

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15788 of 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.461 of 2012 on the file of Additional Judicial First Class Magistrate, Rayachoty, Kadapa District for the offences punishable under Sections 406 and 420 of Indian Penal Code (for short "I.P.C.") and under Section 7 (1) of Essential Commodities Act (for short "the Act").

The Inspector of Police, Rayachoty Police Station filed charge sheet before the Judicial First Class Magistrate, Rayachoty against four (4) persons, the petitioners herein alleging that on 07.09.2012 at 08.30 p.m. near Rayudu Colony on Rayachoty – Madanapalli road, he arrested accused No.1 and two others (accused Nos.2 and 3) while they were transporting 130 bags (each bag containing 50 Kgs) of PDS rice illegally to Madanapalli for selling at higher rate without valid permit or license and seized 130 bags of PDS rice and Eicher vehicle No.AP 24V 5491 and also A.3's pilot motor cycle bearing No.AP 04 AC 5884 under panchanama dated 07.09.2012 and after following necessary procedure police filed the charge sheet against the petitioners for the offences punishable under Sections 406 and 420 of I.P.C. and under Section 7 (1) of the Act.

After filing charge sheet, the petitioners appeared before the Court and it is pending for trial.

The present petition is filed to quash the proceedings in C.C.No.461 of 2012 on the file of Additional Judicial First Class

Magistrate, Rayachoty, Kadapa District only on the ground that Section 7 of the Act has no application and there was no entrustment of any property and commission of breach of trust to attract the offence punishable under Section 406 of I.P.C. and the petitioners did not cheat and induce dishonestly to part with any property or money etc. to attract the offence punishable under Section 420 of I.P.C. Further, it is contended that there is no control order prohibiting transportation of PDS rice from one place to another and in the absence of any control order the proceedings in C.C.No.461 of 2012 shall not be continued since it amounts to abuse of process of Court and prayed to quash the proceedings.

During hearing learned counsel for the petitioners Sri V.H.V.R.R.Swamy admitted that the petitioners are transporting rice, but did not possess any license and no license is required for such business. In the entire complaint, nothing was disclosed about contravention of any control order issued under Section 3 of Essential Commodities Act and in the absence of contravention of any control order, the complaint itself is not maintainable and drawn the attention of this Court to a Judgment of Division Bench of this Court rendered in W.P.No.7811 of 2016 and batch dated 13.07.2016 and general guidelines to exercise jurisdiction under Section 482 of Cr.P.C. in “**State of Haryana v. Ch.Bhajan Lal**”¹ and finally it is contended that the registration of crime by the police is nothing but abuse of process of law and to meet the ends of justice, this Court has to exercise its inherent jurisdiction under Section 482 of Cr.P.C. and the charge sheet is silent as to what control order passed under Section 3 of the E.C. Act is violated, to

¹ AIR 1992 SC 604

register a case under Section 7 of E.C.Act, which deals with penalties and in the absence of violation of any specific control order, the charge sheet is liable to be quashed and prayed to quash the proceedings in C.C.No.461 of 2012 on the file of Additional Judicial First Class Magistrate, Rayachoty, Kadapa District.

Learned Public Prosecutor (Andhra Pradesh) contended that the petitioners were found in possession of P.D. rice in contravention Clause 17 (A) of Andhra Pradesh Public Distribution System control order (for short, hereinafter referred to as "Control Order") for unlawful gain and in the absence of any explanation how the petitioners came into possession of P.D.S. rice while admitting transportation of rice, the burden of proof is on the petitioners to prove that they are transporting rice without contravening any of the control order. Even otherwise, mere non-quoting of specific clause of control order in the charge sheet would not vitiate the entire proceedings when the allegations made in the charge sheet on their face value show the contravention of particular control order.

