

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4880 of 2017

ORDER :

The petitioner is the 2nd accused of Crime No.86 of 2017 of Nandigama Police Station, registered in all against two accused of whom besides the petitioner-accused No.2, accused No.1 is Paleti Sateesh, from the report of the 2nd respondent-Koneti Govindu, Secretary of the Agricultural Market Committee of Nandigama, Krishna District, for the offences punishable under Sections 420, 406 and 409 read with 34 IPC, dated 26.03.2017.

2. The report reads that the *de facto* complainant is working as Secretary of the Agricultural Market Committee, Nandigama, from 05.08.2016. During 2014-2015, the Sirpur Paper Mills Limited, Sirpur, Khagaznagar of Adilabad, purchased subabul from the ryths from Nandigama Agricultural Market Committee and they failed to pay the amount and deceived and cheated. Pursuant to the Commissioner and Director, Agricultural Market Committee, A.P., proceedings, dated 23.03.2017, with endorsement to the Regional Joint Director, Vijayawada, dated 24.03.2017, and pursuant to the note order of the Chairman of Nandigama Agricultural Market Committee, dated 25.03.2017, on verification there was no proper bank guarantee for the value of the stock being purchased by the Sirpur Paper Mills Limited furnished by violating the condition, from which the ryths were deceived and it is since February 2014, an amount of more than 4.79 crores of subabul purchased by the Sirpur

Paper Mills Limited from the Nandigama Agricultural Market Committee from ryths and the Market Committee Chairman-P.Sateesh (accused No.1) and then Market Committee Secretary-K.Gopala Krishna-the petitioner (accused No.2) since not obtained the bank guarantee from the Sirpur Paper Mills Limited, they are privy to the deception and cheating and breach of trust by the Sirpur Paper Mills Limited in their knowingly without insisting bank guarantee, in allowing the credit purchases though they are not in a position to liquidate the amounts, thereby they are liable for the prosecution.

3. The contentions in the grounds of quash petition vis-à-vis the oral submissions of the learned counsel for the petitioner-accused No.2 are that the petitioner is a law abiding citizen and as per the letter, dated 03.04.2017, addressed by the Regional Joint Director of Marketing, Vijayawada, vide Memo No.JDM/Vja/A2/408/2017, dated 03.04.2017, directing the Secretary, Agricultural Market Committee, Nandigama, to withdraw the case against the petitioner (accused No.2) and on perusal of the allegations made in the complaint, they do not attract the essential ingredients of Sections 420, 406 and 409 read with 34 IPC. Apart from that, the petitioner herein lodged a report, dated 13.11.2014, to Nandigama Police Station, which is registered as Crime No.490 of 2014 against the management of Sirpur Paper Mills Limited, complaining that the said paper mill cheated the subabul farmers and failed to pay the amounts due to the farmers. The petitioner herein examined as LW.1 in that crime during investigation

and police filed final report that was taken cognizance as C.C.No.926 of 2015, the same is pending. Therefore, it is cannot be said that the petitioner is any way privy with the management of Sirpur Paper Mills Limited, much less committed cheating or breach of trust against the farmers pertaining and thereby sought for quashing of the proceedings against him.

4. The 2nd respondent-de facto complainant filed counter. The counsel for the 2nd respondent with reference to the counter averments contend that the Commissioner and Director of Marketing, Guntur, instructed through Memo No.S12566/2015, dated 23.03.2017, the 2nd respondent-Secretary of the Agricultural Market Committee, Nandigama, placed the same before the Executive Committee of Agricultural Market Committee, Nandigama, and the Committee passed a resolution for launching prosecution against the then Chairman and Secretary of the Market Committee-accused Nos.1 and 2 respectively. Apart from that, the petitioner herein and accused No.1 failed to collect sufficient bank guarantee from the paper mill and for their carelessness, the said paper mill trying to escape from the dues to the farmers nearly Rs.10,36,69,896/- Though the Regional Joint Director, Vijayawada addressed a letter to the 2nd respondent to take steps to withdraw the police case against the petitioner, the Executive Committee is not ready to withdraw the case against the petitioner. Hence, sought for dismissal of the revision.

