

THE HON'BLE SRI JUSTICE P. KESHA VA RAO

Criminal Petition No.12760 of 2010

AND

Criminal Petition No.13380 of 2010

COMMON ORDER:

Heard the learned counsel for the petitioners in both the criminal petitions and the learned Public Prosecutor. Though notice is served on the second respondent and engaged a counsel, there is no representation.

Since both the criminal petitions are arising out of the same calendar case i.e. C.C.No.279 of 2010 and as both the counsel gave their consent, they are being disposed of by the common order.

The facts of the case are that on 29.12.2009 at 1500 hours, the in-charge Municipal Commissioner, Korutla came to Police Station, Korutla and lodged a complaint stating that in the year 2007 the Municipal Chairman Sri M.A.Gaffar and the then Municipal Commissioner Sri M.Rajaram issued a tender notification for purchase of three tractors vide notification No.F/330/07, dated 01.10.2007. In response to the said tender notification, one Panchasheela Enterprises, Dealer of Mahindra and Mahindra, Karimnagar and Nawab Motors, Korutla filed tenders in order to supply the tractors. Accordingly, the petitioners i.e. A-1 and A-2 purchased

tractors from the firm of A-3 without making any negotiations and paid Rs.1,25,820/- excess to Panchasheela Enterprises. Sri M.A.Gaffar, Municipal Chairman and the then Municipal Commissioner Sri M.Rajaram i.e. the petitioners colluded with A-3 and fraudulently misappropriated the Municipal funds of Rs.1,25,820/- in purchasing the tractors. In pursuance of the said complaint, a crime was registered vide F.I.R.No.265 of 2009 for the offences punishable under Sections 420, 406 and 409 IPC. After completion of investigation, charge sheet has been filed before the Judicial Magistrate of First Class, at Metpally. The Court below after taking cognizance of the case, numbered the same as C.C.No.279 of 2010. Aggrieved by the same, the petitioners who are accused Nos.1 and 2 have filed the present criminal petitions to quash the proceedings initiated against them.

The learned counsel appearing for the petitioners would contend that in pursuance of the resolution passed by the Municipal Council, dated 30.11.2007, three agencies which deal with the sales of tractors of Mahindra and Mahindra quoted their prices. Out of which, M/s. Panchasheel Enterprises quoted the lesser price and as per the resolution of the Council, the petitioners issued purchase order dated 03.12.2007 in favour of A-3. It is further contended by the learned counsel that the Municipal Commissioner is duty bound to implement the resolutions passed by the Council as

per Section 56(1)(a) of the Andhra Pradesh Municipalities Act (for short 'the Act'). Section 56 of the Act deals with 'Powers and functions of the Commissioner'. Section 56(1)(a) relates to carry into effect all the resolutions of the council. He also would contend that Section 375 of the Act deals with sanction for prosecution of Chairperson, Member, Commissioner or Municipal Health Officer or any other officer - When the Chairperson, any Member, the Commissioner or the municipal health officer or any other officer is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction of the Government. On these two grounds, the learned counsel would submit that no prima facie case is made out, more so, when the procedure followed by the Council is transparent and the commissioner will simply follow the resolution of the Council.

Per contra, the learned Public Prosecutor would submit that the petitioners i.e. A-1 and A-2 made a false Resolution No.56 dt.30.11.2007 without consent of Council and ordered for supply of three tractors of New Mahindra and Mahindra Hydraulic vide Supply Order No.F/330/07, dt.03.12.2007. As the supply order was illegal and the Council not accepted, immediately the Councillor representing the 22nd Ward in the Korutla Municipality has approached this Court and filed writ

petition against the acts of petitioners i.e. A-1 and A-2 since A-1 and A-2 knowingly with fraudulent intention has ordered for supply of three tractors causing loss to the Municipal Exchequer to a tune of Rs.1,25,820/-. This Court ordered the Collector, Karimnagar to enquire into the matter and file a report. Accordingly, as per the instructions of the Collector, Karimnagar, an enquiry was conducted by the Joint Collector in which he disclosed that according to the supply order, the dealer (A-3) had supplied three Hydraulic Tractors on 11.12.2007 and the payment has been made to the dealer through a cheque duly obtaining the legal opinion of the Municipal Standing Counsel, Hyderabad on 11.12.2007. The Mahindra and Mahindra Company issued price circular dt.20.12.2007 with effect from 24.11.2007 revising the price of model No.265-DI from Rs.3,66,060/- to Rs.4,08,000/- and hence the sale price realised from the purchasers is also Rs.4,08,000/- with effect from 20.11.2007. The only objection put against the petitioners is that the petitioners have not conducted any negotiations and had minimum caution been exercised to find out the price list during the tender process, the price quoted by A-3 would have been found excess and it would have been informed that there was no base for the rate of Rs.4,08,000/-.

Be that as it may, as per Section 51(a) of the Act, when the Commissioner is purported to implement the resolutions

passed by the Council, it cannot be found fault with the commissioner for implementing Resolution No.56 passed by the Council for purchase of three tractors for the Municipality, Korutla. Similarly, as per Section 375 of the Act, the Chairperson, any Member, the Commissioner etc. cannot be prosecuted except with the previous sanction of the Government.

In the case on hand, no such evidence is placed before the Court that the sanction has been obtained from the Government for prosecuting the petitioners. Further, even a perusal of the charge sheet would also disclose that except making an allegation that had the negotiations been taken place, the commissioner ought to have saved such excess amount paid to A-3, there is no other allegation against the petitioners. When the Commissioner is duty bound to implement the orders of the council, neither the commissioner nor the chairperson of the Council can be found fault with when there was resolution on 30.11.2007 by all the members except Ward No.22. Further, the allegations made in the charge sheet would not disclose that the petitioners have *mens rea* from the inception so as to invoke the provisions of Section 420 I.P.C. In these circumstances, this Court is of the opinion that no prima facie case is made out to proceed against the petitioners for the offences mentioned supra.

Accordingly, both the criminal petitions are allowed quashing the proceedings initiated against the petitioners (A-1 and A-2) in C.C.No.279 of 2010 on the file of the Judicial Magistrate of First Class, at Metpally, Karimnagar District for the offences punishable under Sections 420, 406 and 409 IPC.

Miscellaneous petitions, if any, pending in both the criminal petitions shall stand closed.

DATE: 04-12-2017
ccm

P. KESHA VA RAO, J



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