

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

+ Criminal Petition Nos.1042 and 1043 of 2016

13.10.2017

Criminal Petition Nos.1042 of 2016

#Between:

Buddhi Kota Subbarao ...Petitioner
AND
State of Andhra Pradesh
Rep. by its Public Prosecutor
And two others ... Respondents

!Counsel for the petitioner : Party in Person

Counsel for Respondent
No.1 : Public Prosecutor.

Counsel for the
Respondents 2 and 3 : Sri T.Sidhar

Criminal Petition No.1043 of 2016

Buddhi Kota Subbarao ...Petitioner
AND
State of Andhra Pradesh
Rep. by its Public Prosecutor
And two others ... Respondents

!Counsel for the petitioner : Party in Person

Counsel for Respondent
No.1 : Public Prosecutor.

Counsel for the
Respondents 2 and 3 : ----Nil---

<Gist :

>Head Note:

? Cases referred:

¹ (2014) 8 SCC 273

² (2007) 4 SCC 221

³ AIR 1994 SC 853

⁴ (1996) 5 SCC 550

⁵ (2007) 1 ALD (CRI) 405(AP)

⁶ AIR 1940 L 526

⁷ (1936) Law Suit(Cal) 15

⁸ 1998(2) SCC 493

⁹ 1980(2) APLJ 59

¹⁰ 2005 CrIJ 2161

¹¹ 2017 1 SCC 113

¹² 2013 (5) SCC 762

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.1042 and 1043 of 2016

COMMON ORDER

The petitioner Buddhikota Subba Rao, party in person and advocate by avocation on post-retirement as a Captain in Indian Navy, resident of Navi Mumbai, filed the two petitions against the three respondents (i) the CrI.P.No.1042 of 2016 is against the 1) State of Andhra Pradesh represented by the learned Public Prosecutor, 2) G.Rami Reddy and 3) A.Chandrasekhar who are the two Investigating Officers in Cr.No.26 of 2015 of Vetapalem Police Station. This petition is filed for the relief to cause the complaint u/ sec.340CrPC filed against the said police officers-R.2 and R.3 for the offences u/ Sec.193IPC before the learned Magistrate Court having jurisdiction and to pass such other orders. ii) The other CrI.P.No.1043 of 2016 is filed against 1) the State of Andhra Pradesh represented by its Public Prosecutor, 2) Peraka Varalakshmi and 3) peraka Lakshmana Bapuji, as respondents 1 to 3, who are the State and the accused 2 and 3 of the crime supra with the prayer against the private persons R.2 and R.3 as in CrI.P.No.1042 of 2016 supra.

2. Both the petitions came for common hearing and disposal.

3. Heard the party in person supra and the learned Public Prosecutor representing the State and also Sri T.Sridhar, the learned counsel representing the Investigating Officers-the R.2 and R.3 in CrI.P.No.1042 of 2016. As there is no representation either

in person or through advocate so far as Peraka Varalakshmi and her husband Peraka Lakshmana Bapuji-the Respondents 2 and 3 of CrI.P.No.1043 of 2017 concerned, hence taken them as heard to decide on merits and perused the material on record for common disposal.

4. Before coming to the respective averments of the respective petitions of the petitioner-party in person in nutshell in support of the respective prayers supra, coming to the factual background of the case on hand in Cr.No.26 of 2015 of Vetapalam P.S of Prakasham district, Andhra Pradesh, registered on 09.03.2015 on the report of the petitioner herein against three accused viz; Gutti Prasad-A.1, P.Varalakshmi-A.2 and P.Lakshmana Bapuji(A.3) for the offences punishable u/ sec.379,424,427,451 r/ w 34 IPC. Said crime registered was by the then SHO-Sub Inspector of Police-G.Rami Reddy-R.2 of CrI.P.No.1042 of 2016. It is based on the written report of the petitioner herein(defacto-complainant) addressed to the D.S.P.Cheerala on even date endorsed to the Sub Inspector of Vetapalem to enquire and take action as per law in registering crime at 10P.M. on that day, for the so called fraudulent and illegal demolition of his tiled house in Pandillapalli village and panchayat bearing D.No.8-95 with assessment No.1110 by causing theft of the house material, that the house property acquired by him as per registered Will No.8/ 1971 executed by his father late Sri Nagaiah. His further say is that he along with his elder brother were while in possession and enjoyment by paying

taxes in the name of their late father, as he is living in Mumbai on post-retirement as a Captain in Indian Navy by practicing as an advocate in Supreme Court and in Mumbai High Court, that as per the bequeaths in the Will of his father, tiled house and appurtenant site of it taken by him and his elder brother Venkateshwara Rao without partition by kept it in joint enjoyment. After his elder brother Venkateshwara Rao passed away, leaving behind wife and children died possessed the half share in the property, he developed the desire to construct a library in the property for public use and kept it to the knowledge of his late brother's family. In the meantime they let out said house to a poor widow Smt. P.Suseela on nominal rent to stay with her children and because of his pre-occupation in the legal profession, the task of constructing building for public library purpose has been getting postponed and meantime said Suseela requested him and his late brother's family to sell the house to her for no other abode and her request was conceded to sell at a nominal price. In the meantime she is paying rent that was being collected by Gutti Prasad-A.1 and Chandramouli(father of A.1) of Anumallipeta of Vetapalem who relate to his elder brother's in-laws family. The said Chandramouli and his son Prasad(A.1) representing the petitioner/ defacto-complainant's elder brother's heirs were informed of the house will be sold to the poor woman P.Suseela supra and meantime said Chandramouli passed away and G.Prasad(A.1) was pursuing the matter.

