

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7232 of 2017

ORDER:

This criminal petition is filed by the petitioner/accused No.3 out of three accused in C.C.No.108 of 2014 on the file of the Judl.Magistrate of First class, Rajam, Srikakulam district, under Section 482 Cr.P.C. to quash the proceedings of the Calander Case pending against him from the cognizance taken by the Magistrate supra on the police final report filed by the SHO, Rajam, which is the outcome of the report of the 2nd respondent-Tahasildar, Rajam, Srikakulam District, in Cr.No.196 of 2013, for the offences punishable under Sections 420, 468, 471 of IPC and Section 66-A of Information Technology Act, 2000 (for short 'IT Act').

The prosecution case from the final report material in brief is that the petitioner K.Kasinnayudu, owner of Meharbaba Computers and internet Cafe near Seetharama Theatre, Rajam, herein along with two other accused viz; Yegireddi Ravi Kumar, owner of Ravi Computers, near Ambedkar Junction, Rajam, and Potnuru Satish, owner of Care Computers, near Vasavi theatre, Rajam, running Meeseva Centres, used to issue all the Govt. Certificates to the Public, who pays challans to the Government, including to peasants when approached for 10(1) adangals for obtaining bank loans etc., when they are not uploaded by the Government. In that process, the accused supra, used to issue them fake adangals with fake SSID to get wrongful gain, on that the 2nd respondent/Tahasildar, conducted raid on the Centres of A.1 to A.3 in compliance of the memo of the CCLA, Hyderabad, and seized 6 CPUS from them and lodged complaint on 08.11.2013 to the police, Rajam, who registered said

crime (Cr.No.196 of 2013) for the offences supra and during investigation, two CPUs from each of the accused seized shown that there were fake computerized adangal copies typed in excel sheets named Off-line Adangal Values/Data, in the names of several persons along with respective Account Numbers with respective SSID numbers.

The grounds of the criminal petition are that the petitioner/A.3 is an unemployed and established a small internet centre with the financial assistance from his friends and near relatives and making his livelihood, that the petitioner never possesses any Meeseva license as such there is no scope to tamper the electronic record authorized by the government authorities, that the 1st respondent-police without following due process of law seized computers from his centre and caused him loss of livelihood and reputation, that there is no prima facie case made out against the petitioner from the chargesheet, that the defacto-complainant(R.2) did not produce any documentary evidence to establish that this petitioner/A.3 is running Meeseva Centre, that there are no specific allegations in the complaint making out the alleged offences who commits forgery to meet the requirements of the provisions of the alleged offences, where did the alleged documents are used, who were cheated with dishonest intention by using alleged documents, and to whom the offensive messages were sent through communication, which are all silent in the complaint as well as the chargesheet, that the alleged offence u/sec.66-A of the IT Act, 2000 does not survive as per the expression of the Apex Court in **Shreya Singhal Vs. Union of India**¹, where it is held that Sec.66-A of IT Act, is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2) of the

¹ AIR 2015 SC 1523

Constitution of India, that the respondents are intentionally delaying the case to be disposed of in normal course, which clearly shows that it is a false complaint and the crime registered on 08.11.2013 but chargesheet filed on 07.03.2014, that as the case is based on Sec.66-A of IT Act, and the same is struck down by the Apex Court in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2) of the Constitution of India, this Court by invoking power u/sec.482 CrPC, to quash the proceedings in the above Calender Case supra.

Heard the learned counsel for the petitioner/A.3 so also the learned Public Prosecutor representing respondents and perused the grounds urged in the quash petition, First Information Report, police final report, part-II C.D. and statements of L.Ws.1 to 7.

Undisputedly, the Section 66-A of IT Act, since struck down by the Apex Court holding as unconstitutional, the expression under that struck down penal provision for not in the statute book is unsustainable to allow the petition and to that extent set aside the cognizance order for the said offence.

Coming to the other offences u/sec.420,468 and 471 IPC from the very allegations in the report and the police final report including from perusal of the statements of L.W.1 Tahasildar/defacto-complainant, L.W.2 the Mandal Revenue Officer, L.W.3 revenue employee(Clerk) and L.W.4 Typist-cum-computer Operator, L.W.5 another revenue employee of the Collectorate speak in corroboration to it which discloses the output of the adangals are by fabrication of the record and giving the same to the farmers thereby, for this Court there is nothing to quash the proceedings against the petitioner/A.3.

Having regard to the above, the Criminal Petition is partly allowed by setting aside the cognizance order to the extent of Section 66-A of the IT Act, since struck down, but for the available defences of the accused are left open including if at all to submit any material before hearing on charges to consider on own merits to charge for appropriate penal provisions.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:13.09.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

