

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.14788 of 2013

ORDER :

The petitioners are A.1 and A.2 among seven accused of Crime No.131 of 2011 of Pathikonda Police Station, for the offences punishable under Sections 447, 427, 506 r/w.34 of Indian Penal Code. From the report of the 2nd respondent/defacto complainant by name P. Hanumanthu, the police having registered the crime and after investigation filed the final report in the form of charge sheet only against Accused Nos.3 to 7 by not charging the petitioners A.1 and A.2 for the offences supra. It was observed in the police final report dated 25.12.2012 that the investigation established that as per the Court order Rs.55,056/- was deposited in the name of Chennakeshava Swamy temple, Pathikonda, operated by the E.O., Pathikonda vide CIF No.69086598712 dated 28.08.2009 for three years and there is no mis-use of amounts by petitioners/A.1 and A.2, by violating the Court orders to believe said version of the defacto-complainant and there is no participation of A.1 and A.2 directly or indirectly much less as abettors to A.3 to A.7 in the commission of offence.

2. Pursuant to the final report, having taken cognizance against A.3 to A.7 the learned Magistrate by referring to the material and by perusing the objections by way of protest filed by defacto-complainant for not charging A.1 and A.2 and taking cognizance against A.3 to A.7, by differing with the police opinion in saying the material on record discloses accusations against A.1 and A.2 also with A.3 to A.7 for the offences and therefore ordered to issue summons. It is the same now impugned in seeking to quash said cognisance order of the learned Magistrate, with the contentions that the order of the Magistrate is unsustainable and the petitioners are innocent and they committed no offence and police final report clearly reveals their innocence and there is nothing to differ with police final report opinion formed from the material on record to charge or to take cognizance against the petitioners and hence, said cognizance order is sought for quashing.

3. Learned counsel for the petitioners reiterated the same. Whereas it is the contention of the counsel for the 2nd respondent/defacto complainant that the order of the Magistrate is just and for this Court while sitting against it, there is nothing to interfere and hence, to dismiss the quash petition.

4. The learned Public Prosecutor representing the State sought for decision on merits from the material on record.

5. Heard and perused the material on record.

6. In deciding the quash petition either for quashing or not of the proceedings

supra it is also necessary to mention that there was an interim order passed by this Court in this petition on 16.12.2013 which reads as follows :

“ Issue notice to the second respondent.

Learned counsel for the petitioners is permitted to take out personal notice to the second respondent by “Registered Post with Acknowledgement Due” and file proof of service.

The material placed before this Court would disclose that initially a case in Crime No.131 of 2011 of Pathikonda Police Station was registered against the petitioners and others. After investigation, the police filed a charge sheet deleting the name of the petitioners herein who are accused Nos.1 and 2. Without there being any petition questioning the final report filed by the police, the learned Magistrate appears to have taken cognizance of the matter and issued summons to the petitioners. Further the averments in the charge sheet would disclose that an amount of Rs.55,056/- was deposited in the name of Chennakeshava Swamy Temple, Pathikonda vide CIF.No.69086598712 dated 28.08.2009 for three years, as such, there was no misuse.

In view of the above, there shall be interim stay of all further proceedings in C.C.No.205 of 2013 on the file of the Judicial First Class Magistrate, Pathikonda, for a period of eight (08) weeks, insofar as the petitioners only.

Post on 10.02.2014.”

7. There is no extension of interim order thereafter as can be seen from the record.

8. To be uninfluenced by the interim stay order supra, the factual background necessary in deciding the quash petition on merits is that, there is a land of Ac.19.87 cents in Sy.No.340 of Puchakayalamada village Pathikonda Mandal, belongs to the diety of Sri Chenna Keshava Swamy. The 2nd respondent/defacto complainant claims that he has taken the land on lease in the year, 1983 and while so continuing, when the temple authorities were trying to lease out the land to others he filed W.P.No.16856 of 2007 and obtained status-quo orders and later the writ petition was ended in dismissal and he carried the matter in appeal in W.A.No.48 of 2008 and interim direction was ordered in the said appeal to the effect that the temple authorities shall hand over the land to the petitioner No.1 herein to conduct auction and to deposit the sale proceeds in a nationalised bank.

9. The defacto complainant claims that the 1st petitioner/A.1 of the crime supra allegedly misappropriated those proceeds. The defacto complainant no doubt went unsuccessful in the final disposal of the W.A.No.48 of 2008 supra, carried the matter before the Apex Court and obtained status quo orders. He claims that in the subsequent W.P.No.19664 of 2011 filed by him, there was a status quo order not to interfere with his possession by the Endowment officials or their men and the accused persons inspite of it are threatening him with dire consequences and that is the sum and substance in registration of the crime.