Learned Public Prosecutor (Andhra Pradesh) contended that the conduct of the petitioners must be taken into consideration while deciding the application under Section 482 of Cr.P.C. He has drawn the attention of this Court to various dates of adjournments of C.C.No.461 of 2012 before the trial Court, that itself shows how the petitioners successfully avoided the trial and absconded. In such case, the proceedings cannot be quashed. It is also contended that the proceedings cannot be quashed for the reason that the Government is providing essential commodities to the poor and needy, but depriving them by indulging in sale of essential

commodities at higher price and if these acts are encouraged, which would defeat the very object of enacting Essential Commodities Act and Control Orders passed thereunder from time to time. Therefore, the proceedings cannot be quashed and placed reliance on “**Satya Narain Musadi v. State of Bihar**”² and “**The Public Prosecutor, High Court of A.P., Hyderabad v. Budde Sudhakar**”³

In view of rival contentions, the points that arise for consideration are:

- (1) Whether the allegations made in the charge sheet, which set the criminal law into motion would constitute an offence on the face value of those allegations?
- (2) Whether the transportation of PDS rice amounts to interruption of Public Distribution System in contravention of Clause 17 (A) of Andhra Pradesh State Public Distribution System (Control) Order, 2008, if so, failure to quote the relevant control order vitiates the entire proceedings in all these cases?

P O I N T Nos.1 and 2:

The allegations made in the charge sheet would go to show that PDS rice is being diverted from Public Distribution System depriving the real poor beneficiaries under the scheme and it is not the case of the petitioners that the same is not the PDS rice, but contended that it is PDS rice and for carrying business of sale of rice, no license is required. However, the petitioners did not deny the transportation of P.D.S rice in the vehicle referred to in the

² AIR 1980 SC 506

³ 1988 Cri.L.J.1470 (1)

complaint and when the petitioners are found in possession of alleged PDS rice, it is for them to prove how they came into possession of such rice in view of Section 106 of Indian Evidence Act since the onus of proof lies on them. However, in the entire charge sheet the police did not specify the contravention of any control order, but registered the crime for the offences punishable under Sections 406 and 420 of I.P.C. and Section 7 (1) of the Act. Mere failure of police to quote the specific control order is not a ground to quash the proceedings since the allegations made in the complaint would disclose that the petitioners interrupted Public Distribution Process, which is in violation of Clause 17 (A) of A.P. State Public Distribution System (Control) Order, 2008, which is as follows:

“No Fair Price Shop dealer or card holder or any person shall be allowed to cause interruption or interfere with the process of smooth distribution of scheduled commodities under Public Distribution system or other Government schemes at any level right from Food Corporation of India godown point to Fair Price Shop point, till the scheduled commodity reaches the intended beneficiary. Any such attempt of interruption or interfering with such process shall be treated as an abetment and be deemed to have contravened this order, thereby committing an offence under Section 8 of the Essential Commodities Act, 1955.”

Thus, transporting PDS rice before it reaches the intended beneficiaries i.e. card-holders amounts to interruption of Public Distribution process under A.P. State Public Distribution System (Control) Order 2008. The word ‘any person’ referred in Clause 17 (A) of the Control Order, 2008 indicates every person, who interrupted Public Distribution Process is liable for punishment under Sections 7 and 8 of Essential Commodities Act.

Section 7 deals with penalties against a person, who

contravened any of the order made under Section 3 of the Essential Commodities Act.

Section 3 of the Essential Commodities Act deals with powers to control production, supply, distribution, etc. of essential commodities and it permits the Central Government to pass any control order for securing equitable distribution of essential commodities and availability of fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, and provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein by any order. Thus, A.P. State Public Distribution System (Control) Order, 2008 is a control order issued by the Government in exercise of power conferred under Section 3 of the Essential Commodities Act.

In any prosecution for any offence under the Essential Commodities Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution as per Section 10-C of the Essential Commodities Act. "Culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. For the purpose of Section 10-C of the Act, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Thus, the statutory presumption shall be drawn as per Section 10-C of the Act, when the petitioners are found transporting PDS rice. In the prosecution,

if any, launched against them by filing Charge Sheet would give raise to a defence that he had no *mens era* and in the event of his failure to rebut the presumption, the Court can presume that the petitioners/accused have committed an offence.

