

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.440 AND 1444 OF 2014

COMMON ORDER:

The request in both these Criminal Petitions filed by the petitioner Nos.1 to 4 - accused Nos.1 to 4 as one set in former petition, and petitioner - accused No.5 as another set in latter petition, is to quash the First Information Report in Crime No.3 of 2014 of Bellampally - II Town Police Station, Adilabad District under Section 482 of the Code of Criminal Procedure, 1973.

2. The petitioners alleged to have committed offences punishable under Sections 409, 468, 471, 482, 488 and 420 of the Indian Penal Code, 1860 (for short 'IPC').

3. The aforesaid crime was registered on a complaint made by respondent No.1 - Koppula Lachanna belonging to Caltex Area, Bellampally under Section 156 (3) of the Code of Criminal Procedure, 1973 (for short 'the Code'), to initiate action against the petitioners herein alleging the aforesaid offences.

4. Heard Sri Vedula Srinivas, learned counsel for the petitioners in both the petitions, learned Additional Public Prosecutor appearing for the State of Telangana and Sri V. Ravi Kiran Rao, learned counsel for respondent No.1 - *de facto* complainant.

5. The only submission made by the learned counsel for the petitioners in the direction of quashing the FIR is, that for want of

prior sanction under Section 197 of the Code, the complaint is not maintainable as the petitioners are Government Employees and they are public servants within the meaning of Section 21 of IPC. The ancillary submission is, that the FIR does not make out any offence at all, much less the offences alleged against the petitioners, more particularly, there is no basis for the allegations made by the *de facto* complainant, nor is there any direct involvement of the petitioners shown in the complaint. Even, the *locus* of the complainant is also questioned in the present petition.

6. The submissions made by the learned Additional Public Prosecutor and Sri V. Ravi Kiran Rao, learned counsel for respondent No.1 - *de facto* complainant are to the effect that; firstly, there is absolutely no need to obtain prior sanction for the reason that fabrication of false record in the present fact-scenario cannot be construed as in furtherance of or in discharge of public duty; and second, that it is not the stage, at which, prior sanction is absolutely indispensable for initiation of criminal action as it has not reached the logical conclusion of the investigation, and the investigation has been stayed by this Court way back in the month of January, 2014.

i) It is also their submission that respondent No.1 - *de facto* complainant is not only owner of certain extents in both the survey numbers and in possession and enjoyment thereof, but also as General

Power of Attorney Holder of one Karim Nawaz Alladin, son of the original pattadar.

ii) Its further submission is that every attempt made by the *de facto* complainant to obtain documents from various authorities concerned proved futile, as the response got by him was that these documents are not available.

7. To deliberate in the direction of finding out whether the allegations made in the FIR even if taken at their face value and accepted in their entirety do not *prima facie* disclose the commission of cognizable offence, the allegations made in the complaint need advertence.

i) The *de facto* complainant has obtained information under Right to Information Act, 2005, supplied by the Tahsildar's office, Bellampally. The information he secured reveals that the entries in 'Nakal Shetwar' for the year 1964 and also the entries in 'Wasool Baqi' would show the total extent of the land in Survey No.109 was Acs.388-00 cents, and in Survey No.110, Acs.70.07 cents, situated in Kannala Shivar of Bellampally Mandal and these extents were standing in the name of one Amadulluddin. But, the information supplied by the Tahsildar's office for the year 2011-12, the total extent of Survey No.109 is shown as Acs.410.00 and in Survey No.110, the extent as Acs.106.00. Thus, according to the *de facto* complainant, the extent in survey No.109 was increased to Acs.22.00

and in survey No.110 was increased to Acs.36.00, but physically at the spot it is not so. His grievance is that on account of variation of land on the spot and on record, the land disputes have been on rise.

ii) The complaint shows that the petitioner - N. Venkata Rama Narsaiah in the latter petition had addressed a letter in Rc.No.829/2011-S4, dated 30.05.2012 to the Tahsildar, mentioning therein that their department had purchased land in an extent of Acs.47.00 from the Government for a consideration of Rs.4,00,000/- paid through bank draft to the Revenue Divisional Officer by virtue of G.Os., which he has described thus:

- “ (a) G.O.Ms.No.151/FOR III/77-9, dt: 29.10.1977;
(b) G.O.Ms.No.25286/FOR III/79-2, dt: 26.6.1979;
(c) Dist.Collector, Adb.Proc.No.D7/5397/1978, dt.27.9.1978. ”

iii) The averments also would show that when the complainant made applications under Right to Information Act, 2005, to i) the Director, Government of Andhra Pradesh, State Archives and Research Institution; ii) the Commissioner, Government of Andhra Pradesh, Printing Department; iii) the Chief Librarian, Government of Andhra Pradesh, State Central Library, Hyderabad; iv) the Special Secretary to Government, Forests Department; v) State Bank of Hyderabad regarding demand draft of Rs.4.00 lakh by the Forest Department, dated 06.03.1978; vi) the Chief Conservator of Forests, Andhra Pradesh, requiring to supply the aforesaid three documents, they have given response through their letters, dated 16.02.2013;

12.02.2013; 08.02.2013; 12.02.2013; and 15.02.2013, respectively, expressing the non-availability of the aforesaid documents.