5. It is further averred in the police report that said G.Prasad(A.1) about 10 months back made a phone call to the defacto-complainant stating that he prepared a sale deed to sell the property to P.Suseela and asked to sign and some of the heirs of his elder brother stated already signed and it is awaiting for his signature. He informed him thereupon about his proposed of coming to Hasthinapuram to comply. Accordingly he came in the early 1st week of March,2015 and went to Vetapalem on 03.03.2015 and A.1-G.Prasad approached him and presented the sale deed and requested to sign. Having gone through, he came to know that the property is not being sold to P.Suseela-a poor widow and it has been prepared to sell to P.Varalakshmi w/o of PL Bapuji(A.2 and A.3-cum-respondents 2 and 3 of CrI.P.No.1043 of 2016) of Pandillapalli to his shock and surprise. When he asked G.Prasad-A.1 to produce the documents which are with him, he produced some Photostat copies and informed that the originals were already handed over to P.Varalakshmi-A.2 and P.Lakshmana Bapuji(A.3). On the next day i.e. on 04.03.2015 he went to Pandillapalli along with his wife at about 11.00A.M. and found that the tiled house was demolished and the entire house material was taken away and the land was made as open plot and on enquiry with neighbours he came to know that the tiled house was demolished sometime in February,2015 itself by said P.Varalakshmi-A.2 and P.Lakshmana Bapuji(A.3) and when he enquired with them, they informed that they demolished the tiled

house on the instructions of A.1-G Prasad. They have no documents for so doing. The villagers of Pandillapalli including B.Koteshwara Rao, Prudhvi Ramesh Babu and others confirmed the same, which is nothing but criminal trespass and demolition of tiled house illegally, fraudulently and mischievously by them worth about 3 lakhs and causing theft of the house material including roof tiles, teakwood structure of the house, bricks, windows and doors and the A.2 and A.3 colluded with the A.1 and thereby to take action.

6. As referred supra, the report was dated 09.03.2015. The defacto-complainant came to the village in the early 1st week of March, 2015 i.e. on 03.03.2015 and visited Pandillapalli on 04.03.2015 where the house was located and found that the building was totally demolished and the material was taken away which was also confirmed from enquiry from the villagers including B.Kotheshwara Rao and P.Ramesh Babu that the A.2 and A.3 in collusion with A.1 Prasad, did criminal acts in February, 2015 however the report given as referred supra 4 days later on 09.03.2015 in saying in the last paragraph of the report that upon gathering all these facts, he was presenting the report to conduct complete enquiry and deal with the matter according to law.

7. He did not mention in the report description of the roof tiles, teakwood structures, windows and doors of the house how many of the so called theft but for giving the value of the house

property of 3 lakhs that is committed mischief by demolition of building by criminal trespass and by committed theft of the property. Leave about how far the offence u/sec.424IPC is applicable, from the ingredients in relation to the offence u/sec.427 and 451 and 379 if at all there, from the version of the complaint, leave about the contention of the learned counsel for the respondents in the course of arguments of from the very report showing Prasad-A.1 entered contract of sale with A.2 Varalakshmi and her husband-A.3-P.Lakshmana Bapuji and the complainant's late brother's family members already signed and executed and he refused to sign as he intends to sell to one P.Suseela and the accused 1 to 3 supra even in February, 2015 demolished the house and taken away the material. As per above say he got half share in the property of his late father for the remaining half belongs to his late brother's family and even from the report, said Prasad-A.1 was looking after the house property on behalf of him also being relative to in-laws family of his late brother Venkateshwara Rao of nearby village, whether it is a trespass or not therefrom, but for if at all any mischief and theft of the property, so far as his share concerned as in favour of A.2, wife of A.3.

8. It is the said report that was registered as crime No.26 of 2015 by the SHO-R.2-Rami Reddy of CrI.P.1042 of 2016 and taken up investigation by R.3-Chandrasekahr, who is the subsequent Investigating Officer, who is successor of Ramreddy-R.2 in the

investigation of the case against said G.Prasad-A.1, P.Varalakshmi-A.2 and P.Lakshmana Bapuji-A.3.

9. In this background, in said crime registered on 09.03.2015 A.1 G.Prasad, was arrested and submitted to judicial custody with remand report dt.29.03.2015 by the Sub Inspector of Police-R.2. The remand report speaks as per the defacto-complainant's report registered as crime supra, the house property jointly belongs to him and his later brother's family which they succeeded from their father that was let out to a poor widow by name P.Suseela and on her request he thought of considering to sell for nominal price to her however, the A.1 taking advantage of he was collecting rents from her, arranged sale in favour of A.2 and A.3 and in February 2015, the accused persons colluded and demolished the house property having trespassed into, taken away the demolished material of the tiled house.

10. The witnesses examined as per the remand report were besides L.W.1 defacto-complainant, L.Ws.2 to 7 who spoke in this regard and R.3-Chandrasekhar-R.3 the predecessor to Rami Reddy-R.2 visited and examined scene of offence and drawn rough sketch and examined the witnesses by recording their statements and after he assumed charge, he arrested the A.1 on that day at 10.30A.M. at his house and after explaining grounds of arrest and after observing guidelines of pre-arrest, arrest and remand right to seek bail but no sureties came forward thereby could not release

by granting any station bail and there was no any ill-treatment and thereby to accept the remand seeing the guidelines of the Apex Court in Arnesh Kumar Vs. State of Bihar¹ and Section 41(1)(A) of the Amended CrPC are followed. Apart from the investigation showing examination of the L.Ws.1 to 7 and rough sketch of the scene of offence prepared by his predecessor R.2 Rami Reddy, with arrest memo notice about the arrest to the kith and kin and notice of arrest to accused and arrest, GD entry and fitness certificate, enclosed with the remand report by supply of copies.

