No.8183 of 2015 reads as follows:

“A perusal of the record shows prima facie there is no application of the offence under Section 420 IPC, it is otherwise even premature, more particularly for the reason that Section 15 of the Act says no court shall take cognizance unless there is a written complaint filed by the competent Authority. Even the 2nd respondent herein is the competent authority and the procedure to be adopted to take cognizance of the offence under Section 14 of the Act for violation of Section 13(1) of the Act is by filing a complaint before the learned Magistrate under Section 200 Cr.P.C. to adopt the procedures contemplated under Sections 200 to 204 Cr.P.C. for taking cognizance, if any,

under Section 190 Cr.P.C., there from and not for giving of police report, registering of crime and taking of cognizance by Magistrate there under from police final report. Needless to say, any IPC offences shall be in addition to the provisions of the special statute covered only by private complaint. Usually, in dealing with an offence under Section 420 IPC and Section 138 of N.I.Act, both penal provisions are sustainable, if the same arise out of private complaint, but not by police report for the bar under Section 138 of N.I.Act, for the police to report and take cognizance by the Magistrate.

Having regard to the above, the cognizance taken by the Magistrate and the procedure followed by him are quashed. However, it is made clear that the competent authority concerned under Section 15 of the Act can maintain a private complaint before the learned Magistrate concerned to proceed against the accused persons concerned, who ever they may be, for the penal consequences under the Act along with IPC by virtue of this order.”

6. In the facts and circumstances of the case and in view of the order in CrI.P.No.8183 of 2015, this petition can also be allowed in terms of the said order.
7. Accordingly, the Criminal Petition is allowed in terms of the order dated 22.9.2015 in CrI.P.No.8183 of 2015. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Date : 22.3.2016
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HONOURABLE SRI JUSTICE RAJA ELANGO

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DATED 22.3.2016

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