10. The record reveals that the land belongs to the temple claimed to have taken on lease in the year, 1983 for a maximum period of three years by the defacto complainant. Subsequently, the Assistant Commissioner of Endowments vide proceedings Rc.No.A1/2499/2007 dated 24.06.2007, by public auction to lease out the

lands afresh where the 3rd accused G. Govindu participated among others in the auction and became the highest bidder and impugning the same, W.P.No.16856 of 2007 was filed by the 2nd respondent. Though initially there was a status quo order dated 09.08.2007 the same was vacated as the writ petition itself was ended in dismissal on 08.01.2008 and it is there from the defacto complainant preferred W.A.No.48 of 2008 and there was no any interim protection in his favour as with the interim order passed in the W.A.M.P.No.106 of 2008 in holding categorically that the defacto complainant is not in possession of the land to resume possession or to claim back. It was however observed that the highest bidder shall be put in possession and to pay the sale proceeds to the temple and the temple authorities to deposit the same in a nationalised bank. Pending finality of the writ appeal, the crop was realized by conducting public auction and the sale proceeds were deposited in a nationalised bank and certificate was issued by the Executive Officer of the temple to that effect, that what the police final report also reflects as referred supra i.e., of the Executive Officer Pathikonda in CIF number supra dated 28.08.2009 deposited an amount of Rs.55,056/-as per the Court orders for a period of three years and hence there is no mis-utilization of the amount by the accused persons 1 and 2 herein, as alleged by the defacto complainant.

11. In the SLP (Civil) No.4967 of 2008 filed by the defacto complainant, no doubt an order of status quo dated 07.03.2008 was granted. Infact the record reveals that the 3rd accused- highest bidder was put in possession as a tenant by the Endowments Department and the defacto complainant again filed W.P.No.10816 of 2010 where there is no interim order; apart from it in W.P.No.19664 of 2011, there was an interim direction dated 13.07.2011 in W.P.M.P.No.23772 of 2011, the 3rd accused- highest bidder in the public auction is in actual possession of the temple land as tenant was impleaded himself by seeking to vacate said order obtained by the defacto complainant by filing W.P.M.P.No.3786 of 2011 and same was allowed and consequently the 3rd accused was directed to cultivate the land by vacating the interim order supra in W.P.M.P.No.23772 of 2011.

12. The police investigation in the factual background clearly speak from this Court orders supra, authorising

1st petitioner/A.1 to conduct public auction of the crop and deposit the amount for three years in a nationalised bank and for alleging by the defacto complainant of A.1 violated the orders and misappropriated the amounts, there is no basis as the Executive Officer of the temple issued the certificate saying that the amount realized was invested by the temple in Bank deposit. Once such is the case, taking of cognizance for the offence by the learned Magistrate without proper verification of the material so far as the petitioners/A.1 and A.2 are concerned is no way sustainable, much less to differ with the clear opinion formed by the police in the police final report filed in that regard, leave

about the cognizance taken from the police final report for the offences against other accused persons. The petitioners in support of it, placed reliance on the expressions of the Apex Court saying that the Magistrate taking cognisance must be a judicial one by application of mind and without recording satisfaction of *prima-facie* case of accusations in taking cognizance, issuing of summons to the accused is unsustainable.

13. Learned counsel for the petitioners placed reliance for that expression of Apex Court in ***GHCL Employees Stock Option Trust Vs India Infoline Limited***^[1] where it was also held on the scope of alleged offence of cheating or breach of trust as both are civil and criminal wrongs. However, where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence of cheating or breach of trust to sustain the prosecution. In this regard also, there shall be judicial application of mind and the reasons be given for taking cognisance by referring to several of the earlier expressions of the Apex Court. Further the Apex Court in ***Mohammed Ibrahim and others Vs State of Bihar and another***^[2], held that where the disputes which essentially are civil in nature, filed as criminal complaints, it is the duty of the criminal Court to check any abuse of process and

criminal Court should ensure that criminal proceedings are not misused for settling civil disputes unless there is a criminal element in existence. It was observed regarding the offence of cheating that it cannot be presumed by the Court of culpability of the accused, it cannot be presumed that persons committing of offence merely by alleging or saying that he acted fraudulently unless fraudulent act is specifically made under the Indian Penal Code or some other law in saying there is nothing to establish any offence of cheating with dishonest intention from the inception. In fact the Apex Court in ***Uma Shankar Gopallika Vs State of Bihar***^[3] held that the breach of contract is different from the offence of cheating and in the absence of the allegation of intention from the inception no offence of cheating with criminal conspiracy can be made out. No doubt the cognizance order of the Magistrate is for the offence under Sections 447, 427, 506 r/w.34 IPC. Here to attribute any of the offences against the petitioners/A.1 & A.2 there is no substance or material is found from the police final report after investigation even for a Magistrate though entitle under law to differ with police opinion and take cognizance provided there must be some basis to disclose any of the offence without which taking of cognizance results in non-judicial application of mind consequently unsustainable, to quash the said proceedings to sub-serve the ends of justice and to prevent abuse of process of law.

14. Accordingly and in the result, the Criminal Petition is allowed and the proceedings in the C.C.No.205 of 2013 in sofaras petitioners/A.1 and A.2 are concerned is quashed.

Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

18th March, 2016.
Rds

Dr. B.SIVA SANKARA RAO J,

[\[1\]](#) (2013) 4 Supreme Court Cases 505
[\[2\]](#) (2009) 8 Supreme Court Cases 751
[\[3\]](#) (2005) 10 SCC 336