

THE HON'BLE DR JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2769 of 2017

ORDER:

Petitioner is A.4 in C.C.No.1180 of 2015 on the file of IX Metropolitan Magistrate of Kukatpally at Miyapur, taken cognizance for the offences punishable under Sections 406, 420 and 490 IPC and Section 6A of the Essential Commodities Act, 1955 (for short 'the Act').

Based on the complaint of respondent No.2 – Assistant Supply Officer of Ranga Reddy District, Crime No.396 of 2015 was registered by the Station House Officer, Kukatpally P.S. The police examined the complainant besides one T. Sudhakar Rao, eyewitness, and the mediators to the panchanama, and after completion of investigation, filed the final report that was taken cognizance by the learned Magistrate for the offences supra.

As per the very complaint of respondent No.2, in the course of inspections conducted as part of his duty, including in the fair price shop of Smt. S. Vijaya Kumari, bearing No.410, Circle-I, on 28.05.2015, instead of the said Vijaya Kumari running the shop, it was running by one Y. Sandeep, S/o late Y. Narendra Babu, of Nizampet, and the eyewitness - L.W.2 also stated the same.

The police final report shows that the said Vijaya Kumari by allowing the said Sandeep is unauthorizedly running the fair price shop supra by violating Clause 19 of paragraph 2(a) of Annexure I of Andhra Pradesh State Public Distribution System (Control) Order, 2008 and Clause xiii of paragraph 12 of the guidelines for appointment of Fair Price Shop (Control) Order, 2008 vide G.O.Ms.No. 4, dated 19.02.2011 of C.A, F and C.S-I Department and Section 7 of the Act and Section 406 IPC and in the course of interrogation, the said Sandeep voluntarily admitted his guilt.

The contentions in the quash petition impugning the said final report and the cognizance taken from that material for the offences supra, are that none of the penal consequences under the above provisions is applicable to the case on hand and that the petitioner/A.4 – Y. Sandeep did not commit any offence at all and the proceedings are liable to be quashed.

So far as taking cognizance by the learned Magistrate for the offences supra is concerned, there is no breach of trust for entrustment is a pre-requisite for it is not L.W.1 or any official entrusted any property or dominion over the property to the said Sandeep and the petitioner/A.4 not committed breach of trust or misappropriation of the same. Allowing him to sit and run the shop by the said ration shop dealer, who obtained the licence,

should not be construed as any breach of trust either against the said dealer in question or to the officials of the Public Distribution System or to the cardholders / beneficiaries / consumers. Even, there is no element of cheating that could be made out with dishonest intention and deception from the inception for any wrongful gain or to cause any wrongful loss.

Coming to the offence under Section 490 IPC, there is no such Section available in the statute book of Indian Penal Code as the same was deleted by Act 3 of 1925.

From the above, it is evident that none of IPC offences of Section 406 IPC or 420 IPC that apply to the case on hand apart from no Section 490 IPC is in subsistence in the statute book, much less, any such offence is made out and the question of application of Section 6A of the Act, as if an offence, does not arise because it is a proceeding before the Collector, Civil Supplies, for confiscation of any property under clandestine deal violating the provisions of the Act and several Control Orders and the Rules governing the area.

Having regard to the above, the very prosecution is unsustainable and it is nothing but abuse of process to continue the proceedings.

Therefore, the Criminal Petition is allowed quashing the proceedings in C.C.No.1180 of 2015 on the file of IX

Metropolitan Magistrate of Kukatpally at Miyapur. Bail bonds, if any, shall stand cancelled.

Pending miscellaneous applications, if any, shall also stand dismissed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

11th OCTOBER, 2017.

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