HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.5932 of 2011

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner/Accused to quash the proceedings in C.C.No.866 of 2011 on the file of XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. The brief facts of the case are that the Central Bureau of Investigation (CBI), Hyderabad Branch, has registered a case in Crime No.RC 05(A)/2010 CBI/Hyderabad on 04.03.2010 on the basis of some source of information against 1) unknown officials of Protector of Emigrants (POE), Hyderabad, 2) M/s. Razzak Enterprises, Tours and Travels, Hyderabad, and 3) unknown person, for the offences punishable under Sections 120-B, 420, 468 and 471 IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act') and took up investigation.

The investigation revealed that the petitioner/accused is the Proprietor of M/s. Razzak Enterprises and he is a Registered Agent bearing Reg.No.001740 /HYD/PER/1000 /3/3232/92 assigned by the Ministry of Overseas, Indian Affairs, New Delhi. It is stated that the Ministry of Overseas, Indian Affairs, New Delhi, safeguards the interest and ensures the welfare of the Indian workers working in Foreign Countries on contractual overseas employment. The Office of the Protector of Emigrants (POE), Hyderabad, is one of the Offices of Overseas Indian Affairs, New Delhi. It was further stated that the Recruiting Agents, who seek emigration clearance (ECs.,) for skilled/semiskilled workers, are required to produce the following documents viz., 1) Passport of the workers valid for a minimum period of 6 months with valid VISA; 2) Original Employment Contract, demand letter and Power of Attorney from the Foreign Employer; 3) Challan towards deposit of prescribed fee, and 4) Insurance Policy (Pravasi Bharatiya Bima Yojana). In order to cheat the Protector of Emigrants (POE) Office, Hyderabad in respect of Sri K.Kanakaiah's Emigration clearance matter, on 13.02.2009 the petitioner/accused submitted 82 passports with Employment VISAS, Insurance papers etc in the POE Office, Hyderabad, including the Passport No.E0974045 (issued by Passport Office, Hyderabad, on 04.02.2002) of Sri Komatireddy Kanakaiah, Galipalli Village, Ellantakunta, Karimnagar District, with Employment VISA issued by M/s. Power Line Gulf Construction (LLC), Dubai and Policy No.1815592815002394 of Reliance General Insurance Co. Ltd., of Abids Road Branch, Hyderabad.

Sri S.S.Rana, the then Protector of Emigrants, Hyderabad, issued E.Cs., to the said 82 applications/passports, including Sri Komatireddy Kanakaiah (E.C.Sticker No.477924 with E.C.R.S. No.5771, dated 13.02.2009), and initialled by him. The Consulate General of

India, Dubai, vide letter, dated 19.12.2010, has forwarded the correspondence received from the employer in connection with genuineness of VISA issued to Sri Komatireddy Kanakaiah. M/s. Powerline Gulf Construction, Dubai, vide its letter, dated 08.06.2010, informed that they had not interviewed, short-listed, selected or processed VISA of Sri Komatireddy Kanakaiah. The copy of the employment VISA mentioned by Sri Komatireddy Kanakaiah was unauthentic as the said VISA has not been issued by the Dubai Emigration. Thus, the copy of the employment VISA, purported to have been issued by the Dubai Emigration regarding the Job offer in M/s. Powerline Gulf Construction LLC, Dubai, submitted by the petitioner on behalf of Sri Komatireddy Kanakaiah was false, as it was not issued by Dubai Emigration. Therefore, the role of the officials of the POE was looked into the Emigration Clearance in connection with the aforesaid Sri Komatireddy Kanakaiah’s matter, however, their involvement was not found and no evidence was found against them. The petitioner/accused had submitted forged documents to the POE on 13.2.2009 for obtaining EC for Sri Komatireddy Kanakaiah, by which he cheated Government of India and thereby dishonestly and fraudulently induced with false documents used as genuine documents in the matter of issuance of Emigration Clearance Certificate for Sri Komatireddy Kanakaiah, thereby the petitioner has committed the offences punishable under Sections 420 and 471 IPC.

3. The Inspector of Police, C.B.I., filed charge sheet before the learned Magistrate and he has taken cognizance of the case for the offences referred above. Aggrieved by the action of the respondents in registering C.C.No.866 of 2011 arraying him as an accused, the petitioner has filed the present Criminal Petition seeking to quash the said proceedings initiated against him.

4. Heard learned counsel for the petitioner and the learned Special Public Prosecutor for CBI.

5. Learned counsel for the petitioner contended that the CBI police cannot register the case against the petitioner, since no permission is obtained by CBI as required under Section 6 of the Delhi Special Police Establishment Act, 1946 (for brevity "the Act") and hence, prays to quash the proceedings initiated against the petitioner.

6. Section 6 of the Act reads as follows:

> "**Consent of State Government to exercise of powers and jurisdiction**—Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or Railway, area, without the consent of the Government of that State."