11. It is therefrom the learned Magistrate on that day at about 5.45P.M. of the arrest at about 10.30A.M. or so, taken custody of the accused and remanded to judicial custody which order speaks besides the production and compliance with requirements, from perusal of the First Information Report, Remand Report, Case Diary and other material, it shows there is prima facie case against the A.1 to proceed further and the guidelines of Arnesh Kumar supra followed and submitted the reasons for arrest satisfactorily.

12. The A.1 filed bail application before the learned Magistrate Cheerala on 30.03.2015 u/sec.437CrPC in CrI.M.P.No.938 of 2015 and the order on the bail application granting bail to A.1 on 31.03.2015 speaks that having heard and perused the material on record from notice given to the Addl. Public Prosecutor who opposed saying the investigation is not

¹ (2014) 8 SCC 273

completed, the learned counsel for the A.1 submitted that the A.1 is in judicial custody since the previous day for said offence and investigation might have been completed except filing chargesheet and the learned counsel for the petitioner-A.1 also stated that the A.1 is the sole breadwinner for his family and ready to offer sureties for his due appearance before the Court. Having considered the arguments from both sides and from perusal including part-I CD containing the statements of LWs.1 to 7 and mediators to the scene observation. it shows entire investigation except filing chargesheet is complete and even the A.1-petitioner is released on bail, no prejudice will be caused to the prosecution case, hence to allow the petition granting bail to the petitioner-A.1 for his release on self-bond for Rs.10,000/- with two sureties for likesum.

13. So far as A.2 and A.3 concerned, they filed anticipatory bail application in CrI.P.No.2620 of 2015 before the High Court u/sec.438CrPC. In the Anticipatory bail application with notice filed on 23.03.2015, it is mentioned of they are responsible citizens with a fixed residence and ready to furnish sureties for future appearance and abide by conditions and there is no issue of tampering evidence and investigation has been completed by police except filing chargehseet. Another Single Judge of this Court from the above by order dated 06.04.2015, granted anticipatory bail which reads that the petitioners are the A.2 and A.3 of the above crime of Vetapalem P.S registered for the offences supra

and originally a private complaint was filed u/ sec.200CrPC, that was referred to police and the allegations in the FIR speaks the facts regarding the defacto complainant and his brother's family entitlement to the house property where one Suseela-a poor widow was a tenant. A.1 is nephew of the defacto-complainant who was looking after the property and A.1 contacted the defacto-complainant over phone and misrepresenting about the selling of the property to Suseela made out however, by misrepresentation cause prepared property sale deed by cause signed through his late brother's legal heirs and asked to sign by the defacto-complainant and in the 1st week of March, he visited the village and noticed and to his shock and surprise, the house was demolished and the material was taken away. A perusal of the averments in the FIR disclose that these petitioners-A.2 and A.3 also informed the defacto-complainant and on his instructions money was paid to A.1 and the said house property was demolished in February,2015 and the averments in the FIR disclose the incident of alleged demolition from the fact of selling of the property to A.2 and A.3 taken place at the instance of A.1 and the A.1 was already arrested and released on bail and the petitioners/ A.2 and A.3 stand in much better footing than A.1, thereby their request for anticipatory bail can be considered in granting the same with a direction to surrender before the SHO within 15 days therefrom and shall be released on execution of self-bond with two sureties of Rs.10,000/-

each and shall make available themselves for investigation as and when required.

14. In the factual background, the petitioner herein (defacto-complainant) Buddhikota Subba Rao filed CrI.P.No.733 of 2016 u/ sec.439(2) CrPC, to recall and cancel the anticipatory bail order dated 06.04.2015 granted in CrI.P.No.2620 of 2015 and consequently to direct the SHO concerned for arrest of A.2 and A.3 and commit them to judicial custody. The said petition was ended in dismissal on 21.04.2016 which reads as follows:-

“Heard Sri B.K.Subba Rao, appearing in person for the petitioner; Sri Ramakrishna, Advocate appearing for the respondents 2 and 3 and the learned Additional Public Prosecutor for first respondent/ State.

The present Criminal Petition is filed under Section 439(2) Cr.P.C., seeking to recall the order dated 06.04.2015 passed in CrI.P.No.2620 of 2015 granting anticipatory bail to the respondents 2 and 3 herein.

By an order dated 06.04.2015 in Criminal Petition No.2620 of 2015, this Court granted anticipatory bail to the petitioners therein i.e., A-2 and A-3 in Crime No.26 of 2015 of Vetapalem Police Station, registered against them and another for the offences punishable under Sections 379, 424, 427, 451 read with 34 IPC. It was a case where a private complaint filed under Section 200 Cr.P.C., was referred to police under Section 156(3) Cr.P.C. The averments in the report show that the informant who is the petitioner herein, along with his brother is in possession and enjoyment of the property bearing Dr.No.8-95 of Pandilapalli village which was acquired through a registered Will bearing document No.8 of 1972 executed by his father by name B.K.Nagaiah. The averments in the report further show that as per the Will, the tiled house and the land in which the tiled house existed should be taken by the petitioner herein and by his elder brother by name B.Venkateswarlu. It is alleged that till date they have not partitioned the tiled house property and kept it as a joint property. While things stood thus, the elder brother of the petitioner passed away and consequently his wife and children succeeded to enjoy one half of the said property. The petitioner desires to construct a library for public use, which was known to one and all in the village. In the meantime they have let out the said house to a poor widow by name Pinjala Suseela, who was having small children at that point of time, on a nominal rent. Due to pre-occupation of the petitioner with his profession, the task of constructing the library was getting postponed. Under those circumstances the poor widow requested the petitioner and the heirs of deceased-brother to sell the said house to them as they have no other place to live. Accordingly, they have agreed to sell the house to her for a nominal amount. In this connection, the petitioner appointed Gutti Chandramouli, who is brother-in-law of the

