

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.1429 of 2016

ORDER:

The complainant-revision petitioner filed a private complaint u/ sec.200 CrPC before the IV Addl.Judicial Magistrate of First Class, Chittoor, against 4 accused for the offences punishable under Sections 420,506 and 386 r/ w 120(B) and 34 IPC, with the averments that he is sole proprietor of Bharat Construction and doing Industrial Infrastructure construction business since 2012 having its office at Door No.7, Sundaraiah Street, Chittoor town and district. In 2012, the complainant's firm was engaged by A.2- who is stated as Director of Sreeni Food Park, with whom the firm was already in acquaintance with, on Contract basis. The A.2 met the complainant in the first week of April,2013 and represented that A.1 is Viyyanka of A.2, a very influential person and also close to Chief Minister of Tamilnadu and that several private sector companies are commencing as New Industrial Units worth of thousands of crores and that the clearness of those projects from the Government is to be done only through A.1 and that if he paid one crore to A.1 through A.3 and A.4 who are son and daughter-in-law of A.1, then A.1 would influence private sector companies and get contract work to the complainant and that further amounts are to be paid subsequently to A.1 after getting the work. In the month of May, 2013, A.1 attended a function in connection with Samsmaranasabha of late D.K.Adhikesavulu Naidu in Chittoor district. Hence, the A.2 arranged a meeting with A.1 in which A.1 and A.2 reiterated their promise that they will provide construction work from private sector companies. However, the A.1 asked the complainant to send one crore to the joint account of A.3 and A.4, the A.1 and A.2 also informed the A.3 and A.4 about the deal and

got their bank account number and the same was furnished to the complainant. Believing their words the complainant transferred an amount of Rs.50,00,000/- by way of RTGS in cheque No.958129 dt.20.06.2013, Rs.30,00,000/- through cheque number No.958169, dt. 15.07.2013 and Rs.20,00,000/- through cheque No.360904, dt. 12.09.2013 from his firm account of the Indian Bank, Kongareddypalli Branch to the joint account of A.3 and A.4 having with Indian Overseas Bank, College Road Branch, Chennai and all the accused informed the same to the complainant that they received the amount in 3rd week of September, 2013 but did not provide any construction work as assured by them. Subsequently, the complainant realized that all the accused conspired together with a common intention and cheated him and dishonestly induced him to part with his money of one crore. Then the complainant demanded them to repay the money. In the first week of March, 2013, the A.2 and A.3 called the complainant to their residence and demanded a further amount of rupees one crore. As the complainant refused to pay the same and rejected their demand, the accused persons 2 and 3 threatened the complainant that they would kill him by engaging rowdy elements. Out of fear, he sent E-mails to his brother by name Praveen Nanabala and his advocate friend M.S.Yoganand on 07.03.2014 informing them about the dealing and also he informed that if anything happens to him or his family members, A.2 and A.3 will be responsible for the same. In the month of April, 2014, A.2 again threatened the complainant with dire consequences, if he approaches the police. Then the complainant kept quite due to fear of death. In the 3rd week of June, 2016, A.2 called the complainant to his house and demanded another one crore rupees as if the complainant was due to them with regard to the promise made by the accused. Then the complainant

protested saying that he does not want to get any work from them as he already paid one crore and it was ridiculous to ask further amount. Then A.2 threatened the complainant that he would implicate him in Mayor's murder case by influencing the police or kill him in fake encounter if that one crore rupees was not paid. As the A.2 is very influential person and prominent businessman in the city and his sister-in-law is sitting MLA for Chittoor constituency belongs to ruling Telugu Desam Party, the complainant thought if the police would not render any justice. Hence, he filed the complaint on 28.03.2016.

2. The complainant also narrated same facts in his sworn statement.

3. After hearing the complainant and perusing the material on record, the Magistrate held that except the evidence of complainant there is no other evidence to support his contention with regard to the alleged deal between himself and A.1 and A.2 though it is proved that the amount of one crore was transferred to the joint Account of A.3 and A.4, but not shown prima facie for the reason of getting contracts from A.1. Mere showing deposit or transfer of amounts itself is not sufficient to establish that the A.1 and A.2 lured the complainant to arrange him contracts on providing them one crore. Here the demand of A.1, public servant, one crore rupee from a person like complainant does not mean that he is accepting bribe. The complainant entered into such a deal which is forbidden by law and accepted to provide one crore rupees to the accused but in the entire episode it seems that the complainant himself alone participated which does not seem to be probable. If at all he paid the money through cheques, he can get it returned through legal means by way of filing a civil suit. The entire case does not arise any criminal prosecution though the complainant alleged that the accused

threatened with dire consequence which seems in the month of March, 2014. So it seems that the complainant kept quiet for two years without taking any steps to get the amount back. Therefore the conduct of the complainant seems not fair and dismissed the complaint.