Learned Public Prosecutor for the State of Andhra Pradesh contended that when the crime is registered under Section 420 of I.P.C., proof of possession of PDS rice is sufficient and the Court can conclude that it is only for wrongful gain. In support of his contention, he placed reliance on a judgment of the Apex Court rendered in “**Satya Narain Musadi v. State of Bihar**” (referred supra) wherein it is held as follows:

“Section 11 of the Act precludes a Court from taking cognizance of the offence punishable under the Act except upon a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. The question is, if such police officer investigating into an offence which the Act has declared as cognizable submits a report in writing under Section 173 (2) disclosing an offence under the Act and requesting for proceeding further into the matter, would it satisfy the requirements of Section 11 for taking cognizance of the offence so disclosed? Undoubtedly the police officer submitting the report would be a public servant within the meaning of Section 21 I.P.C. and his report has to be in writing as required by Section 173 (2). It must disclose an offence of which cognizance can be taken by the Magistrate. Apparently Section 11 would stand fully complied with.”

In “**The Public Prosecutor, High Court of A.P., Hyderabad v. Budde Sudhakar**” (referred supra) this Court held as follows:

“The object of amendment is to deal more effectively with persons indulging in hoarding, black marketing of, and profiteering, in any essential commodities and the evils of vicious inflationary prices and for matters connected therewith or incidental thereto. Section 2 of the Amendment Act provides that, during its continuance the provisions of the principal Act shall have effect only subject to Sections 3 - 11 of the Amending Act, though most of the Sections in the principal Act are drastically amended temporarily for the purpose of achieving this object. Section 11 of the principal Act is not touched and that being the position, the question is whether Section 12AA(1)(e) operates as complete bar for taking cognizance as provided under Section 11 which is also in operation. It must be noted that if the Legislature wanted to completely remove Section 11 it ought to have removed the same, but Section 11 is not touched. Therefore, it cannot be presumed that there is implied bar for taking cognizance under Section 11.”

In the present case, there is no mention in the charge sheet about the violation of particular control order i.e. A.P. State Public Distribution System (Control) Order, but the allegations made in the charge sheet on their face value would constitute an offence punishable under Sections 7 and 8 of the Essential Commodities Act and clause 17 (A) of A.P. State Public Distribution System (Control) Order.

In the present cases, the contention of the petitioners is that there is no mention about the violation of any particular control order, but that by itself is not sufficient to quash the proceedings when the allegations made in the charge sheet would constitute an offence on their face value.

The Apex Court in “**State of Haryana v. Bhajan Lal**” (referred supra) laid down seven guidelines. Guideline No.1 is relevant, according to it, where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In “**Madhavrao Jiwaji Rao Scindia & anr. v Sambhajirao Chandrojirao Angre & ors.**”⁴, the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence.

⁴ 1988 AIR 709

Therefore, by following “**Madhavrao Jiwaji Rao Scindia & anr. v Sambhajirao Chandrojirao Angre & ors.**,” (referred supra) the special facts or special features have to be taken into consideration to quash the criminal proceedings and to decide the *lis* between the parties, as held by the Supreme Court “**Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy and Ors**⁵”.

In “**R.P. Kapur v. State of Punjab**⁶”, the Apex Court held as follows:

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

In view of the principles laid down by the Apex Court, this Court can exercise jurisdiction under Section 482 of Cr.P.C. only when the allegations made in the complaint on its face value would not constitute an offence; failure to quote contravention of specific clause of control order is irrelevant.

The main reason for challenging the proceedings before this Court is that sale of PDS rice is not an offence in the absence of

⁵ 2011 (3) ACR 3156 (SC)

⁶ AIR 1960 SC 866

any contravention of control order in view of the principle laid down in W.P.No.7811 of 2016 and batch wherein the Bench of this Court while deciding a Writ of Certiorari filed under Article 226 of the Constitution of India to declare G.O.Rt.No.1024 dated 11.05.2016 confirming the detention of the petitioner's husband as illegal, arbitrary and to grant Habeas Corpus directing the respondents to produce the petitioner's husband.

In the facts of the above judgment, the detenue indulged in sale of PDS rice by purchasing PDS rice from cardholders after supplying by the Fair Price Shop dealer to the cardholder. So, it is clear that there was no interruption in the process of distribution as contemplated in clause 17 (A) of the A.P. State Public Distribution System (Control) Order since the process is limited till the commodity reaches the intended beneficiary i.e. cardholder from Fair Price Shop godown. Therefore, purchase of PDS rice from the beneficiary or cardholder does not amount to interruption in the process of distribution under Clause 17 (A) of A.P. State Public Distribution System (Control) Order. But the facts of the present cases are distinct as the petitioners herein transporting PDS rice after recycling, thus, it can be termed as interruption of Public Distribution System. Since it was not case of the defacto complainants that the petitioners purchased the rice from cardholders or beneficiaries and thereafter started transporting the same. Hence, the principle laid down in W.P.No.7811 of 2016 and batch has no application and on the strength of the principle laid down by the Division Bench of this Court in W.P.No.7811 of 2016 and batch, the present proceedings cannot be quashed at this stage.