5. Heard both sides as referred supra and perused the grounds urged in the quash petition and the F.I.R. and the other material on record.

6. This Court pending disposal of the quash petition, granted stay of further proceedings, by order, dated 28.06.2017, which is in force. The fact that the petitioner as *de facto* complainant lodged a report to the police covered by Crime No.490 of 2014 against the management of Srirpur Paper Mills Limited for the offences of cheating, etc., and the police after investigation including by examination of the petitioner filed the final report that was taken cognizance by the learned Magistrate by allotting C.C.No.926 of 2015, which is pending, is not in dispute. The record further shows the accused of Crime No.490 of 2014 i.e., Mr.Ranjan Kumar Poddar, Mr. Rameshwar Lall Lakhotia, Mr.B.C.Sharma and Mr. Devashish Poddar as accused Nos.1 to 4 respectively, filed a quash petition in Crl.P.No.94 of 2015 in seeking to quash the said crime proceedings against them and this Court after hearing observed while dismissing the quash petition saying there is prima facie material for the offence under Section 420 IPC against them, though not attracted the offence under Section 409 IPC, in proceeding to investigate and complete the investigation within three months and pending investigation not to arrest the said accused persons and further observations therein are that Special Grade Secretary of the Agricultural Market Committee, Nandigama, acts as facilitator on behalf of the farmers in purchase transactions of

subabul and Sirpur Paper Mills Limited, and the contention of no locus to maintain a complaint for the Secretary, but not if at all by the farmers is not tenable for any person can set the law in motion. Further, the correspondence, particularly from the letter of accused No.4 of C.C.No.926 of 2015, who is Vice-President of the said paper mill, including by letter, dated 08.08.2014, agreed to pay the pending dues in three installments i.e., three crores in August, 2014; five crores in September, 2014 and the balance in October, 2014, however, did not pay the amount nor attended the meeting of the District Collector, Krishna District, which shows the deceptive mentality of the accused persons in cheating the farmers and it is immaterial whether the said paper mill suffered losses, much less of Rs.97 crores in 2012-13, if that is the case, when not in a position to clear the dues pending, the paper mill could not have purchase the worth of nearly Rs.9.5 crores from about 281 farmers for not in a position to repay, which demonstrate their dishonest intention to make them liable.

7. Here, coming to the petitioner and the Chairman of the Agricultural Market Committee, the petitioner is only a Secretary of the Agricultural Market Committee and not even the Chairman. The management is in the control of the Market Committee headed by its Chairman vested in the Executive Committee and the inadvertence or inaction is different from the deception, much less from inception. Insofar as the credit purchases of the Sirpur Paper Mills Limited through the Agricultural Market Committee from the farmers, that too

when the Market Committee is only facilitator and thereby mere not taking of the bank guarantee will not make the petitioner as a privy with the paper mill management, much less as co-accused. Apart from, earlier crime investigation, where the petitioner is the de facto complainant, no way shows the complicity of the petitioner including in the final report that was taken cognizance referred supra, to sustain the prosecution against him, but for to say, if at all during trial of C.C.No.926 of 2015, from any evidence the complicity of the petitioner came to light, the trial court is bound to take cognizance as co-accused/additional accused under Section 319 Cr.P.C. from any prima facie accusation, which is with substantial material something more than material require for framing of charge from the settled expressions of the Constitutional Benches of the Apex Court.

8. Having regard to the above, the criminal petition is allowed quashing the proceedings against the petitioner/accused No.2 in F.I.R.No.86 of 2017 of Nandigama Police Station, Krishna District, with the observation that in the event of any complicity of the petitioner come light during trial of C.C.No.926 of 2015, it will not prevent the trial Court to array the petitioner as co-accused.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

9th November 2017.

mar