petitioner's deceased-brother, to collect the rents from the poor widow and participate on his behalf in negotiations to sell the house to the said lady. They have been representing to the petitioner and to the heirs of his elder brother that the house will be sold to the poor lady only. After the death of G.Chandramouli his son G.Prasad was pursuing the matter. About 10 months prior to the date of lodging of the report, the said G.Prasad made a phone call to the petitioner herein representing that he has prepared a sale deed in favour of the poor lady and asked the petitioner to sign on the said document. During the first week of March 2015, the petitioner came down to Hasthinapuram went to Vetapalem on 03.03.2015 and during the said period, the said G.Prasad (A-1) approached him and requested the petitioner to sign on the said document. While going through the document, the petitioner noticed that the property was not sold to Pinjala Suseela but to be sold to one Perika Varalaxmi. When the same was questioned, G.Prasad (A-1) produced some Xerox copies to show that the originals were handedover to P.Varalaxmi. On the next day i.e., on 04.03.2015 he along with his wife went to Pandillapalli and found that the tiled house was demolished and entire household articles were taken away. His enquiry with the neighbours reveal that the tiled house was demolished by P.Varalaxmi (A-2) and P.Laxman Bapuji (A-3) husband of A-2 in the month of February 2015. When enquired with A-2 and A-3 they seems to have informed that on the instructions of A-1 they have demolished the house. The fact of demolition of the house was also alleged to have been confirmed by the villagers. Basing on these allegations, the above report came to be lodged.

After taking into consideration the fact that the respondents 2 and 3 herein, who are A-2 and A-3, acted on the instructions of A-1 and since A-1 was already granted bail, this Court considered the request of A-2 and A-3 and granted anticipatory bail to them on certain terms and conditions.

The present application came to be filed on the ground that the said order was obtained by mis-representation of facts and also by misleading and misguiding the court.

The petitioner who appeared in-person placed on record three judgments of the Apex Court reported in A.V.Papayya Sastry and others v. Government of A.P., and others, S.P. Chengalvaraya Naidu (dead) by L.Rs., v. Jagannath (dead) by L.Rs. and others and Indian Bank v. Satyam Fibres (India) Pvt. Ltd. to show that any order, judgment or decree obtained by playing fraud on the court, has to be treated as a nullity and non-est in the eye of the law, whether such order, judgment or decree by the Court of first instance or by the final court. There is no dispute with regard to proposition of law canvassed by the petitioner, who is appearing in person. It is well established principle of law that fraud avoids all judicial acts, ecclesiastical or temporal. Therefore, if any judgment or order is obtained by playing fraud on the Court, Tribunal or authority is a nullity and non-est in the eye of the law. It is also not in dispute that the same can be challenged in any court at any time, in appeal, revision, writ or even in collateral proceedings.

But the question is whether there was any fraud or any misrepresentation made before this Court while passing the order?

Admittedly, the present application came to be filed seeking cancellation of bail granted to A-2 and A-3. No application is filed either before this Court or before the Sessions Court seeking cancellation of

regular bail granted to A-1. A perusal of the order granting bail to A-1 shows that his request was considered on the ground that entire investigation was over except filing of charge-sheet. It was also held by the trial court that no prejudice will be caused to the prosecution case in any manner if A-1 is released on bail.

A reading of the first information report, which has been lodged by the petitioner, prima facie shows that A-1 tried to deceive him by asking him to sign on a document wherein the property was sought to be sold to one P.Varalaxmi instead of to P.Suseela. The averments in the said report reveals that the enquiries made by the petitioner with A-2 and A-3 and also with the neighbours show that A-2 and A-3 demolished the tiled house on the instructions of A-1. The said averments were reflected in the order granting anticipatory bail. It is not the case of the petitioner that the respondents 2 and 3 here have violated any of the conditions of bail or that they have tampered with the evidence or interfered with the investigation by the police. As observed earlier, the petitioner seeks cancellation of bail on the ground of alleged fraud. In support of the same, he places reliance on the affidavits filed by one Bellamkonda Chinna Ankulu and Pinjala Veera Nageswara Rao to show that the contents of the order are incorrect and that a false representation was made before the Court while obtaining anticipatory bail. It is to be noted that these affidavits are not part of case diary. The 161 Cr.P.C., statements of these two witnesses which are placed on record by the learned counsel for the petitioner speak something else. Infact it is to be noted that sworn affidavits of these two persons came to be obtained much after the order of anticipatory bail is passed by this Court. As stated earlier, this Court granted anticipatory bail on 06.04.2015, whereas these two affidavits which are now filed along with this application are dated 08.11.2015. Definitely, these two affidavits cannot form a basis for cancelling the bail on the ground that there was any misrepresentation before the Court while granting anticipatory bail. In fact it is to be noted that subsequent to the order granting anticipatory bail, the State filed Criminal Petition No.9799 of 2015 seeking cancellation of the bail to these two respondents. By an order dated 05.10.2015 this Court rejected the request holding that any observations made in the order while granting bail will not cause any effect while framing of charge or during the trial. Without challenging either the order passed in CrI.P.No.2620 of 2015 or the order passed in CrI.P.No.9799 of 2015, the present application came to be filed at the instance of the informant.

