

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.10687 of 2008

ORDER.

Heard Mr. C.V.R.Rudra Prasad for petitioner and the Assistant Government Pleader (Panchayat Raj).

The petitioner prays for *Mandamus* declaring proceedings Roc.No.5009/03/A1 dated 29.12.2007 issued by first respondent and the consequential action of second respondent in lodging complaint against petitioner as arbitrary, illegal, colourable exercise of power, violative of procedure contemplated under the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') and unconstitutional.

The petitioner is the Ex-Sarpanch of Katrenikona Gram Panchayat. The first respondent issued show cause notice dated 02.3.2007 under Section-265 of the Act on the alleged misuse of funds by the petitioner. Thereafter the first respondent through proceedings dated 29.12.2007 authorised the second respondent as follows:

"As per inquiry report, show cause notice has been issued to Sri M.Ananda Sagar, Ex-Sarpanch, Katrenikona Gram Panchayat under Section-265(1) of the Act. But the said show cause notice was not served on the delinquent Sarpanch due to non-availability of his address and his whereabouts are not known.

In view of this, the Divisional Panchayat Officer, Amalapuram is hereby authorised to file criminal case and to launch prosecution against Sri Moka Ananda Sagar, Ex-Sarpanch, Katrenikona Gram Panchayat, Katrenikona Mandal, who misappropriated Government grants and Gram Panchayat funds totalled to a tune of Rs.15,20,095/- during his tenure as Sarpanch, Katrenikona Gram Panchayat, in consultation with Assistant Public Prosecutor concerned within 10 days positively and report the stage from time to time to this office.”

The petitioner challenges the authorisation granted by first respondent to second respondent for filing criminal case against him.

This Court on 07.02.2017 after noticing the non-filing of counter-affidavit by respondents passed a conditional order. The operative portion of the conditional order reads thus:

“Having perused the material available on record and particularly the challenge of petitioner to proceedings impugned in the Writ Petition while granting time requested by Government Pleader, this Court directs the respondents to deposit a sum of Rs.1,000/- to the credit of Secretary, Legal Services Authority, Andhra Pradesh by the next date of hearing.

Post on 28.02.2017 for counter and compliance with the condition.”

The respondents have filed counter-affidavit explaining the circumstances under which a decision to initiate proceedings under I.P.C. against the petitioner was taken. It is

further stated that the second respondent has lodged a complaint before the Judicial First Class Magistrate at Amalapuram, vide C.C.No.1272 of 2008 under Sections-403, 406 and 409 IPC in the month of March 2008. It is further stated that in view of interim suspension granted on 07.5.2008, the respondents are not proceeding with the complaint already filed against the petitioner.

Mr. C.V.R.Rudra Prasad contends that the proceedings Roc.No.5009/03/A1 dated 29.12.2007 are illegal and violative of principles of natural justice. The District Collector is the competent authority for authorising prosecution in cases of misappropriation of funds, in the case on hand, basing on a report submitted by Deputy Commissioner, Panchayat Raj dated 26.6.2006, the prosecution is ordered. According to him, the first respondent firstly, must put the petitioner on notice on the conclusions recorded in the enquiry report dated 26.6.2006, call for explanation, consider the explanation, form opinion either to recover the alleged misappropriation under the Act or consider authorising second respondent to initiate prosecution. As none of these steps have been followed by the first respondent, learned counsel for petitioner contends that the impugned proceeding is violative of principles of natural justice

and the first respondent failed to consider the other options under the Act. Therefore he prays for setting aside the same.

The Assistant Government Pleader for Panchayat Raj vehemently contends that the legal challenge to the proceeding is without basis. According to her, if the contention of petitioner is accepted, in every complaint filed under I.P.C., the accused is put on notice and if the allegations or the information on which culpability of an individual is complained is firstly disclosed to accused, opportunity is given to the accused and thereafter action is initiated. According to her, the first respondent is entitled to take recourse to recovery under the Act and having regard to the extent of misappropriation alleged against the petitioner, he can certainly authorise the second respondent to file complaint against petitioner under I.P.C. and after the case is taken on file, on the allegations, the material and the consequences under which the petitioner is charged, he has full opportunity and at this stage of the matter, for initiating prosecution, no opportunity is provided either under I.P.C. or under the Act. Therefore, she prays for dismissing the Writ Petition.

On the pointed out query of this Court, whether the contention of petitioner is supported by any provision under the

Act, learned counsel for petitioner fairly states that the contention is not supported by Scheme under the Act.

The challenge to a proceeding authorising prosecution against petitioner refers to administrative grounds available against quasi-judicial or administrative orders passed by the first respondent. The petitioner does not challenge the jurisdiction or authority of first respondent to oversee the affairs of a local Body under the provisions of the Act.

In the case on hand, the report dated 26.6.2006 is received by the first respondent. Though the contention on violation of principles of natural justice is made for initiating prosecution against petitioner under I.P.C., the petitioner did not substantiate the contention. As the complaint is already filed and pending on the file of the Judicial First Class Magistrate, Amalapuram, I do not consider it appropriate to express view on either the allegations in the complaint or the defence available to petitioner.

As the petitioner failed to successfully challenge the impugned proceeding, this Court is not exercising the discretion to interdict the same in the Writ Petition.

The Writ Petition fails and accordingly dismissed. As already observed, the defence available to the petitioner can always be raised in an appropriate proceeding or before the trial

Court and the same shall be considered independently and orders pronounced by the learned Magistrate.

As a sequel to dismissal of the Writ Petition, Miscellaneous Petitions pending, if any, are dismissed as infructuous. No order as to costs.

JUSTICE S.V.BHATT

03rd March, 2017

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