

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15060 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.93 of 2016 dated 09.09.2016 on the file of Yeldurthi Police Station, for the offences punishable under Sections 406, 409 and 420 of I.P.C.

The facts of the case are that the complainant who is working as District Manager, Telangana State Civil Supplies Corporation, Medak District filed a complaint on 08.09.2016 that during Rabi 2013-2014 & 2014-2015, the complainant delivered a quantity of 2272.50 mts of Paddy to the firm of the petitioner i.e. M/s Sri Shiva Sai Binny Rice Mill, Yeldurthy for custom milling purpose, out of which he has delivered only 836.401 Mts of rice which is equivalent to 1230.001 mts of paddy, leaving a balance of 1042.519 mts of paddy with the miller. Further, inspite of giving repeated reminders to the petitioner, the petitioner has not delivered custom milling rice to civil supplies corporation which costs Rs.1,69,21,155/-, thereby it amounts to misappropriation of the custom milling paddy for illegal gains. It is also the case that the petitioner cheated the civil supplies corporation contravening the provisions of law. Based on the said complaint the police registered F.I.R. No.93 of 2016 against the petitioner on 09.09.2016 for the offences punishable under Sections 406, 409 & 420 I.P.C, and the said case is under investigation.

The contention of the petitioner before this Court is that the District Manager, Civil Supplies Corporation did not deliver any paddy during Rabi 2013-2014 & 2014-2015 for custom milling purpose and totally denied the delivery of paddy for custom milling. But, it is a matter of investigation and at this stage while exercising jurisdiction under Section 482 of Cr.P.C, such disputed question cannot be decided. The Court can exercise jurisdiction under Section 482 of Cr.P.C only when the facts on the face of it, if taken into consideration would constitute not an offence, the Court can quash the proceedings. But, it is a disputed question of fact regarding delivery of paddy for custom milling purpose and it is required to be investigated into by the authorities. Therefore, it is not the appropriate stage to quash the proceedings at this stage while exercising jurisdiction under Section 482 of Cr.P.C.

Learned counsel for the petitioner has drawn attention of this Court to the order passed in Crl.P.No.14380 of 2016, where this Court while deciding a similar *lis*, directed the police to complete investigation within the specified time, while dispensing with the appearance of the petitioner before the investigation agency for the purpose of investigation.

But, such direction is contrary to the principle laid down by the Apex Court in **Parvinderjit Singh and Anr. v. State (U.T. Chandigarh) and anr**¹, wherein the Apex Court while deciding the question of direction not to arrest a person in connection within non cognizable offence, held that an interim order restraining arrest of a person charged with a cognizable offence, if passed while dealing with an

¹ AIR 2009 SC 502

application under Section 438 of Cr.P.C, will amount to interference in the investigation.

The principle laid down in the above judgment is directly applicable to the present case, for the reason that, while exercising jurisdiction under Section 482 of Cr.P.C, the Court cannot issue a direction not to arrest the petitioner, since it amounts to interference with the investigation, in view of the law declared by the Apex Court.

However, in **Joginder Kumar v. State of U.P. and ors**², the Supreme Court held as follows:

"18. The above guidelines are merely incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen" and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter, The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do.

19. Then, there is the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England. (Civil Actions Against the Police - Richard Clayton and Hugh Tomlinson; page 313). That Section provides:

Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable

² AIR 1994 SC 1349

except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.”

Hence, the police is directed to follow the guidelines scrupulously laid down by the Supreme Court in **Joginder Kumar's** case (referred supra), before arrest of the accused, if necessary for investigation.

With the above direction, the criminal petition is disposed of.
No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:24.10.2016
SP