As observed earlier, the application filed for cancellation of bail does not anywhere show that the respondents have violated any of the conditions of the bail. The 161 Cr.P.C. statement of Bellamkonda Chinna Ankulu shows that on the representation made by G.Prasad that the property has been purchased from the petitioner herein, they have accepted to demolish the tiled house and took away the sticks for using the same as firewood. The 161 Cr.P.C. statement of Pinjala Veera Nageswara Rao toe in line with what has been mentioned in the first information report by the petitioner. As per the said statements, the petitioner herein agreed to sell the property to P.Suseela, but however, A-1 sold the same to Varalaxmi and Lakshman Bapuji. Thereafter A-1 engaged L.W.6 i.e., Bellamkonda Chinna Ankulu and another and got the tiled house demolished. But, affidavit filed now gives a very different version to what has been mentioned in the 161 Cr.P.C. statement. Since these two affidavits, which are now filed, are not part of the Case Diary as these two documents are brought on record much after the impugned order came to be filed and as the contents of these two statements vary

with their statements recorded under Section 161 Cr.P.C. statement, the request of the petitioner, for recalling the order dated 06.04.2015 granting anticipatory bail to the respondents 2 and 3 in Criminal Petition No.2620 of 2015, cannot be considered. Hence, I see no merits in the petition and the same is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed. As a sequel to it, miscellaneous petitions pending if any in this Criminal Petition, shall stand closed.

15. Besides the above facts which no way requires repetition but for the other facts alleged herein are said order of anticipatory bail in favour of A.2 and A.3, from regular bail obtained by A.1, obtained by A.2 and A.3 by misrepresentation of facts and by misleading and misguiding the Court. This Court by another Bench which granted bail in dealing with the application for cancellation of bail therefrom observed that in support of that in seeking cancellation the defacto-complainant who appeared in person relied upon the expressions of the Apex Court in A.V.Papayya Sastry Vs.Government of A.P.², S.P Chengalvaraya Naidu vs Jagannath³ and Indian Bank Vs. Satyam Fibres(India) (P) Ltd.⁴ to show that any order, judgment or decree obtained by playing fraud on the Court has to be treated as nullity and non-est in the eye of law, where such order or judgment or decree by the Court of first instance and or by appellate or other Court. There is no dispute with regard to the proposition of law canvassed by the party in person as the petitioner for cancellation of the bail as to fraud avoids of judicial acts ecclesiastical or temporal and thereby any order obtained by playing fraud on Court or tribunal is a nullity and

² (2007) 4 SCC 221

³ AIR 1994 SC 853

⁴ (1996) 5 SCC 550

non-est in the eye of law and the same can be challenged in any Court at any time and at any stage either in appeal, revision or writ or even in any collateral proceedings. But the question is, whether there was any fraud or misrepresentation made before the Court while passing the order.

16. It is in the above background of facts, coming to the two petitions averments a) in CrI.P.No.1042 of 2016 the defacto-complainant averred that in CrI.P.No.2620 of 2015 for anticipatory bail application filed by A.2 and A.3 supra, the two investigating officers, Rami Reddy and Chandrasekhar R.2 and R.3 fabricated false evidence within the meanings of 192IPC punishable u/ sec.193IPC which is one of the offences against public justice enumerated in Section 195(1)(b) CrPC, to follow the procedure prescribed u/ sec.340 CrPC as the two police officers intentionally and deliberately omitted to include the material facts in the police record, fully and faithfully particularly the statements of Bellamkonda Chinna Uncle L.W.6 and without even talking to Pinjala Veera Nageswara Rao(L.W.5) and his statement created and placed on record and avoided making panchanama of the house property, roofed tiles, teakwood structure, door, windows, cement tiles etc., that were carried away after fraudulently and illegally demolishing the tiled house by the R.2 and R.3 of the CrI.P.No.1043 of 2016 by names P.Varalakshmi and her husband Laxmana Bapuji (A.2 and A.3) and the police officers intending and knowing that the police record created would appear in the

proceedings of Court to cause the presiding judges to entertain erroneous opinion touching the points for material to the proceedings in passing favourable orders to the A.2 and A.3 of the above crime and in their getting anticipatory bail and the High Court also granted anticipatory bail under erroneous opinion though A.2 and A.3 approached the Court for anticipatory bail with unclean hands having fraudulently and illegally caused tiled house demolition and occupied the land by made it vacant after theft of the demolished house material and thereby all they committed the offence punishable u/sec.193IPC and it is thereby effecting administration of justice and erodes trust, faith and confidence in common people on the functioning of police Department and in administration of justice in the Courts and it is expedient to deal with the respective respondents of the two petitions as per the procedure prescribed u/ sec.340CrPC and to cause complaint filed before the learned Magistrate of appropriate jurisdiction. What is averred further is that the R.3-Chandrasekhar in the remand report mentioned as if it is a bailable offence though it is a non-bailable offence.

