

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.2194 OF 2011

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.37 of 2011 on the file of P.S. Miryalaguda Rural, Nalgonda District. The Inspector of police, SHO, Miryalaguda Rural, Nalgonda has registered the said crime under Section 34-E of A.P. Excise Act, 1968 and Section 8 (b) of A.P Prohibition Act, 1995 against the accused Nos.1 and 2.

2. The brief contents of FIR are that on 23.02.2011 at 1500 hours, the Inspector of Police has received a credible information that one Lambada person by name Nunavath Linga, S/o.Deshya is manufacturing and selling the illicit liquor at Illapuram Village. On the said information, the Inspector of Police along with his staff rushed to Illapuram village and found one Nunavath Linga, S/o.Deshya, apprehended him and conducted panchanama. Accused revealed his name as Nunavath Linga, S/o.Deshya, aged about 34 years, Caste: Lambada, R/o.Illapuram Village of Miryalaguda Mandal. He further stated that he took raw material i.e., black jaggery and Alum at Anneparthi Gangadhar, S/o.Satyanarayana of Miryalaguda and after selling the illicit liquor, shared the benefit equally.

3. The Inspector of Police registered the case against the accused Nos.1 and 2 basing on their confession statements and seized the black jaggery and alum from accused No.2 i.e., the petitioner herein. Aggrieved by the same, the petitioner/ accused No.2 preferred this Criminal petition.

4. Learned counsel for the petitioner/ accused No.2 submitted that the petitioner is doing business of black jaggery, alum and other general items under a valid licence issued by the Government of Andhra Pradesh, Commercial Tax Department vide GRN No.NLG/02/0/1551. It is submitted that the petitioner is no way connected with the business of the accused No.1 and he only sold black jaggery and alum to accused No.1. It is further submitted that the petitioner never participated in the business of accused No.1 and had no share in the business of accused No.1 and never instigated the accused No.1 to prepare the illicit liquor.

5. Learned Public Prosecutor submitted that in the light of the confessional statements recorded by the police, the police may be permitted to proceed with further investigation in the present crime.

6. On consideration of the arguments of the learned counsel for the petitioner/ accused No.2 and learned Public Prosecutor, it can be concluded that the Inspector of Police has recorded the confessional statements of accused Nos.1 and 2, wherein both the accused have confessed that the accused No.1 is preparing illicit liquor and accused No.2 is supplying the material for preparation of illicit liquor and they are sharing the profit equally.

7. It is, no doubt, the confessional statements of the accused are not admissible in evidence. However, in this case, the police registered a case basing on the confessional statements of the accused. The truth or otherwise of the confessional statements of accused would be considered only at the time of the trial. The

case of the petitioner is that he is innocent. But in the event of confessional statements of accused Nos.1 and 2, it cannot be said that there are no allegations at all.

8. This Court has already granted interim stay of all further proceedings in the year 2011. Therefore, all further proceedings of Crime No.37 of 2011 of P.S Miryalaguda Rural, Nalgonda District are stalled.

9. The FIR discloses that there is some material against accused No.2. Keeping in view of the decision of the Hon'ble Supreme Court in **CBI v. A. Ravishankar Prasad**¹ referred to a leading case in **State of Haryana v. Bhajan Lal**², wherein some guidelines have been formulated for exercising provision under Section 482 Cr.P.C. The guidelines in **Bhajan Lal**, are as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which

¹ (2009) 6 SCC 351

² 1992 Supp. (1) SCC 335

no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In **Ravishankar Prasad** case, the Hon'ble Supreme Court, in paragraphs 45 and 48, observed as follows:

45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in proper perspective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court under section 482 Cr.P.C. the trial of this case could not be completed and concluded.

48. In this view of the fact, in the interest of justice we direct that the trial be now completed as expeditiously as possible. The trial court is directed to conduct the trial on day to day basis and parties are directed to cooperate with the trial court. The trial court shall ensure that unnecessary adjournments be avoided and trial be concluded as expeditiously as possible.

10. In the light of the above decisions, this is not a case to quash the proceedings as this is not a case as the allegations in F.I.R even if they are taken at their face value and accepted in its entirety, they did not constitute prima facie case or making out a case in favour of accused.

11. In view of the above observations, this Criminal Petition is dismissed giving liberty to the petitioner to seek his legal remedies in case charge sheet is filed. The interim stay granted by this

Court is vacated and miscellaneous Petitions, pending if any, in this Petition shall stand closed.

GUDISEVA SHYAM PRASAD, J

26.10.2017.
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HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.2194 OF 2011



Date:26.10.2017

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