

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.696 of 2017

ORDER:

This criminal petition is filed seeking for quash of the proceedings in C.C.No.168 of 2016 on the file of the Judicial Magistrate of First Class, Hindupur, Anantapuram District against the petitioner/accused No.2.

2. Heard learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent-State and with their consent, the criminal petition is disposed of at the admission stage.

3. It is brought to the notice of this Court that the case is already numbered as calendar case. Hence, the petitioner has an effective remedy before the Court below, to file a petition for discharge and raise all the pleas that are raised in this petition, in the said petition.

4. The law is fairly well settled that only in rarest of rare cases the inherent powers under Section 482 Cr.P.C. be invoked. i.e., only when the allegations in the complaint, on its face value, do made out *prima facie* case against the petitioner and where there is an abuse of process of law.

5. In this case, the allegations against this petitioner, who is figured as A2, are that he created a false residential certificate in the name of Kasthuri Bai keeping the photo of unknown woman as if she is Kasthuri Bai. A2 verified the residential address and

attested that she is residing in a part door number at Hindupur. There are also allegations against him, that he fabricated false documents along with A3 and A4, to assist A1. The contentions of the petitioner are that Section 197 Cr.P.C. is not complied with before taking cognizance of the case against A2. He also relies on the following rulings:

i) *Rizwan Ahmed Javed Shaikh and others vs. Jammal Patel and others*¹, wherein the facts show that the prosecution failed to produce the accused in this case beyond 24 hours. The Court observed that the official act of taking the accused therein into custody was legal and not producing him within 24 hours is illegal. Hence, it observed that the acts are committed in the course of his official duty.

ii) The Orissa High Court in CrI.R.No.463 of 1992 between *D.P.Joshi vs. State of Orissa*, wherein the facts are that the Head Constable inflicted lathi blow to complainant when informant tried to enter the plant without gate pass. It was held as part of his official duties.

iii) The Patna High Court in Criminal Misc.No.664 of 1978 between *Dr.A.N.Sanyal vs. State of Bihar and another*, wherein the facts are that a Doctor, who is a public servant, caused the death by negligence.

iv) The Patna High Court in *Pancham Lal vs. Dadan Singh*,² wherein the facts are that the public servant abused and slapped a gang leader while tackling explosive situation.

¹ (2001) 5 SCC 7

² 1979 CrI.L.J.1018

6. The above four cases stand on totally different facts and situations to the present case. The allegations in this case are that there was a fabrication, which cannot be considered as part of an official duty. But, however, it is an aspect, which has to be gone into at the time of trial.

7. Moreover, the ruling of the Supreme Court in *Choudhury Parveen Sultan v. State of West Bengal and another* in CrI.A.No.8 of 2009 is to the effect that error in sanction cannot be a ground for quashing a petition. It discussed about the sanction required under Section 197 Cr.P.C., and also observed that the question where sanction is required for initiating prosecution against a public servant is a question of fact and need to be decided on the facts of the given case.

8. In view of the above circumstances, I opine that there are no grounds for quashing the petition.

With the above observations, the Criminal Petition is dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

T. RAJANI, J

October 13, 2017
LMV