17. In fact, in this regard, admittedly R.3 did not grant station bail as mentioned in the remand report for no sureties furnished and admittedly the bail application of A.1 is u/ sec.437 Cr.P.C. for grant of bail for non-bailable offence of the learned Magistrate was no way influenced from any mistaken reference instead of non-bailable as bailable offence of the crime in the

remand report filed by the A.3 after arrest in submitting the A.1 judicial custody apart from A.1's bail application is for the non-bailable offence and the regular bail granted to A.1 by the learned Magistrate is for the non-bailable offence. It is hardly believable that the A.3 intentionally mentioned in the factual scenario to fabricate false evidence to make it convenient to A.1 to obtain bail. Had it been, there is nothing to prevent from the say as bailable offence even on self-bond by the R.3-Chandrasekhar being the SHO who arrested him and submitted to judicial custody. In fact, Section 50(2) CrPC categorically speaks that "*Where a police officer arrests without warrant any person other than a person accused of a non bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties in his behalf*". It might thus be a mistaken mention as bailable offence, inadvertently by the SHO, Chandrasekhar-R.3 on arrest of A.1 in asking him to furnish sureties to grant station bail and for he could not furnish any sureties for not granted station bail and was submitted to judicial custody by mentioning clearly the penal sections of law which are the non bailable offences in the remand report. Therefrom the leaned Magistrate on perusal from the prima facie accusation for the offences made out accepted the remand in taken to judicial custody by application of mind and had it been a bailable one, he could order for release granting bail in the remand acceptance order to furnish sureties as contemplated by Section 50 r/w

Sec.167(1) and (2) of CrPC which speak as “ *Whenever any person is arrested and detained in custody for investigation cannot be completed within the period of twenty four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate, 2) the Magistrate to whom an accused person is forwarded under this Section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction*”.

18. Once such is a case, it is, in the above factual background, squarely appears an inadvertent mention as if a bailable offence that too when the offences which are non-bailable, mentioned and not even a case of released by saying the accusation is not well-founded invoking Section 169 r/w Sections 50 and 57CrPC by the Police Officer-R.3 of A.1.

19. In fact after the crime registered on 09.03.2015, the arrest and remand of A.1 was on 29.03.2015 and there is a gap of 19 clear days. Further the remand report shows from the investigation done already by the R.2 who registered the crime and visited the scene of offence and conducted scene observation by examination of 7 witnesses including the defacto-complainant as L.W.1 apart from the others L.Ws.2 to 7. The learned Magistrate by perusal of the same from the submission by the A.1 of investigation mostly completed dated 31.03.2015 granted bail undoubtedly from the order referred supra for A.1. The A.2 and A.3 filed the anticipatory bail application on 23.03.2015 in CrI.P.No.2620 of 2015 supra before this Court another Bench wherein their applications as referred supra they mentioned that the investigation is almost completed, as the case may be, but for filing chargesheet. The said anticipatory bail in CrIp No.2620 of 2015 was granted only on 06.04.2015 that too after hearing the learned Public Prosecutor and also by mentioning factum of A.1 was granted regular bail on 31.03.2015. The present Criminal Petition s are filed on 22.01.2016. It is not even mentioned as to other than L.Ws.1 to 7 supra therefrom any further witnesses were examined to say the investigation almost not completed.

20. What all the petitioner says is as it is a property theft by demolition of the existing tiled house by committing mischief from the alleged trespass and taking away the material by the A.2 and A.3, a panchanama could have been conducted by seizure of the

material available and whether if at all dispose of or kept by A.2 and A.3 and that was not done by the Investigating Officer.

21. It is not even the case much less from the police report of defacto-complainant or from his statement during investigation that, even after the house was demolished and material taken away in February, 2015, by the time of his visit on 04.03.2015 or by the time of his report on 09.03.2015 after local enquiry any house demolished material available at the place or to say where any of A.1 to A.3 kept the stolen or removed material. Thus from that nothing to say the police in the course of their investigation either by R.2 and R.3 of CrI.P.1043 of 2016 did not properly investigate that to whom report (FIR) speaks lying vacant as demolished and took away. At best even not stated by the complainant as supra and by any witnesses, any of the two could ascertain whether the demolition material kept by A.1 to A.3 by any of them and if at all dispose of then to whom and how and what is the material, leave about its worth by saying in panchanama if at all nothing recovered in this regard. Is it suffice for the Court to invoke the jurisdiction against the A.2 and A.3 to say that they are liable for perjury punishable u/ sec.193IPC defined in section 192 IPC from the alleged improper investigation or defective investigation pointed out supra.

22. In fact, the regular bail granted to A.1 was not sought for cancellation by the defacto-complainant so far undisputedly. So far

as the anticipatory bail granted to A.2 and A.3 by this Court another Bench in CrI.P.No.2620 of 2015 was sought for cancellation by the application of the defacto complainant which came before the self-same judge of this Court in CrI.P.No.733 of 2016 that was ended in dismissal for nothing to cancel and not even by appreciating the contention of the investigation is faulty. In fact, in dismissal order of the recall application of anticipatory bail, supra it is observed the so called affidavits of the two witnesses filed that is Bellamkonda Chinnauncle-L.W.6 and P.Veera Nageshwara Rao-L.W.5 relied therein were observed as not part of the police Case Diary and through 161 Cr.P.C. statements recorded by the Investigating Officer-Rami Reddy-R.2 of CrI.P.No.1042 of 2016 speaks something else, though sworn affidavits given by the two persons are long subsequent to the anticipatory bail order passed by this Court on 06.04.2015 as those were obtained and filed on 08.11.2015 and those two affidavits cannot form basis even for cancellation of the bail much less to say there is a misrepresentation before the Court for granting anticipatory bail by the Court. In fact, it is also observed that the State also filed CrI.P.9799 of 2015 for cancellation of said anticipatory bail and same was also rejected by the another Bench of this Court on 05.10.2015, saying the granting of bail will not cause effect in framing a charge or conducting trial and there is no violation of any conditions of bail.

23. The Section 161CrPC statement of L.W.6-Bellamkonda Chinnauncle shows on representation made by the A.1-G.Prasad of the property purchased from the defacto-complainant herein they accepted for demolition of the tiled house and taken away the sticks for using the same as firewood. The L.W.5-P.V.Nageshwara Rao also stated in the similar lines of what has happened as mentioned in the FIR by the defacto-complainant.