4. Impugning the above order dated 31.05.2016 of the learned Magistrate, the complainant preferred the revision with the grounds in the revision vis-à-vis the oral submissions that the impugned order is illegal, against law and weight of evidence, that the learned Magistrate ought to have taken cognizance of the private complaint as there is a prima facie evidence of a criminal offence and the observation of the learned Magistrate, that the petitioner has not examined any other witness in spite of filing list of witnesses to be examined along with private complaint, is untenable. The learned Magistrate ought to have seen that the First Information Report lodged by the A.2 in Cr.No.44 of 2016 of Chittoor I Town Police Station, clearly shows admission of the factum of receiving of one crore from the petitioner. The learned Magistrate traveled beyond the scope of Sections 200, 202 and 203 of CrPC in dismissing the complaint. The learned Magistrate ought to have seen that the Court is not required to assess the evidence to consider the probabilities or improbabilities of the versions of the complainant or evaluate or any delay in laying the complaint or motive of the complainant at this stage. Hence, to set aside the order supra by directing the learned Magistrate to take cognizance of his private complaint.

5. Whereas, it is the submission of the learned counsel for the respondent to the revision proposed accused of the dismissed complaint that the impugned order of the lower Court no way requires interference

while sitting in revision within the limited scope and thereby sought for dismissal of the revision.

6. The learned counsel also wanted to place reliance on some additional material for which as he is not entitled at this stage to permit, this Court is not inclined to consider but for to consider the legality and correctness of the impugned order of the court below while sitting in revision within the scope of law.

7. No doubt, as held by the Apex Court three Judge Bench in *SMS Pharmaceuticals Vs. Neeta Bhalla*¹ particularly at para-5 the dismissal of complaint without issuing process therefrom within the power of the Magistrate under Section 203 CrPC, is only after considering sworn statement of the defacto-complainant and all other witnesses examined if any, and other documents and therefrom whether the Magistrate is of the opinion that there is no sufficient ground for proceeding against all or any of the accused. It clearly speaks from these words that the Magistrate has to apply his mind to the complaint at the initial stage itself and see whether the case is made out against the accused persons before issuing process to them on the basis of the complaint. Applying of mind and forming of opinion as to whether there are sufficient grounds for proceeding is only from the complaint which makes out a prima facie case or not. The complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this is not the requirement, consequences could be far-reaching as per the expression supra. The Apex Court further held that if a Magistrate has got to issue process in every case, the burden of work before the Court as well as the harassment caused to the respondent to whom the process issued, would be tremendous. Even Section 204 of the Code starts with the

¹ (2005) 8 SCC 89

wording '*in the opinion of the Magistrate taking cognizance of offence there is sufficient ground for proceeding*'. The words of sufficiency of ground for proceeding means that ground should be made out in the complaint for proceeding against the respondent/complainant. It is the settled law as held by the Apex Court that at the time of issuing the process, the Magistrate is required to see only allegations in the complaint and whether the allegations in the complaint or the chargesheet did not constitute an offence against the person, the complaint is liable to be dismissed.

8. The said observation of the Apex Court gives a judicial caution of the requirement of application of mind only to the complaint averments prima facie and any documents placed reliance by the complainant with reference to the sworn statement of complainant and other witnesses if not to make out any prima facie allegation on the face value to constitute offence and not whether to take cognizance and issue process on the said private complaint allegations or to dismiss the complaint as the case may be u/ secs.200 to 204 CrPC.

9. In fact, the impugned order of the learned Magistrate showing but for the sworn statement of the complainant to support the complaint averments, there is no other witness examined. This in fact not sustainable but for to consider whether the complaint averments prima facie make out an accusation including from the sworn statement with supporting documents if any. Along with the complaint, 5 documents filed by the complainant and those were exhibited as Exs.P.1 to P.5 in the sworn statement recorded as the complainant as P.W.1 in the pre-cognizance private complaint enquiry conducted by the learned Magistrate against the 4 respondents arrayed as accused of which in support of the complaint averments and the sworn statement Ex.B.1

statement bank account of the complainant's entity and remitting of the account therefrom to the joint account of A.2 and A.3 with interest therein and the income tax returns regarding amounts and its reflections substantiate the same. What the learned Magistrate observed is there is a deal supported by the averments of sworn statement and material, however went wrong in saying same is not shown prima facie for reason of getting contracts. In fact, when that is the very allegation of the complainant in the complaint averments and also in a sworn statement on oath, there is nothing to disbelieve the purpose for which the amount is shown transferred to consider as to prima facie case makes out to take cognizance or not. Thereby it is wrong on the part of the learned Magistrate to observe same showing deposit or transfer of amount, does not establish the allegation of accused lured the complainant to pay for alleged contract works and on his paying, their further demand. The complaint averments vis-à-vis the sworn statement prima facie show the A.1 was in the capacity of additional Chief Secretary to the Chief Minister of the Government of Tamilnadu by then and A.3 is his son and A.4 is his daughter-in-law and A.2 is his Viyyanka. The complaint averments and the sworn statement further show the A.2 is highly influential political person and his sister-in-law is also sitting M.L.A. of Chittor constituency belongs to the Ruling party in the State of Andhra Pradesh. No doubt, so far as the role of A.1 concerned, there is no whisper in the complaint and sworn statement but for to say the A.2 and A.1 attended the samsmaranasabha of late A.K.Naidu of Chittoor district in May, 2013 and the complainant also went there and A.2 arranged a meeting there with A.1 to the complainant and A.1 allegedly asked the complainant to send the amount to the Joint account of A.3 and A.4 in so sending. Apart from date not given at the Samsmaranasabha, can it