Learned Public Prosecutor for the State of Andhra Pradesh further contended that when the petitioners sought for quashing of proceedings during pendency of C.C. having successfully avoided the trial of case at the threshold i.e. at the crime stage, the Court has to exercise its discretionary power sparingly keeping in mind various principles laid down by the Apex Court.

Sri V.H.V.R.R. Swamy, learned counsel for the petitioners, by his over vehemence contended that the entire proceedings are vitiated only on the ground that the police did not mention the violation of particular control in the F.I.Rs. It is a known fact that on receipt of complaint from the defacto complainant, police register the same as crimes and issued F.I.Rs. to set criminal law into motion. Mere quoting wrong provision of law or failure to quote relevant provision of law is not a ground to quash the proceedings since the allegations made on their face value shall be taken into consideration at this stage. To exercise inherent jurisdiction under Section 482 Cr.P.C. by this Court, the truth or otherwise of the allegations made in the complaint cannot be gone into at this stage. Hence, the contention of the learned counsel for the petitioners is without any substance legally and the same is negated.

On an overall consideration of the law laid down by various Courts and the Apex Court and present facts of the case, I find that the petitioners violated the clause 17 (A) of Andhra Pradesh State Public Distribution System (Control) Order on the face value of the allegations made in the charge sheet, as such the proceedings in C.C.No.461 of 2012 on the file of Additional Judicial First Class Magistrate, Rayachoty, Kadapa District are not liable to

be quashed.

The petitioners did not appear before the trial Court and not cooperating for examination under Section 251 of Cr.P.C and not attending the Court to complete the trial of the Case. The Magistrate issued N.B.W on 16.06.2015 and thereafter it is coming up for execution of N.B.W. Thus, the petitioners are successfully avoiding the completion of trial obviously for different reasons. The details of hearing dates are as follows:

Registration Number	Judge	Business on Date	Hearing Date	Purpose of Hearing
100461/2012	Additional Junior Civil Judge	11.03.2013	18.03.2014	Examination
100461/2012	Additional Junior Civil Judge	18.03.2014	18.11.2014	Examination
100461/2012	Additional Junior Civil Judge	18.11.2014	12.02.2015	Examination
100461/2012	Additional Junior Civil Judge	12.02.2015	25.03.2015	Examination
100461/2012	Additional Junior Civil Judge	25.03.2015	17.04.2015	Examination
100461/2012	Additional Junior Civil Judge	17.04.2015	16.06.2015	Issue BW/NBW
100461/2012	Additional Junior Civil Judge	16.06.2015	03.07.2015	Issue BW/NBW
100461/2012	Additional Junior Civil Judge	03.07.2015	22.09.2015	Issue BW/NBW
100461/2012	Additional Junior Civil Judge	22.09.2015	13.10.2015	Issue BW/NBW
100461/2012	Additional Junior Civil Judge	13.10.2015	26.11.2015	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	26.11.2015	09.12.2015	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	09.12.2015	23.12.2015	Issue BW/NBW

100461/2012	Principal Junior Civil Judge	23.12.2015	08.03.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	08.03.2016	08.06.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	08.06.2016	29.06.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	29.06.2016	10.08.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	10.08.2016	13.10.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	13.10.2016	03.11.2016	Issue BW/NBW
100461/2012	Principal Junior Civil Judge	03.11.2016	01.12.2016	Issue BW/NBW

If the conduct of the petitioners is taken into consideration, this Court cannot exercise inherent power to quash the proceedings against the petitioners whose conduct is blameworthy and who are successful in avoiding the trial of the case.

In view of my foregoing discussion, I find no ground to quash the proceedings in these cases as they are devoid of merits. Consequently, the petitions are liable to be dismissed.

In the result, the petition is dismissed. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

06.02.2017
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