

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 484 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner/A4 in C.C.No.337 of 2010 on the file of Addl. Judicial Magistrate of First Class, Chirala.

2. On 21.06.2009, the 2nd respondent-defacto complainant gave a complaint to the police, basing on which a case in Crime No.204 of 2009 was registered against the accused A1 and A2 for the offences punishable under Sections 420, 467 and 468 IPC. The sum and substance of the complaint is that the accused A1 and A2 have taken money from the 2nd respondent by promising that they would get house site pattas issued to him, but they cheated him by providing fake pattas. The police investigated the matter and filed charge sheet against accused A1 to A5 alleging that they are liable for punishment under Sections 120(B), 420 and 468 IPC.

3. Heard the arguments of the learned counsel for the petitioner and the learned Public Prosecutor. None appeared on behalf of 2nd respondent-defacto complainant.

4. Learned counsel for the petitioner submitted that the petitioner/A4 is working as a Village Revenue Officer and that there are no specific allegations against the petitioner in respect of the

offences alleged against her under Section 120B, 420 and 468 IPC. He further submitted that there is no incriminating material produced by the investigating officer against the petitioner, and there are no allegations against her in the complaint or in the 161 Statement of the 2nd respondent.

5. The learned Public Prosecutor opposed the arguments of the learned counsel for the petitioner and submitted that there are specific allegations against the petitioner in the charge sheet and therefore she is not entitled for quashing of proceedings.

6. The contents of the 161 statement of 2nd respondent recorded by the police and the contents of the charge sheet would disclose that there are allegations against the petitioner with regard to the offences punishable under Sections 120B, 420 and 468 IPC. Therefore, there are no valid grounds to interfere at this stage of investigation without examining the witnesses.

7. Learned counsel for the petitioner submitted that as per Section 18 of the Andhra Pradesh Village Revenue Officers Service Rules, 2008, issued in G.O.Ms.No.39, Revenue (VA) Department, dated 11.01.2008, Government sanction has to be obtained to prosecute the alleged official.

8. As far as the contention with regard to Government sanction is concerned, the petitioner may not be entitled to protection under

Section 18 of the Rules as the allegation against her is that she was involved in the commission of offence which may not pertain to the discharge of her official duties.

9. Placing reliance on the findings in the departmental enquiry proceedings conducted by the disciplinary authority viz., the Revenue Divisional Officer, Ongole, the learned counsel for the petitioner submits that the departmental enquiry has been conducted against the petitioner which revealed that the petitioner is innocent and subsequently the petitioner was also reinstated into service. Basing on the departmental enquiry report, the learned counsel for the petitioner submitted that in the enquiry conducted by her own department, no material was brought on record to prove her guilt and therefore the allegations made against her in the criminal complaint also do not stand for scrutiny as there is no material in this case to allege that the petitioner has committed the offence under Sections 120B, 420, 468 IPC.

10. It is pertinent to note that the departmental proceedings may be for the same cause for which the complaint was lodged, but the departmental proceedings are different from criminal prosecution. The departmental proceedings were conducted for the department to ascertain the truth or otherwise of the allegations in the charges framed against the petitioner.

11. Learned counsel for the petitioner submits that the articles of charges framed against the petitioner and the allegations made in the charge sheet are one and the same and when the department itself has stated that there is no material against the petitioner to proceed with the departmental enquiry, there will not be any material for the prosecution also to proceed with the investigation.

12. As a matter of fact, the contents of the allegations against the petitioner, in paragraph 3 of the charge sheet, are as under:

“Thereafter A1 and A2 colluded with A3 and A4, who are VROs and obtained old sish receipts in the names of LWs.1 to 9 to show that LWs.1 to 9 are in possession and enjoyment. After preparing a false document relating to issue of house pattas to LWs.1 to 9, A1 to A4 forged the signatures of LWs.13 and 14 to give a colour of reality. With the active help of A5, who was working as attender in Tahsildar office, Chirala, A1 to A4 got the forged papers stamped by the affixed the seals of Tahsildar, Chirala.”

13. Learned counsel for the petitioner submits that the petitioner was not in service by the date of issue of fake certificates and she came into service much later and therefore she cannot be penalized for the acts for which she is not responsible.

14. It is pertinent to note that these questions have to be gone into only at the time of trial when the evidence is produced in the case. This is a case where the disputed questions of fact are to be

ascertained by material evidence. Therefore, this is not a fit case for quashing the proceedings against the petitioner.

15. Learned counsel for the petitioner submitted that there is interim stay in this matter for the past seven years and, therefore, requested that the presence of petitioner may be dispensed with during trial. Learned counsel also requested to grant liberty to the petitioner to file discharge petition under Section 239 Cr.P.C.

16. On considering the request of the learned counsel for the petitioner, liberty is granted to the petitioner to file a petition before the trial Court to dispense with her presence during trial and the same shall be considered in accordance with law. Liberty is also granted to the petitioner to file discharge petition before the trial Court which shall also be considered by the trial Court as per law.

17. In the result, the criminal petition is dismissed. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

12th October, 2017

KSM

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