be believed of a meeting is arranged and A.1 allegedly promised. But for that there is no any direct role of A.1, so also of A.4 but for to say the amount transferred is to the joint account of A.3 and A.4. Thereby prima facie there is no sustainable accusation from the allegations in the complaint averments or from sworn statement of complainant-P.W.1 against the A.1 and A.4 but for against the A.2 and A.3 so also from the subsequent acts of threats only by A.2 and A.3 by criminal intimidation and to attempt to extract amounts by threats to do away or to implicate in a false murder case to ruin the career of the complainant. Thus there is material of accusation against A.2 and A.3 to take cognizance from the complaint averments and sworn statement of P.W.1-complainant with reference to Exs.A.1 to A.5 however, the learned Magistrate went wrong in so observing and in dismissing the complaint in toto including against the A.2 and A.3 though he was correct to the extent of dismissal against the A.1 and A.4 without even any such discussion by disbelieving the allegations and accusations respectively of each accused.

10. However, the fact remains that with the complaint there is no any copy of police report given earlier to it by enclosure. Even from the complaint averments no police report given. The learned Magistrate at least should have considered to refer the complaint to police for investigation u/ sec.156(3) CrPC, therefrom rather than recording sworn statement and proceed to take cognizance as a private complaint case for nothing to show even reporting to police but for alleged apprehension of the complainant of police would be managed by the A.2 out of his influence apart from the A.1 and A.3 for no action and no useful purpose could be served in giving report to police in not choosing to give. In fact, that is not an answer at all but he should have given police report and if no action taken, should have sent by Registered Post

to the Superintendent of Police as contemplated by Section 154 CrPC, and he cannot assume and presume something without such recourse. Apart from it as laid down by the Apex Court in Priyanka Srivatsava Vs. State of UP² two Judge Bench of the Apex Court in CrI.A.No.781 of 2012 dated 19.03.2015, referring to and relying upon earlier three Judge Bench expression of the Apex Court three days before it dated 16.03.2015 in CMA No.600 of 2007 in Ramdev Food Products Private Limited Vs.State of Gujarat³ in Priyanka supra particularly at para-27, there must be a supporting affidavit of the applicant who seeks the invocation of the jurisdiction of the Magistrate in filing the complaint even to ask for referring to police for investigation u/ sec.156(3) CrPC and that apart from the learned Magistrate would be well advised to verify truth and veracity of the allegations and before filing a private complaint, there must be giving of police report by invocation of Section 154(1) and (3) CrPC. Thus it is the duty of the complainant before filing a complaint, to give police report either orally to the Station House Officer to cause reduced to writing or handwritten and if necessary by Registered post and file proof of giving of such report and also to file affidavit as the private complaint filed in this case as stated already was on or after 28.03.2016 which is more than a year subsequent to the directions in the expressions of Priyanka supra, the petitioner could have been complied with in filing the private complaint and the learned Magistrate should have asked for such a complaint before entertaining the private complaint rather return or comply.

11. Having regard to the above and in the result, while holding that there is a prima facie accusation so far as the A.2 D.K.Badrinarayana and A.3 Vivek Papisetty concerned, as the complaint

² AIR 2015 SC P. 1758

³ 2015 6 SCC 439

is not filed within the parameters laid down in Priyanka supra, the revision is allowed by setting aside the dismissal order of the learned Magistrate u/ sec.203CrPC, insofar as against the A.2 and A.3 concerned and by upholding the dismissal against the A.1 Dr.Papisetty Ramamohan Rao and A.4 D.B.Harshini and by restoring the complaint to the file of the learned Magistrate so far as the A.2 and A.3 supra concerned with a direction to return the complaint to represent within one month thereafter by including the sworn affidavit required and also by meantime giving police report and file proof of giving of police report either to refer the complaint to police for investigation or to consider afresh from the sworn statement and documents already filed and further to be filed or further witnesses to be examined by the complainant, as the case may be. For such recourse under Section 156CrPC available at any stage as per the expression of the Apex Court laid down wayback in 2008 in Sakiri Vasu Vs. State of UP⁴.

Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04.04.2017
Vvr

⁴ 2008) 2 SCC 409