

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10502 of 2010

ORDER:

Heard learned counsel for the petitioner/A.1 among 19 accused of C.C. No.110 of 2010 pending on the file of Judicial Magistrate of I Class, Kamalapuram, where the learned Magistrate has taken cognizance for the offences punishable under Sections 406, 408, 409, 420 and 109 IPC, which is outcome of Crime No.54 of 2008 of G.R.Palli Police Station, Kadapa District registered for the offences supra and after investigation, police filed the final report.

2) As per the police final report, 30 witnesses were examined, undisputedly with the quash petition, there is no part-II CD of any such witnesses. No doubt, page No.9 of the material reflects that after naming 19 accused, it is observed in the final report that under the above circumstances, it is submitted that prior to 19.08.2008 in Panchayats of Yerramalapalli, Payasampalli, Gonumakulapalli, N.Palagiri and Indukur of V.N.Palli Mandal, the accused No.1—C.Venkatesh, MPDO, V.N.Palli and 18 others noted in the margin in different cadres of officials and non officials failed to discharge their part of legitimate duties prescribed under NREGS programme under which the silt operation works have to be taken up in the lands of SC caste people and thereby the accused committed breach of trust and cheating under NREGA programme by falsification of records and other means and thereby committed cheating, criminal breach of trust and misappropriated the government funds worth Rs.36.54 lakhs. In this process, A.1, A.6 & A.12 to A.14 being the public servants deliberately failed to

supervise the above works according to the norms laid down under NREGS scheme and thereby intentionally aided and abetted the other accused to commit the misappropriation of NREGS funds.

3) So far as the role of A.1 is concerned, all his acts were mentioned in page No.8 of the said final report.

4) Where from the prosecution material of investigation they merely failed to supervise that resulted misappropriation committed by others whether they are also privy to the misappropriation and committed misappropriation is a factual matter to be considered including in respect of the deemed public servant within Section 30 of the National Rural Employment Guarantee Act, 2005 which contemplates that no suit, prosecution or other legal proceeding shall lie against the petitioner, and he is a public servant within the meaning of Section 21 of IPC. In fact, no sanction has been obtained by the prosecution, to prosecute the petitioner.

5) It is one of the contentions of the petitioner that police final report taken cognizance by the learned Magistrate (supra) is that there is no need of sanction as contemplated by Section 197 Cr.P.C except with the previous sanction of the Central Government. Leave about the issue of sanction which can be raised by the accused at any stage right from the taking cognizance including at appeal stage and once there is inherent requirement of the sanction, proceedings are null and void to relegate the parties to pre-sanction stage and obtain sanction to the cognizance to be taken afresh from that position and also from

the settled position, the issue of requirement of sanction can be considered stage to stage even in a part heard trial matter.

6) Having regard to the above from no part-II CD filed and material is incomplete, such a contention of requirement of sanction is left open to raise before the trial Court, if necessary, by virtue of this order, by filing a petition under Section 197 Cr.P.C and it is for the learned Magistrate to pass appropriate orders. Needless to say, if there is any requirement of sanction, further proceedings of cognizance and any part heard trial shall be declared as null and void by relegating the parties and proceedings to the pre-cognizance stage with a direction to return the police final report and submit with necessary sanction being required under law.

7) Accordingly, with these observations giving liberty to file such application before the trial Court to her and decide, the Criminal Petition is disposed of.

8) Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.08.2017
knl