

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.10521, 10525 AND 10762 OF 2017

COMMON ORDER:

Heard learned counsel for the petitioners, learned Government Pleader and learned counsel for the *de facto* complainant.

These writ petitions are being disposed of by this common order as they arise out of registration of crime No.32 of 2017 by the Station House Officer, Bahadurpura Police Station, Hyderabad, and consequential action taken by the investigating officer in issuing notices under Section 102 of the Code of Criminal Procedure to the Warehouse Managers in Mumbai.

W.P.No.10521 of 2017 was filed by one Ashok Keshavlal Kesharia and two others seeking a writ of Certiorari for quashing F.I.R.No.32 of 2017, dated 11.02.2017, registered by the second respondent police on the complaint lodged by the third respondent, Jagdish Sarada, whereas W.P.No.10525 of 2017 was filed by one Sanat Odhvibhai Pala challenging the notice dated 13.02.2017 issued by the second respondent police advising the Warehouse Manager not to release any stock held in tank No.501. W.P.No.10762 of 2017 was filed by M/s.Murgan Overseas challenging the notice, dated 10.03.2017 issued to the Terminal Manager of the Warehouse situated in Mumbai instructing him to seize the edible oil (2500 MTs in Vessel Mt Ariana) in the storage tank of M/s.Atman Overseas Private Limited pursuant to registration of crime No.32 of 2017 lodged by the *de facto* complainant, Jagdish Sarda.

The *de facto* complainant lodged a compliant on 04.12.2013 stating that it was engaged in the business of manufacturing and importing of edible oils and making the contracts with other exports and imports companies for purchasing and selling of oils over high seas. It imported a consignment of palm oil, vide Bill of Lading dated 04.12.2013, which was originally intended to be imported by M/s.PEC Limited, New Delhi, a Government of India

Enterprise, which sold those goods to the complainant on high seas vide High Seas Sale Contract, dated 13.12.2013, which was executed at Bahadurpura for a total quantity of 999.992 MTs and it was invoiced vide invoice dated 13.12.2013. Out of the said total quantity of 999.992 MTs, the complainant states that he further entered into a High Seas Sale Agreement with respect to 250 MTs of palm oil covered in Bill of Lading dated 04.12.2013 to one M/s.K.Trambaklal through one agent under sale agreement, dated 13.12.2013 and it was followed by invoice dated 13.12.2013 raised by the complainant in favour of M/s.K.Trambaklal. Though the agreement was entered for 250 MTs, the said company, M/s.K.Trambaklal forged and fabricated documents and filed Bill of Entry for a quantity of 500 MTs without the knowledge of the complainant. In view of the same, a complaint was lodged. In respect of the said complaint, F.I.R.No.163 of 2014 was registered on 09.07.2014 by Bahadurpura police and it was later on transferred to Central Crime Station, Hyderabad, which re-registered the crime as F.I.R.No.197 of 2014. The investigation is going on.

It appears that M/s.K.Trambaklal filed a suit, O.S.No.71 of 2016 before the Civil Court of Junior Division, at Uran, Raigad, against the *de facto* complainant and the warehouse and the said suit is pending. The *de facto* complainant filed W.P.No.6543 of 2014 before the High Court of Bombay seeking a direction to call for the records from the respondents therein, Commissioner of Customs and the said K.Trambaklal, and pass appropriate orders pursuant to the letters of the complainant, dated 28.02.2014, 26.03.2014 and 19.04.2014. The said writ petition was filed on 02.07.2014 and it appears the same was disposed of on 22.09.2014 giving liberty to the petitioner therein/the complainant herein, to file an application for amendment of the Import General Manifest (IGM) and the respondents were directed to pass appropriate orders on the application and communicate the same to the petitioner therein.

While so, another complainant was lodged by same complainant representing one M/s.Sarda Agro Oils Limited in respect of some other transaction against five persons, who are not connected with the earlier complaint with regard to import of 1000 MTs of RBD Palm Oil and alleging illegal sale of oil imported by the complainant. The same was registered as crime No.27 of 2015 by the same Bahadurpura police under various sections.

