

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7177 OF 2017

ORDER:

The petitioners are accused Nos.1 to 3 of Crime No.130 of 2017 on the file of IV Town Police Station, Nellore, registered for the offences punishable under Sections 465, 468, 471 and 420 r/w 34 of IPC, which is on the report of the 1st respondent/Chief Administrative Officer of the SC/ST Court-cum-V Additional District and Sessions Judge Court, Nellore.

2. The grounds urged in the quash petition are that on the allegation of fake sureties submitted by the accused at the time of suspension of sentence of imprisonment in S.C.No.16/2015 on the file of the said court of the V Additional District and Sessions Judge Court supra, on 02.05.2017, by cause enquired and reported to the police by the 1st respondent to the quash petition on 13.06.2017 for the 2nd respondent registered the crime.

3. The allegation is that the petitioners secured sureties by name Shaik Alla Bakshu and Shaik Anwar Basha who produced their salary certificates before the V Additional Sessions Court supra and the court found the salary certificates submitted by the sureties as fake. However, the petitioners contend that they are innocent and no way

connected with the crime and the very registration of the crime is unsustainable and noting but abuse of process and contrary to the procedure contemplated by Sections 340 and 195 Cr.P.C., for the court to direct the Chief Administrative Officer to report to the police in registering the crime without following the mandatory procedure contemplated under the provisions and thereby the proceedings are liable to be quashed. The learned counsel for the petitioner reiterated the same referring to sections 340 and 195 Cr.P.C. and in support of it placed reliance on some expressions of the said procedure as mandatory.

4. The learned public prosecutor representing the respondents submitted that there is nothing wrong in the FIR registered from the report of the Chief Administrative Officer and thereby there is nothing to quash the FIR and the quash petition is liable to be dismissed.

5. Before proceeding further, it is necessary to extract Sections 340 and 195 Cr.P.C. which read as follows:

“Section 340: Procedure in cases mentioned in section 195. – (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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 of 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.

Section 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.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

- (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
- (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

6. From the above, so far as the offences under Sections 465, 468 and 471, needless to say, Section 468 includes Section 420 of IPC, are covered by forgery defined in Section 463 IPC. Whether the bar under Section 195 Cr.P.C. applies or not for the above is the question to answer. For that Section 195(1) speaks with the bar of no court shall take cognizance and sub-section (1) of clause (b) of sub-clause (ii) speaks of an offence described in section 463 or punishable under Section 471, 475 or 476 of IPC. When such offence is alleged to have committed in respect of a document produced in a proceeding in any court and except of complaint in writing of that court or by such officer of that court, that court may authorize in writing or of some other court, which is subordinate to it.

7. The very submission of the FIR by the Chief Ministerial Officer at the instructions or authorization of the learned Sessions Judge clearly speaks the accused persons 1 to 3 herein, who were convicted in the sessions case, before the said court under SC/ST Act, for suspension of sentence when ordered to be released on production of bonds with sureties, produced sureties with solvency referred supra that are ultimately found as fake salary certificates, showing as if they are municipal employees. It is in fact the defacto-complainant of the sessions case by name Kotte Amulya

informed the court of said solvencies are fake and from which the learned sessions judge cause verified the solvencies by addressed to the Municipal Commissioner and the Municipal Commissioner in turn responded informing that the so-called sureties are not working in their municipal corporation and the salary certificates produced are not issued by them and those are fake. It is thereby in respect of the solvency certificates produced in the proceedings before the court within the meaning of Section 195(1)(b)(ii) of Cr.P.C., the police report given.

8. Having regard to the above, if at all the court has to follow, it is the procedure contemplated by Sections 340 and 195 Cr.P.C. From what section 340 reproduced above, the court, on application, may cause enquiry into any of the offence referred in Section 195(1)(b) of Cr.P.C. that appears to have been committed in or in relation to a proceeding in that court in respect of a document produced in proceedings in that court and after said preliminary enquiry as it thinks fit by recording a finding for making a complaint in writing by sending to the Magistrate of First Class having jurisdiction over the area.