24. No doubt, it shows from the affidavits of the two persons that it is not mere sticks to use as firewood the wood material of demolished house but something of more value as referred supra. The FIR and chargesheet did not speak the same. It can be said that had the affidavit been taken into consideration, the investigation done by the Rami Reddy-R.2 in recording their statements by not further conducting investigation as to what is actual material, where it is and of what value much less of seizure panchanama if available so also equally if at all subsequently by the Chandrasekhar-R.3. It is the submission of the learned counsel for the R.2 and R.3-the Investigating Officers that once the witness stated there is no material of the old tiled house but for of anything usable of firewood. There was no need of further investigation for nothing brought to their notice and it is a bona fide investigation and there is nothing therefrom to say they created any false evidence much less one defined u/ sec.192IPC and punishable u/ sec.193IPC. In this regard they placed reliance upon the expression of this Court in Vidadala Maruti Hari Prasad

Rao Vs. Special Judge for SPE & ACB Cases⁵ where referring to Section 340 read with 195(1)(b) Cr.P.C. for the offence u/ sec.193IPC, this Court observed that prosecution for perjury as offence against public justice not to be sanctioned as a matter of course merely because there is some of inaccuracy in statements which may be innocent or immaterial and the Court should not react and make a complaint for the said offences therefrom.

25. Undisputedly, the petitioner being a practicing advocate in constitutional Courts did not ask for further investigation by approaching the learned Magistrate where the crime is pending or by approaching any superior police officer like Deputy Superintendent or Superintendent of Police. He did not even choose to ask for any re-investigation so far by approaching any constitutional Court in this regard, with reference to the two affidavits of the two persons, whose versions are since different to the versions recorded by the investigating officer during investigation according to the Case Diary as one of the available and effective recourses.

26. No doubt, from the three decisions placed reliance by the defacto-complainant of Papaiah Shastry, S.P.Chaengalvaraya Naidu and Indian Bank supra as also observed in the recall of anticipatory bail sought, dismissal order of fraud-avoids all judicial acts of any order obtained by fraud is a nullity and non-est in the

⁵ (2007) 1 ALD (CRI) 405(AP)

eye of law and it can be questioned in any proceedings before any Court including in any collateral proceedings.

27. Coming to the so called offence of perjury, the two decisions placed reliance by the defacto-complainant are the expression of Lahore High Court in *Jawala Vs. Ram Parshad*⁶ in CrI.R.C.No.547 of 1940 dt.27.05.1940 where it is observed that an application u/ sec.476 CrPC however is entirely different from a complaint, it is merely the omissions drawing the Court's attention to the fact that an offence appears to have been committed in the proceedings before the Court, and which it can in the majority of cases verify even without the help of the application. It is manifestly most improper for the Court to shirk its obvious duty of applying its mind to the question whether it makes a complaint or not merely because the application does not appear in support of his case. In fact, the application might well be anonymous, if it were sufficiently precise and definite, there would be no justification for not acting upon it. It is clearly duty of a Court to which such application is made either to make a complaint or to reject the application on the merits. No doubt, the expressions of the learned Single Judge of the Lahore High Court of 1940 is having a persuasive value on this Court. So far as the scope of Section 476 CrPC (old) =present 340 CrPC, leave about any difference in wording of the old one and new one as the case may be, not of much, if not, nothing. However, the fact remains that even taken

⁶ AIR 1940 L 526

the duty as laid down supra, from what is discussed supra, there is nothing to book the two police officers for perjury.

28. The other decision of Single Judge of Calcutta High Court placed reliance is in *Jatindra Nath Sahu Vs. Emperor*⁷ on the scope of Sec.193 IPC where it is observed that the accused is Investigating Officer. The evidence given before the Court by one Charu is that after giving report of missing of Gouru Chakravarthi to the police again went to the Investigating Officer on the same day and complained that there were blood marks on some rags and on the loose earth near Indra Dutt's arat had been found and requested to come and see blood marks present however the police officer did not make any note at that time but verbally asked Charu, to go and search for the deadbody and later on in the evening, one Nani Gopal Chakravarthy who had seen the blood marks outside the Indra Dutt's arat also went to the Police Station and reported the same to the accused/ Police Officer who was in charge of the Station at that time, and at about 9PM, Purna Chakravarti and others went to the arat of one Ajoy Gopal Dutt and took Ajoy to the Police Station and told to the accused/ Police Officer that they had discovered blood marks near said arat at 9.30p.m. and the accused made the entry in question, namely, entry No.43 in the General Diary as only Gouri Chakravarti had been missing but he did not record in that entry the fact of reporting him later on the same day of their finding blood marks near about place of Indra Dutt. The prosecution case is that the

⁷ (1936) Law Suit(Cal) 15

accused intentionally omitted to note in the General Diary the fact of reporting him about the blood marks were found near the Arat of Indra Dutt. It was therefrom observed in taking cognizance for the offences u/ sec.193IPC by the learned Sessions Judge from the evidence of the witnesses during trial of it proves so the charge u/ sec.193 IPC against the police officer/ accused that he made a false entry or illegally omitted to make an entry and he did not intended so that the false entry should appear in evidence in a judicial proceedings or other proceedings and the person conducting other proceedings had to form an opinion upon evidence in which such false evidence appear and the accused intended that a person to entertain erroneous opinion upon the evidence and such erroneous opinion touch upon the material to the result of such proceeding and having taken these points observed that in considering said offence has been committed u/ sec.193IPC defined in Section 192IPC of fabricating false evidence, the erroneous opinion consists of a false entry must be made in a book or record say a false statement must be made in a record or document that false entry or statement must be made with a certain intention, namely that the false entry or false statement made appeared in the evidence in a judicial proceeding or any other proceedings taken by law before a public servant, that false entry or statement in a record or document would be a false entry if it does either by reason of some false additions or of some material omissions misrepresents the truth. The omission may be

illegal or legal. The thing to consider is what is the effect of the omission on entry as made or on the statement as occurring in a document. On facts therefrom observed whether the accused/ Police Officer made the entry No.43 in the manner that he did with necessary intention required by Section 192 IPC. The evidence is absolutely held 'Nil' on that point. Even from the decision, it is not mere omission but the deliberate and intentional act and on facts despite the three persons informed the police officer deliberately omitted at best however that was not also shown proved in holding no offence u/ sec. 193 IPC but for u/ sec. 218 IPC.

