

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4280 of 2017

ORDER:

The petitioner/accused was Sub Inspector of Police of Vallampudi Police Station of Vizianagaram District. The 2nd respondent is defacto-complainant in C.C.No.48 of 2017 pending on the file of the Judl.Magistrate of First Class, Kothavalasa. It is outcome of the private complaint that was taken cognizance by the learned Magistrate on 15.02.2017 for the offences punishable u/sec.217IPC(wrongly mentioned as 217 CrPC).

The cognizance order,dt.15.02.2017 speaks that the accused being the public servant while discharging duties of SHO of Vallampudi Police Station, willfully neglected to obey the direction of law u/sec.154(1) CrPC, and facilitated to one Dulla Mangamma and others to escape from criminal liability with a view to protect them from legal punishment. Such act of the accused/SHO is not official duty thereby not entitled to protection u/sec.197CrPC and thereby to take cognizance to punish the accused. It further speaks as prima facie case is made out, cognizance is taken for the offence u/sec.217IPC and ordered for issuance of summons to accused. Record shows only the defacto-complainant as sole witness, his sworn statement was recorded.

The private complaint averments and the sworn statement in support of it show that the complainant is resident of Arigipalem village, and for the development of Grampanchayat, the Government of India released Rs.15,000/- under the National Rural Health Scheme (for short, 'NRHS') for the year 2014-15 and the sarpanch, panchayat Secretary and ANM of the village have no power to withdraw said amount in the absence of resolution of majority

members of said Gram Panchayat and the Members of Gram Panchayat, Arigipalem not introduced any issues without passing any resolution to withdraw the amounts since July,2013 and the sarpanch, panchayat secretary and ANM colluded together and misappropriated the said amount, with dishonest intention by not conducting even clean and healthy meeting and created false resolution to misuse the funds as if for cleaning drains, removing waste material, heap of sweepings, provide labour and also to purchase bleaching, phenyl and white powder etc. and also created false bills from Sri Ramachandra Hardware and Electricals, S.Kota for Rs.6,000/- and again in the name of Srinivasa kirana Stores, Baddam for Rs.9,000/- and when the complainant lodged a report, dt.18.09.2015, against the Sarpanch, Secretary and NAM respectively, the L.W.1 A.Varalakshmi, Women Police Constable No.2028 and the accused willfully refused to register report of the complainant, having colluded with the sarpanch to protect her from legal liability,

The quash petition averments impugning the cognizance order of the learned Magistrate are that on the complaint of the 2nd respondent dated 28.09.2015, FIR No.114 of 2014 was registered by Vallampudi Police Station against Smt. Dulla Mangamma, Sarpanch, Agiripalem village, and others for the offences punishable u/sec.406 and 420 r/w 34IPC. The police after investigation by examining as many as 12 witnesses including the defacto-complainant, filed final report before the learned Magistrate of Kothavalasa, on 04.01.2016 and not satisfied with the final report, the 2nd respondent herein as defacto-complainant filed a private complainant but the said facts were suppressed in filing the false complaint covered by the present C.C.No.48 of 2017 for taking cognizance by the learned Magistrate as if the petitioner/accused was not discharging official duties and as if

earlier he did not take any legal recourse on report of the defacto-complainant and thereby the proceedings are liable to be quashed.

In fact, the record shows Cr.No.144 of 2014 was registered and police filed final report. Thereby there is nothing to say there was no any non-registration of the FIR and investigation furthermore for the learned Magistrate in taking cognizance on the private complaint for the offence punishable u/sec.217IPC. The very complaint averments shows that the petitioner/accused as SHO-cum-Sub Inspector of Police, not registered the crime on the complaint of 2nd respondent but the material referred supra shows crime was already registered and investigated and referred report filed. Anything done by him was in discharge of official duties as Sub Inspector of Police. If at all from any report is lodged, to take cognizance or not depends upon the cognizable offence or not on verification of the same definitely part of official duty. Once such is the case, the contention before the learned Magistrate as concluded by the learned Magistrate of no sanction required to prosecute the petitioner/Sub Inspector of Police is basically unsustainable thereby even apart from other merits supra.

Having regard to the above and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.48 of 2017 pending on the file of the Judl.Magistrate of First Class, Kothavalasa, against the petitioner The petitioner is acquitted and his bail bonds shall stand closed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:04 .10.2017
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