

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.2272 of 2017

ORDER:

The present petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed by one Sasikanth Pulikullu, s/o. Srinivasa Rao, describing himself as accused No.1 in Crime No.1129 of 2016 of Rajendranagar Police Station, Cyberabad, and requesting to quash the proceedings in the said Crime.

As per the submission of Sri K.Srinivasa Reddy, learned counsel for the petitioner, when the remand case diary, remanding one A.Kiran Kumar Sharma, was presented before the Court, the present petitioner was shown as accused No.2 and the said Kiran Kumar Sharma was shown as accused No.1 therein.

The petitioner alleged to have committed the offences punishable under Sections 408, 420, 379 of IPC and Sections 65 and 72 of the Information Technology Act, 2000 (for short, 'the IT Act').

Learned counsel for the petitioner would submit that the petitioner earlier approached this Court by filing Writ Petition No.38 of 2017 and, by interim order dated 03.01.2017, this Court granted stay of all further proceedings including the arrest of the petitioner. Learned counsel would further submit that, by order dated 08.03.2017, this Court has disposed of the said writ petition by giving liberty to the petitioner to avail the alternative remedy for the relief

sought therein and extended interim stay granted on 03.01.2017 for a period of two weeks from that day.

Learned counsel would make two main submissions. The first is, though, the penal provisions of Sections 65 and 72 of the IT Act, which are bailable and non-cognizable, would alone apply, the Investigating Officer deliberately added penal provisions of Sections 408, 420 and 379 IPC also, as they are non-bailable and cognizable. Second is, that the petitioner ceased to be an employee of the *de facto* complainant's Company in 2016 and, to wreak vengeance, he is also arraigned as an accused.

A perusal of the complaint averments would show that the petitioner, who was an employee then, was attached to one A.Kiran Kumar Sharma, who has been the Chief Executive Officer of Global Solutions Private Limited, and entrusted the work of implementing and processing HPFS Software work and, both of them, having colluded with each other, with a dishonest intention of committing theft of the equipment of HPFS Software, which is the exclusive property of the Prohibition & Excise Department, Government of Andhra Pradesh and Telangana State, to cause loss to the exchequer of the States, committed theft of the Software along with Apple Macbook Pro 13-MD 101HN/A and Industrial Grade embedded Computer exclusively imported for HPFS implementation from Taiwan based Company named as Lanner Electronics, Taipei, serial

Nos: 1) LR 201409002179 2) LR 201409002028 3) LR 201409002298 4) LR 201409002334.

Now, the submission of learned counsel for the petitioner is that no theft as such has been committed by the petitioner and the allegations levelled against the petitioner are wholly improbable and untrue.

Learned counsel also places reliance on the decision in **Syed Kaleem v. M/s. Mysore Lakshmi Beedi Works**¹ rendered by a learned Single Judge of Karnataka High Court for the proposition that when the provisions of Sections 78 and 79 of the Trade & Merchandise Marks Act, 1958 would govern the situation therein, framing of a charge under Section 420 of IPC was inappropriate. This decision is relied on for the reason that analogous situation would occur in the present case. Learned counsel further places reliance on the decision rendered by the Hon'ble Apex Court in **Sharat Babu Digumarti v. Govt. of Nct of Delhi**² and refers to the expression of the Hon'ble Supreme Court in paragraph '32' thus:

“The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, Section 292. It

¹ 1993 (1) ALT Cri 64

² 2017 (1) HLT Cri 17

is apt to note here that electronic forms of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.”

In the aforesaid decision, in the context of violation of the provisions of Section 292 of IPC with reference to offences under Sections 79 and 81 of the IT Act, the law declared by the Hon’ble Supreme Court is that when a special law provisions have been clutched, they shall prevail over the general and prior laws and, when the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC. It has to be kept in view that the said decision was rendered in the context of framing charges that were questioned.

Investigation in the present crime is under progress. The factual aspect, as described in the complaint, has to be wholly kept in view, by the Investigating Officer and, keeping in view, the decisions relied on by the learned counsel for the petitioner, the Investigating Officer has to arrive at whether the offences covered by the IPC would find place in the IT Act. In such an event, on completion of investigation, the Investigating Officer may arrive at just opinion and would clutch the relevant offences either under the special law or under the provisions of the IPC as well as the special law, but, certainly, at this stage, it would be difficult to hold that it is abuse of the process of law, in case investigation proceeds against the

petitioner. In fact, in the order dated 08.03.2017, passed by this Court in W.P.No.38 of 2017 referred to above, there has been an expression that “a reading of the complaint discloses an offence”. There is no merit in the present petition.

The Criminal Petition is, therefore, dismissed. The investigating Officer, however, is directed to follow the procedure inlaid by the provisions of Section 41A of the Code and the guidelines laid down by the Hon’ble Supreme Court in **Arnesh Kumar v. State of Bihar**³.

Miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

Date: 27.03.2017
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A circular green seal of the High Court of Telangana, Hyderabad. The outer ring contains the text "HIGH COURT OF TELANGANA, HYDERABAD" at the top and "FOR THE STATE OF TELANGANA AND A PRADESH" at the bottom. Inside the ring is a smaller circle with a green emblem in the center. Below the emblem is a red lotus flower. At the bottom of the seal, the text "सत्यमेव जयते" is written in Devanagari script.

A.SHANKAR NARAYANA, J

³ (2014) 8 SCC 273