HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6657 of 2017

ORDER :

The petitioners/A.1 and A.2 of Cr.No.81 of 2007 of Central Crime Station, A-Division, DD, Hyderabad which is outcome of the report of the defacto-complainant-the 2nd respondent/Commercial Tax Officer, Tarnaka Circle, registered for the offences punishable u/sec.420,465,467,468 and 471 IPC sought for quash of said Crime in which the investigation is pending.

Heard the learned counsel for the petitioners/accused and the learned Standing Counsel for the 2nd respondent/Commercial Tax Officer, and also the learned Public Prosecutor representing 1st respondent-State and perused the grounds urged in the quash petition with the supporting material and the additional material.

Coming to the first contention of the locus of the defacto-complainant concerned, the law is fairly settled from the Constitution Bench expression of the Apex Court in A.R. Antulay Vs. R.S. Nayak[1] where the locus standi of a person to lodge a complaint for initiating the criminal proceedings was positively considered. It is thus only academic for such contention to impugn the prosecution is unsustainable including from the earlier expression of the Apex Court of Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P.Poddar[2] where it is held that the complaint for the offence of cheating lodged by dealer and attorney of registered Trademarks owner also

[1] 1984 SC 718
[2] AIR 1984 SC 5

competent and the impugning against taking cognizance on the ground of so called incompetency of dealer to file the complaint accepted by the learned Magistrate is held unsustainable.

Coming to the next contention of Section 62 of the (now called) Telangana Value Added Tax Act(for short, the Act'), speaks that any Court other than the Court of Magistrate of First Class, shall take cognizance of, or try, an offence under the Act. So far as the taking of cognizance concerned, the crime is still under investigation and it is only from filing of final report the stage of taking cognizance arises before the Magistrate Court concerned where the First Information Report is submitted. Further the sub section 2 of the Section 62 in fact specifically deals with as a special provision that no prosecution of any offence under the Act, shall be instituted except with the written consent of the Commissioner. In fact, from the very wording the prosecution for offence under the Act, is a bar without written consent of the Commissioner and there is nothing to show any such bar to prosecute for the IPC offences. Apart from that, from the facts showing the offence alleged is regarding the violation of the provisions of the Act that so called invoices issued by M/s Vigneshwara Traders are not genuine and fabricated to any make use by accused in setting law in motion, in reporting the matter and registering the crime for IPC offences and not for any offence under the provisions of the Act. Even taken for arguments sake out of the sweep of Section 62 sub section 2 referred supra of the Act, it is to consider whether there is written consent of the Commissioner to the prosecution for the offence against the accused persons supra, it is now only at the crime stage. Even taken for arguments sake of giving of report to register the crime is initiation of prosecution in setting law in motion from the contention of the learned counsel for the petitioners, the important aspect to consider then is whether the Additional Commissioner is within the meaning of the Commissioner under the Act for according written consent to the Commercial Tax Officer concerned, who set the law in motion on giving report to the police in registering the crime. In fact, it is pursuant to the report of the 2nd respondent to the Deputy Commissioner of Police, CCS, in RC Tin 36656158794, dt. 12.05.2017 against the petitioners herein speaks that the Deputy Commissioner of Commercial Tax, Secunderabad communicated the opinion received from the Additional Commissioner, Commercial Tax Enforcement, Hyderabad which are references 2 and 1 of April, 2017 with instructions to file suitable criminal proceedings against these accused persons in relation to the offences supra. Thus, it refers to RC.No.AC.III/84/2015 dt.20.04.2017 of Additional Commissioner addressed to the Deputy Commissioner who in turn addressed by RC.No.A4/456/2017/24.04.2017 to the 2nd respondent herein, to set the law in motion. There is nothing from the provisions of the Act to show that for the purpose of Section 62 of the Act, the consent of the Additional Commissioner tantamount to consent of the Commissioner. In the absence of which and two views are possible, the view favourable to the accused can generally be accepted. Having regard to the above, it is suffice to say the prosecution is laconic for having considered the need of sanction/permission, not obtained from Commissioner since given only by Additional Commissioner and at this stage the learned Standing Counsel seeks permission to launch fresh prosecution with permission of the Commissioner.

Having regard to the above and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioners/A.1 and A.2 of Cr.No.81 of 2007 of CCS, A-Division,DD, Hyderabad, however it is made clear that the quashing of the FIR in view of the facts supra to clear the cloud no way disables the 2nd respondent to obtain necessary written consent from the Commissioner as contemplated by Section 62(2) of the Act, to give fresh report to police to proceed against the petitioners if any according to law. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:13.09.2017
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