It appears from the facts that one M/s.Atman Overseas Private Limited and Srijee Shipping Services International imported another consignment of palm oil of nearly 25,000 mts on 12.02.2017 and some quantity was purchased by M/s.Murugan Overseas on the basis of High Seas Sale Agreement and invoice was also raised in favour of the said Murugan Overseas. The *de facto* complainant, who lodged a complaint earlier, on 09.07.2014, lodged another complaint by changing the names of the agents but with identical allegations referring to the events that took place in the year 2013 involving the said 500 MTs of oil and the said complaint was registered as F.I.R.No.32 of 2017 by the same Bahadurpura police. The police, referring to the latest complaint, issued a notice to the Terminal Manager, Ganesh Benzoplast Limited, Navi Mumbai, on 10.03.2017 directing to seize the edible oils in the tank bearing No.139 to the extent of 2500 MTs or part and the same is challenged by the said M/s.Murugan Overseas in W.P.No.10762 of 2017.

The very registration of fresh F.I.R. No.32 of 2017 on the self same allegations contained in the complaint in F.I.R.No.197 of 2014 was challenged in W.P.No.10521 of 2017. In pursuance to the registration of the said complaint, since a notice under Section 102 of Code of Criminal Procedure was issued on 13.02.2017 to the Deputy General Manager, IMC Limited, Navi Mumbai, directing him not to dispatch/release any stock from the storage tank No.501 in respect of M/s.Atman Overseas, represented by Sri Dhaval Harish Kesharia, the same was challenged in W.P.No.10525 of 2017 by the sole

proprietor of M/s.Keshav Enterprises, who claimed to have purchased under the overseas agreement and in favour of whom, an invoice was raised.

This Court carefully perused the complaint lodged in 2013, which is under investigation in F.I.R.No.197 of 2014 and the contents of the complaint in F.I.R.No.32 of 2017 and they are identical except change of names of agents as the import in 2017 is different. The entire case of the *de facto* complainant relates to 250 MTs of palm oil out of 999.992 MTs imported in 2013 and the said matter is under investigation by the Central Crime Station in Crime No.197 of 2014. There cannot be any interdiction of such investigation and in fact, nobody challenged that investigation. Surprisingly when another import took place in 2017, the *de facto* complainant repeated the allegations of the year 2013 and lodged a fresh complaint. The same was registered as F.I.R.No.32 of 2017 and notices were issued to the Warehouse Managers restraining them not to release the edible oils stored in their tanks, which have nothing to do with the import of 2013. The oil imported in 2017 is different from the oil imported in 2013. The *de facto* complainant has nothing to do with the latter import. In spite of the same, the Bahadurpura police registered F.I.Rs., and issued notices to the Warehouse Managers without applying their mind.

The learned counsel for the *de facto* complainant submits that the accused have been committing several irregularities by forging documents and creating fictitious firms, but in the present case arising out of F.I.R.No.32 of 2017 or F.I.R.No.197 of 2014, no such allegation finds place and hence, this Court is not concerned with such allegation.

This Court is satisfied that the registration of second F.I.R., on the self-same allegations by the *de facto* complainant made in the year 2013 should not have been entertained by P.S., Bahadurpura. The circumstances mentioned by the Hon'ble Supreme Court in **Pramatha Nath Taluqdar v**

Saroj Ranjan Sarkar¹, which was followed in **Mahesh Chand v B.Janardhan Reddy**² enabling the registration of second F.I.R., are not existing in registering the second complaint. In view of the same, this Court has no alternative except to quash F.I.R.No.32 of 2017 and the consequential proceedings taken by the P.S., Bahadurpura. However, it is open to the Central Crime Station, Hyderabad, which is investigating crime No.197 of 2014 to take stock of the facts mentioned in the complaint, if any, if they are useful for the purpose of investigation and proceed with the investigation.

The writ petitions are accordingly allowed. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

30.03.2017
pln

A.RAMALINGESWARA RAO, J



¹ (1962) Supp 2 SCR 297 : AIR 1962 SC 876

² AIR 2003 SC 702