

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.9364 of 2011

ORDER:

1. This Criminal Petition is filed by the petitioner-sole accused under Section 482 Cr.P.C., seeking to quash the proceedings in CFR No.3722 of 2011 on the file of the Judicial First Class Magistrate, Adoni for the offences under Sections 195 and 211 of IPC.

2. The de facto complainant-second respondent herein filed a petition before the trial Court under Section 340 of Cr.P.C. seeking to take cognizance of offence against the petitioner herein, who is the then Superintendent of Police, Kurnool District, for the offences under Sections 195 and 211 IPC. It is stated by the 2nd respondent in the said petition that he is an Advocate and a politician belonging to Congress Party and that in order to give support for the Party, on 7.9.2008, he along with his supporters attended a felicitation programme in Kosigi village and in that connection, a complaint was lodged against him by a villager, basing on which, a case was registered against him in Crime No.91 of 2008 for the offences under Sections 323, 506 IPC r/w Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After completion of the investigation, the investigating officer sent a report dated 8.4.2009 to the petitioner herein requesting him to permit him to refer the case as false after obtaining legal opinion. The Special Public Prosecutor in his opinion stated that the case is false one. However, the petitioner herein directed the investigating officer to get the statements of witnesses recorded under Section 164 Cr.P.C and basing on that statements directed him to file a charge sheet. On that, the 2nd respondent filed a Writ Petition in W.P.No.8566 of 2010 assailing the action of the petitioner herein. The

said Writ Petition was disposed of by this Court granting liberty to the 2nd respondent herein to challenge the filing of the charge sheet. Subsequently, the second respondent filed CrI.P.No.344 of 2011 seeking to quash the proceedings in PRC No.110 of 2010 and this Court by order dated 25.3.2011 allowed the petition quashing the proceedings against the second respondent herein. Hence, the complainant-second respondent herein filed the above CFR alleging that the petitioner taking advantage of inconsistencies in the investigation, with a view to harass the complainant, directed the investigating officer to file the charge sheet and therefore, he is liable to be punished for the offences under Sections 195 and 211 of IPC.

3. Heard and perused the material available on record.

4. Learned Counsel for the petitioner submits that on 17.9.2008 the then investigating officer recorded the statements of witnesses i.e. L.Ws.1 to 7 in Case Diary Part-II, which would reveal that L.Ws.2 to 6 corroborated the version of L.W.1 and L.W.7 did not support his case, and that contrary to the same, the entries in Case Diary Part-I were made to the effect that L.Ws.3 to 6 have not corroborated the version of L.Ws.1 and 2. He further submits that the petitioner joined the duty as Superintendent of Police, Kurnool on 31.7.2009 and since he found that CD Part-I is not in consonance with CD Part-II, in due discharge of his official duties, directed the then investigating officer to get the statements of witnesses recorded under Section 164 Cr.P.C. to take further action as per law. Subsequently, the investigating officer after obtaining permission from the Court, only recorded the statement of L.W.1 before the Court, wherein he supported his case in his statement, and basing on that, the investigating officer obtained the legal opinion and prepared the draft charge sheet and the petitioner gave permission as per the procedure, and that the said fact was

suppressed by the second respondent before the trial Court. Thus, the action of the petitioner in giving instructions either to record the statements under Section 164 Cr.P.C. or to give approval for filing the charge sheet is in discharge of his official duties. It is contended that the Court below failed to notice that the offence under Section 195 IPC has no application as the petitioner took charge only on 31.7.2009 and the evidence was collected by the then investigating officer way back on 17.9.2008 and 29.9.2008, and similarly, Section 211 IPC also has no application since the charge sheet was filed by the then investigating officer after obtaining opinion of the Public Prosecutor and after the draft charge sheet was approved by him and that the charge sheet was sent to the petitioner only for formal approval and therefore, the petitioner cannot be found fault.

5. The 2nd respondent filed an application under Section 340 Cr.P.C. before the Judicial First Class Magistrate, Adoni, seeking to take cognizance of the offence under Sections 195 and 211 IPC against the petitioner. On the said application, the learned Magistrate authorized the Superintendent of the said Court to sign the complaint on his behalf, so as to forward the same to the Principal Junior Civil Judge, Adoni.

6. In the circumstances of the case, it is relevant to extract the provisions of Sections 195 and 340 Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such

offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
 (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
 (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Section 340 of the Criminal Procedure Code is dealing with Procedure in cases mentioned in Section 195 Cr.P.C, reads as follows:

1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,†

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,†

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court. (4) In this section, "Court" has the same meaning as in section 195.

7. The provisions of Section 195 Cr.P.C., are mandatory in character. In fact, this provision creates a bar and Section 340 Cr.P.C. confers

Jurisdiction on the Court to proceed for the offences mentioned in Section 195 (1) (b). These two Sections are supplementary to each other. Section 195 Cr.P.C. creates a bar on the filing of complaint by all and Section 340 Cr.P.C. removes the bar and confers exclusive jurisdiction on the Court to file the complaint after satisfying itself prima facie about the correctness of the offences said to have been committed and covered by Section 195 (1)(b) (i) or (ii). Therefore, both the Sections should be read together.

8. Further, it is to be noted that Section 340 Cr.P.C. is mainly intended to be complimentary to Section 195 Cr.P.C. Any Civil or Criminal Court may proceed under Section 340 Cr.P.C. and hold a preliminary enquiry and thereafter, record a finding and make a complaint in writing and forward it to the concerned Judicial Magistrate having jurisdiction. Section 340 Cr.P.C. makes it clear that the prosecution is to be launched if it is expedient in the interests of Justice, but not on mere allegation or personal revenge. Section 340 Cr.P.C., cannot be permitted to be invoked by private parties to achieve their own ends of revenge against the opposite/another person. A Court of Law is to consider whether there is any ulterior object which the party seeking to invoke the power under Section 340 Cr.P.C. wants to achieve indirectly by using the Court as an instrument for its own ends.

9. In the instant case, the fact remains undisputed is that the case in P.R.C.No.110 of 2010 on the file of the Additional Judicial First Class Magistrate, Adoni, against the 2nd respondent was quashed by this Court. Even assuming that there was an observation by this Court as to any such fabrication of false evidence with intent to procure conviction of the 2nd respondent, under Section 340 (3) Cr.P.C., it is the only such officer of the Court authorized by this Court to make any such complaint of this nature.

Therefore, the approach of the 2nd respondent in filing the application under Section 340 Cr.P.C. is not with bonafide intention.

10. Apart from that, it is pertinent to note that while quashing the proceedings against the 2nd respondent, this Court observed that there are two sets of statements of the witnesses, which are contrary to each other. However, it has to be made clear that the prosecution has not concealed the said statements. All the statements were placed before this Court. In that background only, this Court quashed the proceedings against the 2nd respondent. Taking advantage of the said observation, without there being any remarks on the petitioner or any directions by this Court, the approach of the 2nd respondent in making such an application is not sustainable. There is no prima facie material against the petitioner to proceed against him for the alleged offences.

11. In the above circumstances, this Court is of the view that the order impugned is liable to be quashed.

12. Accordingly, the Criminal Petition is allowed quashing the order dated 26.8.2011 passed in CFR No.3722 of 2011 on the file of the Judicial First Class Magistrate, Adoni. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO,J

Dated:22.6.2017
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