

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.11734, 11742, 11744 AND 11758 OF 2015

COMMON ORDER:

One Rangari Ashok, who is arraigned as accused No.2 in Crime No.514 of 2015-16, dated 10.10.2015, filed Criminal Petition No.11734 of 2015 under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), requesting to quash the proceedings in the aforesaid Crime, while Rangari Prakash, who is arraigned as accused No.2 in remaining three crimes of Prohibition and Excise Station, Narayankhed, Medak District, filed Criminal Petition Nos.11742, 11744 and 11758 of 2015 under Section 482 of the Code requesting to quash the proceedings in Crime Nos.511, 509 and 510 of 2015-16, respectively.

2. The respective petitioners along with accused No.1 alleged to have committed the offences punishable under Section 7(A) read with 8(e) of Andhra Pradesh Prohibition Act, 1995 (for short 'the Act') and Section 34 (C) and Clause (3) of GUR (Regulation of Use) Order, 1968. Basing on the confessional and recovery *panchanama* of accused No.1, the petitioners herein have been arraigned as accused No.2 in the aforesaid crimes.

3. Heard Sri Venkat Rao Patil, learned counsel for the petitioners, and learned Additional Public Prosecutor for the State of Telangana.

4. Before advertng to the submission of the learned counsel for the petitioners, it is necessary to refer to the submission made by the learned Additional Public Prosecutor.

5. The learned Additional Public Prosecutor would submit that in all the aforesaid crimes, concerned Investigating Officer of Excise Department has filed charge sheets respectively, and since the petitioners herein are seeking to quash the proceedings in the aforesaid crimes, the present criminal petitions would become infructuous and the petitioners have to move separate criminal petitions under Section 482 of the Code for quashing the proceedings in the charge sheets. This has been the short submission made by the learned Additional Public Prosecutor.

6. The aforesaid submission is strongly resisted by the learned counsel for the petitioners, contending that it is open for the petitioners to continue the present requests despite the fact that the Investigating Officer has filed charge sheets and there is no need to seek separate reliefs for quashing the proceedings in the charge sheets. In support of his submission, he places reliance in **State of Haryana & others v. Ch. Bhajan Lal & others**¹.

i) The learned counsel's submission touching on merits has been that the trade in black jaggery is not prohibited and the petitioners being honest traders and no adulteration of black jaggery is

¹. AIR 1992 SC 604

detected, the investigation in the aforesaid crimes and prosecution of the petitioners would amount to abuse of process of law.

ii) His further submission, as mentioned in the above, is that the petitioners can continue the present criminal petitions to quash the proceedings in the aforesaid crimes though, charge sheets have been filed as it would not change the nature of case. He relies on the observations of the Hon'ble Supreme Court in paragraph No.62 of **Bhajan Lal's Case**.

7. The expression of the Hon'ble Supreme Court in **Bhajan Lal's Case** (Supra) contained in paragraph No.62 is thus:

“62. The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious

prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.”

8. The short question that arises for consideration is:

whether the present petitions can be entertained when charge sheets are already filed in the above crimes?

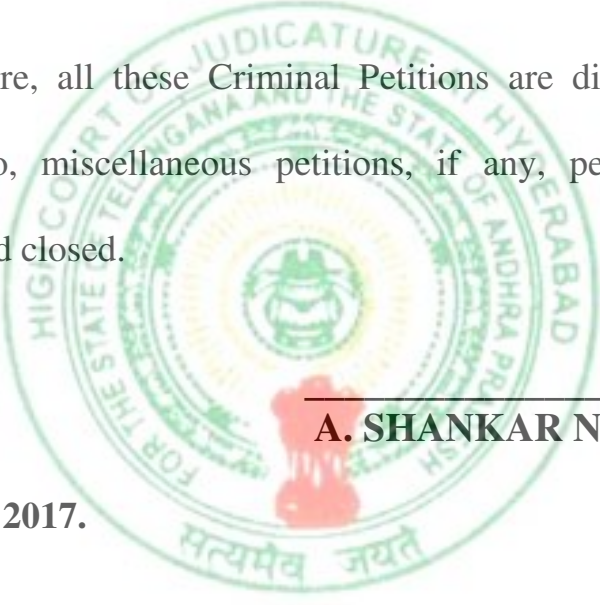
9. The Hon’ble Supreme Court while expressing that the Police Officers have unfettered power to investigate into, but cautioned that such power is available so long as it is legitimately exercised in strict compliance of the provisions falling under Chapter XII of the Code and interference of the Court is unwarranted unless a Police Officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen. In which case, the Court on being approached has to consider the nature and extent of breach and pass appropriate orders. But, in the present context, it would not aid the petitioners in these petitions

respectively, for the reason only change of relief is now required to be sought which is detailed hereunder.

10. The request in all these petitions is to quash the aforementioned crimes either before or just after the investigation was commenced. The duty of the Court is to examine, at that stage, whether FIR/crime proceedings would, *ex facie*, show that no allegation of commission of cognizable offence has been made out by the concerned police or Excise Department and when once charge sheet is filed, necessarily to substantiate the conclusion arrived at by the Investigating Officer, all the relevant documents will have to be filed. In the sense, statements recorded under Section 161 of the Code, copies of *panchanamas* and other relevant material in the direction of showing that no *prima facie* case is made out to prove the complicity of accused in the commission of offences levelled against him. So, the scope of examination, when once the charge sheet is filed, differs from the scope of examination before filing the charge sheet. Therefore, the request to quash the proceedings at crime stage would render infructuous when once charge sheet is filed as a different relief requires to be claimed seeking quashing of proceedings in the charge sheet. Even otherwise, the respective petitioners have not filed any petition for an amendment of the relief as well as relevant averments in the body and grounds of the criminal petition. In such an event, these petitions, since become infructuous on account

of filing of charge sheets in the aforesaid crimes respectively on 15.09.2016 and 18.01.2017 respectively, and having been assigned C.C. Nos.416 and 415 of 2016 in Crime Nos.514 and 511 of 2015-16, respectively and yet to be assigned in the remaining crimes, the same are liable to be dismissed as infructuous. The dismissal of the present petitions would not bar the right of the petitioners in asking for quashment of the proceedings in the charge sheet in each of these cases.

Therefore, all these Criminal Petitions are dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in these petitions, stand closed.



A. SHANKAR NARAYANA, J

February 27, 2017.

Mgr