This has been the main ground on which the *de facto* complainant insisted that the aforesaid three documents have been fabricated by the petitioners in these two petitions to make use of them as genuine documents.

v) The complainant has also stated that the letter to the Tahsildar, Bellampally by the Deputy Conservator/D.F.O., Bellampally, dated 30.05.2012, would contain survey No.110, but in the letter, dated 11.8.2011, addressed to the Revenue Divisional Officer, Asifabad, the said survey number i.e., 110 was not mentioned.

8. These are the allegations basing on which the complainant filed the present complaint under Section 156 (3) of the Code before the Judicial Magistrate of First Class, Asifabad, which was referred to the Station House Officer, Bellampally - II Town Police Station, and registered the crime as the aforesaid FIR against the petitioners for the offences aforementioned.

9. Now, adverting to the main submission made by the learned counsel for the petitioners that prior sanction under Section 197 of the Code is *sine quo non* and, therefore, the FIR is liable to be quashed, the learned Additional Public Prosecutor and the learned counsel for the *de facto* complainant would place reliance in **Shambhoo Natha**

Misra v. State of U.P. and others¹, to fortify their submission that when the fabrication of false record is not in furtherance of or in discharge of public duty, sanction is not necessary. Incidentally, they relied on the ruling as to the object of obtaining sanction for prosecution of a Government Servant. The expression of the Hon'ble Supreme Court in paragraph No.5 since apt to be quoted, the same is extracted as under:

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc., can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.”

10. Turning to the official positions held by the petitioners, in the former petition, petitioner No.1 is a Tahsildar, petitioner No.2 is a Deputy Tahsildar, petitioner No.3 is a Village Revenue Officer and petitioner No.4 is a Mandal Surveyor. It is not in dispute that they

¹. (1997) 5 SCC 326

were also placed under suspension. In the latter petition, the petitioner is a retired Divisional Forest Officer.

11. The stage at which, prior sanction is required to be obtained is explained by the provisions of Section 197 of the Code. For taking cognizance of any offence alleged to have been committed by a public servant while acting or purporting to act in discharge of his official duty, the previous sanction is absolutely necessary. In the present case, on the complaint lodged by the *de facto* complainant, the concerned Station House Officer has issued first information report and was yet to investigate and at that stage, the investigation was stayed by this Court by orders dated 28.01.2014. Therefore, for want of previous sanction, certainly, the FIR cannot be quashed. There is merit in the submission of the learned Additional Public Prosecutor and the learned counsel for respondent No.1 - *de facto* complainant that even if previous sanction is necessary, obtaining of previous sanction arises only before the charge sheet is laid on completion of investigation. Therefore, the submission of learned counsel for the petitioners that the registration of FIR is bad for want of previous sanction is not convincing.

12. The investigation in this case is yet to be conducted involving the collection of evidences in arriving at whether there is material *prima facie* available to support the offences clutched. It is, therefore, unnecessary to go into whether prior sanction is required to

prosecute the petitioners when investigation itself is not yet over on account of stay granted by this Court.

13. The other submission made by the learned counsel for the petitioners as to the *locus* of the *de facto* complainant to file the complaint levelling the offences mentioned in the above, can only be examined after the completion of investigation.

14. So far as the submission that there is no basis for the allegations made by the *de facto* complainant, nor is there any direct involvement of the petitioners is concerned, the allegations shown in the complaint, narrated in the above, at this stage, would constitute *prima facie* allegations as to the commission of cognizable offences to proceed with the investigation and, therefore, the said submission is also without any merit.

15. Thus, viewed from any angle, it is not an exceptional case to exercise extraordinary power under Section 482 of the Code to accede to the requests and to quash the First Information Report.

Thus, both the Criminal Petitions are hereby dismissed at the admission stage itself. Consequently, the stay of investigation ordered on 28.01.2014 and extended from time to time stands vacated. As a sequel thereto, miscellaneous petitions, if any, pending in the petitions, stand disposed of.

A. SHANKAR NARAYANA, J

January 30, 2017.
Mgr