

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2458 OF 2017

ORDER:

Requesting to quash the proceedings in Calendar Case No.23 of 2016 on the file of XI-Metropolitan Magistrate, L.B. Nagar, R.R. District, under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code'), the present criminal petition is filed.

2. The petitioners are arraigned as accused Nos.1 to 4 respectively in the aforesaid calendar case. They alleged to have committed the offence punishable under Sections 419, 448 and 504 of IPC.

3. Heard Sri P.V.L. Bhanu Prakash, the learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

4. Two main submissions have been made by the learned counsel for the petitioners. The first submission is, that the 2nd petitioner is a public servant and he being a State Government employee under the directions of Deputy Registrar/Liquidator, M/s. Vasavi Cooperative Urban Bank Limited approached the 2nd respondent in performing his official duties and he has even submitted an explanation to the notice issued under Section 41-A of the Code, but the investigating officer failed to take into consideration the said fact and he did not follow the procedure contemplated under Section 197 of the Code and charge-sheeted the 2nd petitioner. Thus, the protection available under

Section 197 of the Code is grossly violated by the investigating officer who filed charge sheet without obtaining the consent.

5. The second submission has been that the learned Magistrate, without proper application of mind, has taken cognizance of the offence and, therefore, the cognizance order is liable to be set aside.

6. The learned Additional Public Prosecutor for the State of Telangana would fairly concede that the 2nd petitioner was on duty and he is a public servant, however, the learned Additional Public Prosecutor would not say anything about application of mind by the learned Magistrate in taking cognizance of the offences alleged against the petitioners.

7. The fact situation occurring in the instant case requires advertence in appreciating the contentions raised by the learned counsel for the petitioners.

8. The 2nd respondent/*de facto* complainant lodged a complaint with the Station House Officer, Saroornagar P.S. stating that on 4.7.2015 at about 11.30 a.m. the petitioners claiming themselves recovery staff of Vasavi Cooperative Urban Bank Limited, Malakpet, Hyderabad, criminally trespassed into his house picked up quarrel with him and his family members using filthy language, threatened them with dire consequences demanding for payment of loan amount borrowed by V.J. A.C. systems by fraudulently obtaining signatures of his late father, which is the subject matter of W.P. No.2831 of 2011

pending before this Court. Hence, basing on the said complaint, First Information Report was registered for the aforesaid offences.

9. Turning to the submission made by the learned counsel for the petitioners, so far as the 2nd petitioner is concerned, it cannot be said that he is not a public servant, being Recovery Officer, as he is holding the post of Senior Inspector working in Cooperative Department and he was appointed as Sales Officer in Vasavi Cooperative Urban Bank Limited, which is under liquidation. Under Section 129 of A.P. Cooperative Societies Act (APCS Act), the Sale Officer is to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1960 to execute the execution petitions/to recover any amount pursuant to the orders passed under any of the provisions of the Act, and Rule 2 (L) envisages that the Sale Officer is competent authority to attach and sale the property of the defaulters and execute, and even under Section 72 of the APCS Act, the Sale Officer is competent to attach and sale the property and he is deemed to be Civil Court for certain purposes under Article 182 of the Indian Limitation Act, 1908. In such an event, certainly, sanction under Section 197 of the Code is absolute which the investigating officer has to completely ignored or overlooked. Besides the same, it reflects the absence of application of mind by the learned Magistrate while taking cognizance of the offences alleged against the petitioners.

10. It is pertinent to note that the order taking cognizance of offences by the learned Magistrate, *ex facie*, reflects non-application of mind while taking cognizance of the offences. A copy of the order is placed for perusal, which shows that a Rubber Seal was used leaving blanks to fill up the provisions of the law and the C.C. Number No. process to be issued and the date to be put. Rest of the matter in Rubber Seal is embossed one. It reads thus:

Cognizance is taken for the Offence

U/S.419, 448, 504 IPC

Register as C.C.

Issue summons to accused

Call on 5.4.2016

Sd/- 13/1/16

XI M.M. Cyberabad

at L.B. Nagar

11. Thus, it *ex facie* reflects non-application of mind by the learned Magistrate. In the present context, it would be profitable to refer to the law declared by the Hon'ble Supreme Court in **Priyanka Srivatsava v. State of Uttar Pradesh¹** and **S. Purnachandra Rao and another v. State of A.P., rep., by its Public Prosecutor, High Court of A.P. and another²**.

12. In **Priyanka Srivatsava** (1 supra) in the context of non-application of mind at the time of taking cognizance of the offence the Hon'ble Supreme Court held in paragraph-20 thus:

“20. The learned Magistrate, as we find, while exercising the power under Section 156 (3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while

¹ (2015) 6 SCC 287

² 2015 (1) ALT (CrL.) 49 (A.P.)

exercising power under Section 156(3) CrPC, cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. Police officer’s power to investigate cognizable case:- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

13. In **S. Purnachandra Rao and another v. State of A.P., rep., by its Public Prosecutor, High Court of A.P. and another**³, a learned Single Judge of this Court dealing with a situation relating to the offences punishable under Sections 504, 506 and 120-B of IPC held that the Magistrate has to give reasons while referring the case under Section 156 (3) of Cr.P.C. or while taking cognizance of the offence and shall also give reasons while empowering the police officer to investigate into a non-cognizable offence or referring the case to police, and thereby, set aside the order passed by the Magistrate, but, however, remanded the matter for fresh consideration. In the said decision, learned Single Judge had the occasion to refer to purport of Sections 155 (2), 156 (3), 239, 240 and 482 of the Code.

14. In such an event, certainly, the order of taking cognizance of the offences against the petitioners by the learned Magistrate is liable to be set aside, and accordingly set aside, while relegating the matter to the XI-Metropolitan Magistrate, L.B. Nagar, R.R. District to

³ 2015 (1) ALT (CrL.) 49 (A.P.)

consider the charge-sheet and the annexures thereto, and pass appropriate orders in accordance with law.

15. Accordingly, the present Criminal Petition is allowed with the aforesaid direction.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 04.04.2017

gbs