29. From that even leave about a Single Judge expression of this Court referred supra in Vidadala Maruti supra of inaccuracy in a statement may be innocent or immaterial. Court should not react and made complaint for the offence u/ sec. 193 IPC much less invoking Section 340 r/ w 195(1)(b) CrPC.

30. Furthermore, it is not fabrication of evidence in the Court proceedings, but the Case Diary if at all from the alleged improper recording of the statements of the two witnesses from whose affidavits filed with different versions to their Sec. 161 CrPC statements during investigation before the Investigating Officer Ramireddy-R.2. Once such is the case, the remedy is left open to the petitioner if at all to file a protest to any final report, leave about otherwise can file a private complaint his own for there is no need of the Court to invoke Section 193 IPC against the two police officers for the offences effecting administration of justice

u/ sec.340r/ w 195(1)(b) CrPC. The expression of the Apex Court in Sachida Nand Singh Vs. State of Bihar⁸ is very clear on that aspect that the Court is not bound from the provisions to make a complaint regarding commission of an offence unless the Court is of opinion that interest of justice requires and otherwise for not in every case otherwise. Any interpretation which leads to 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. This Court in Vishnu Kumar Vs. State of Andhra Pradesh⁹ also held the same. Further the Constitution Bench of the Apex Court in Iqbal Singh Marwah Vs. Meenakshi Marwah¹⁰ held that the bar u/ sec.195(1)(b)CrPC 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 or during the time when the document is in custodia legis and not for forged document produced in a Court. For that conclusion, the Constitution Bench referred Satchidananda Sharma supra even subsequent to Iqbal Marwah supra the two judge Bench of the Apex Court in C.B. Subhash Vs. Inspector of Police, Chennai(Crl.A.No.176 of 2013) reiterated a principle. Furthermore, the very latest expression of the Apex Court two Judge Bench in Amarsandh Nathaji Vs.

⁸ 1998(2) SCC 493

⁹ 1980(2) APLJ 59

¹⁰ 2005 CrIj 2161

Hardik Harshadbhai Patel¹¹ on the scope of Sections 340 and 195 CrPC on initiation of proceedings for the offence of perjury concerned observed that mere fact that a contradictory statement was made in a judicial proceeding is not by itself sufficient to justify prosecution for perjury. It must be established that such act was committed intentionally. The pre-conditions for initiating proceedings u/ sec.340CrPC are that the material produced before the Court must make out prima facie case for enquiry about the alleged offence and it should be expedient in the interest of justice to hold such enquiry about the alleged offence. Mere making a contradictory statement by itself is not sufficient to proceed u/ sec.340CrPC in the absence of showing such statement was intentionally made whereafter the Court has to form an opinion that it is expedient in the interest of justice to initiate enquiry in order to form an opinion, the Court may hold preliminary enquiry though it is not mandatory when the Court form opinion that offence stood committed for perjury then it may dispense with preliminary enquiry even after forming an opinion, the Court has to take a decision when it is required to file a complaint considering the facts and circumstances of the case. Where the Court feels that it was required to lodge a complaint then it can make a complaint in writing and the jurisdictional Magistrate to proceed u/ sec. 340 r/w 343 Cr.P.C. for that

¹¹ 2017 1 SCC 113

conclusion, the Apex Court referred the Constitution Bench expression in Iqbal Singh Marwah supra also.

31. Having regard to the above, there is nothing for this Court to hold that the interest of justice requires to book the respective respondents in the two petitions for the offence of perjury u/sec.193 IPC defined in sec.192IPC, by following the procedure contemplated by Section 340 r/w 195 (1)(b) Cr.P.C. but for to say in view of the difference in the earlier version to that of the present affidavits of the so called two witnesses, the investigation to be entrusted to some other Investigating Officer, even the earlier investigation completed and any final report if at all filed for purpose of re-investigation particularly for further examination of the two witnesses and if possible to ascertain as to what happened to the material of the demolished house and what is its value and whether it is disposed of by examination of the two witnesses and any offences concerned as to how any of A.1 to A.3 disposed of the material including if at all taken away by any of the two witnesses as the case may be.

32. Accordingly and in the result, these two Criminal Petition Nos. 1042 and 1043 of 2016 are instead of dismissal disposed of while rejecting the request of the petitioner to cause book the respective respondents 2 and 3 of the two petitions for perjury u/sec.193IPC as per Sections 195 r/w 340 CrPC, however by directing the Deputy Superintendent of Police, Cheerla, to re-investigate the case by directing re-investigation of the case as per

the expression of the Apex Court in Vinay Tyagi Vs. Irshad Ali @ Deepak¹², and file final report if already any final report is filed, in the form of additional final report by virtue of this order.

33. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:13.10.2017

Note: L.R. copy to be marked.
b/ o. vvr



¹² 2013 (5) SCC 762