9. Section 340(3) of Cr.P.C. speaks of authorization to the court officer. The very provision speaks on receiving application in relation to the offence committed affecting administering of justice, court cannot straight away to proceed to issue process but

to file complaint either by it through officer authorized by it in relation to any of the offences referred under Section 195(1)(b) referred supra. In this case, no doubt from the defacto complaint of the sessions case mentioned about the solvencies produced on behalf of the accused are taking the court cause enquired by addressing to the Municipal Commissioner and received report of those persons were not working and the solvency certificates were not issued and thereby revealed as fake in using as genuine for enlarging the petitioners/accused of the sessions case by suspension of the sentence of imprisonment imposed by the said trial court/special judge.

10. A plain reading of Section 195(1)(ii) and (iii) Cr.P.C. would show that for the offences mentioned therein the Court has to take cognizance only from complaint is in writing filed by the Court or some other Court to which that Court is subordinate. Therefore, the registration of F.I.R on basis of report submitted by the individual (respondent Nos.2) is hit by the provisions of Section 195(1)(b)(ii) and (iii) Cr.P.C. So far as Sections 463, 465, 468, 471 I.P.C is concerned, Section 463 I.P.C defines a forgery simpliciter whereas Sections 465 to 471 I.P.C define punishment for forgery and for other aggravated forms of forgery like forgery for purpose of cheating etc. In the light of the phrase of any offence described in Section 463 I.P.C section 468 also will be hit by the provisions of Section 195(1)(b)(ii) of the Cr.P.C the same was also laid down by this Court in **Vishnu Kumar V. State of A.P.**¹ Further, the five Judges bench expression of the Apex Court in **Iqbal Singh**

¹ 1980 (2) APLJ 59

Marwah V. Meenakshi Marwah² held that the bar under Section 195(1)(b) Cr.P.C would be attracted for the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence and during the time when the document is in custodia legis and not for forged document produced in a Court. It is held referring to the earlier expressions, particularly of **Sachida Nand Singh V. State of Bihar**³ by approving the law laid down in **Sachidanand Singh**. It is held that Section 195(1) Cr.P.C in respect of particular offences is a sort of exception to the general provision Section 190 Cr.P.C of power of Magistrate to take cognizance of an offence under any of the three modes. The procedure for filing a complaint by Court contemplated by Section 195(1) Cr.P.C is given in Section 340 Cr.P.C. As per Section 340 Cr.P.C, the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C, if the Court is of the opinion that interest of Justice requires and not in every case. Any interpretation which leads to a situation where a victim of a crime is rendered remediless has to be discarded. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such recourse is rarely adopted. Same proposition is reiterated in a later expression of the Apex Court in **C.P.Subhash V. Inspector of Police, Chennai** (CrI.A.No.176 of 2013). However, once the court chosen to take recourse it has to follow Section 340 r/w 195 Cr.P.C. procedure of filing a private complaint.

² 2005 CrI.J - 2161

³ (1998) 2 SCC 493

11. On the scope of Sections 195 and 340 Cr.P.C. and for the offences referred in Section 195 Cr.P.C., the Hon'ble Apex Court in ***M.S.Ahlawat Vs.State of Haryana and another***⁴, observed that:

“Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C, it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr.P.C. are mandatory and no court can take cognizance of offences referred to therein. It is in respect of such offences the court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.”

12. Having regard to the above, giving of the police report is unsustainable but for to authorize by the learned sessions judge the Chief Administrative Officer to cause file a private

⁴ 2000 AIR SC 168

complaint before the Magistrate concerned from the combined reading of Section 340 r/w 195(1)(b) of Cr.P.C. supra. It is also necessary to refer at the cost of repetition the wording of Section 195(1)(b)(ii) of any offence described in Section 463 concerned that Section 463 defines forgery simpliciter punishable under Section 465 Cr.P.C., 468 Cr.P.C. is forged for purpose of cheating and Section 471 is using as genuine a forged document known to be forged; thereby Sections 465, 468 and 471 squarely come within the meaning of Section 195(1)(b)(ii) referring of Section 463 offences of forgery.

13. Having regard to the above, very giving of report and registration of crime is not in compliance with the requirements of Section 195 and 340 Cr.P.C., the same is quashed. Needless to say if at all the learned Sessions Judge wants to follow the procedure, leave about the right of the defacto complainant or other aggrieved party, otherwise to maintain private complaint, strictly in accordance with Sections 195 and 340 Cr.P.C.

14. Accordingly and with the above observations, this Criminal Petition is allowed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

18.08.2017
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