7. Learned counsel for the petitioner placed reliance on a judgment in **CENTRAL BUREAU OF INVESTIGATION v. SHRI RAVI SHANKAR SRIVASTAVA, IAS AND ANOTHER** in Appeal (Crl.) No.36 of 2002, wherein it was held thus:

> "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.
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> 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.
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> 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 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 prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

8. It is settled law that as per Section 6 of the Act, the State Government has to give its consent to investigate any offence within the area of the State, which would be permissible, Magistrate can direct the officer of the CBI to take such investigation. It is further stated that Sections 5 and 6 of the Act is not one of conferring power on Magistrate

to order the CBI to conduct investigation in exercise of Section 156 (3) Cr.P.C.

9. The learned Special Public Prosecutor appearing for CBI submitted that Section 6 of the Act is not applicable to the facts of the present case, since in this case, the CBI has taken up investigation directly basing on the source of information and, therefore, Sections 3 and 5 of the Act are only applicable to this case.

10. It is pertinent to note that in the decision cited by the learned counsel for petitioner in the case of Central Bureau of Investigation, the facts are otherwise. In the said decision, it was held that the Magistrate cannot direct the CBI to exercise Section 156 (3) Cr.P.C., unless there is a consent of the State Government for the CBI to investigate any offence within the area of the State. Therefore, the facts of the present case are totally different from the facts stated in the above said decision.

11. In the instant case, the Magistrate has taken cognizance of the offences on the basis of source of information received by the C.B.I.

12. The learned Special Public Prosecutor for C.B.I., placed reliance on a decision reported in **SUPERINTENDENT OF**

POLICE, CBI AND OTHERS V. TAPAN KUMAR SINGH[1], wherein at para 20 it was held thus:

> "It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to dispose in great detail all aspects of the offence committed. What is of significance is that the aspects of the offence omitted. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigation machinery, with a view to collect all

[1] (2003) 6 Supreme Court Cases 175

> necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

In view of above, what is significant is that the information given must disclose commission of a cognizable offence and the information so alleged must be the basis for the police officer to suspect commission of a cognizable offence. It is further submitted that the information was received through some source, which need not be disclosed by the CBI, but the sum and subsistence of such information and the subsequent investigation would reveal the commission of offence and, in such a case, the C.B.I can take register a case against the petitioner.

13. In view of submissions made by the Special Public Prosecutor for C.B.I by placing reliance on the decision of **TAPAN KUMAR SINGH's case** (supra 1), the C.B.I can investigate the matters, which fall under Sections 3 and 5 of the Act, where they received information with regard to commission of a cognizable offence. Therefore, the decision cited by learned counsel for the petitioner is not applicable to the facts of the present case.

14. Learned counsel for the petitioner further submitted that though the genuineness of VISA issued to Sri Komatireddy Kanakaiah was in dispute, the Investigating Agency has not examined the said Komatireddy Kanakaiah in this case. But, according to the contents of charge sheet, a copy of employment VISA submitted by Sri Komati Kanakaiah was unauthentic, as said VISA has not been issued by Delhi Emigrants. Thus, the copy of employment VISA purported to have been issued by Delhi Emigrants regarding job in M/s. Powerlines Gulf, LLC, Dubai, submitted by petitioner on behalf of Sri Komatireddy Kanakaiah was false, as it was not issued by Dubai Emigrants.

15. The learned Public Prosecutor submitted that petitioner is the main person, being an Agent, who submitted all the documents to Emigrants Department, and Sri Komatireddy Kanakaiah, being a person not aware of the procedures of Emigrants, approached through an Agent and, therefore, the

contention of the learned counsel for the petitioner that Sri Komatireddy Kanakaiah was not examined, is false and baseless.

16. Learned counsel for the petitioner further submitted that this Court passed stay of all further proceedings and in view of the same, all further proceedings are stalled.

17. After filing of the charge sheet against the accused, summons were issued. Learned Special P.P. for CBI submits that the accused has not been arrested so far even after receipt of summons to attend the Court to face charges.

18. Learned counsel for the petitioner submitted that no *prima facie* case has been made out against the petitioner for the offences punishable under Sections 420 and 471 IPC. The alleged forged documents are not being produced by the CBI and basing on the news published in the newspaper, the CBI has taken cognizance of the offence and started investigation and, therefore, the proceedings against the petitioner are liable to be quashed.

19. Learned Public Prosecutor submitted that the letter addressed by the Section Officer, R.R.Gupta, on behalf of Magistrate of Overseas Indian Affairs is nothing to do with the allegations made in the present complaint. It is further submitted that there are prima facie allegations made against

the petitioner/accused and hence, the petitioner is not entitled for quashing of the proceedings initiated against him.

20. In view of the said submissions and on consideration of facts and circumstances of the case, it is not a fit case where extraordinary jurisdiction under Section 482 Cr.P.C. can be invoked to quash the proceedings against the accused.

21. At this stage, the learned counsel for petitioner submitted that though during pendency of stay granted by this Court, NBWs were issued against the petitioner. The learned Special Public Prosecutor for CBI submitted if that being so, the same would be recalled.

22. Accordingly, the Criminal Petition is dismissed giving liberty to the petitioner to move an application before the trial Court for dispensing his presence during trial, and the trial Court may consider the same and pass appropriate orders.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

GUDISEVA SHYAM PRASAD, J

OCTOBER 13, 2017
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HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.5932 of 2011

Date: 13.10.2017

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