

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.808 and 986 OF 2018

COMMON ORDER:

The allegations made and grounds urged in both the petitions are almost identical. Hence, it is expedient to dispose of by common order.

CRIMINAL PETITION NO.808 OF 2018

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the summons issued against the petitioners in S.C.No.403 of 2017 pending on the file of Court of Sessions, Anantapuram, on the ground that when charge sheet was not filed against these petitioners, issuing summons to the petitioners as if they also committed an offence punishable under Sections 420, 406 IPC and Section 5 of A.P.P.D.F.E Act, 1999, is illegal.

CRIMINAL PETITION NO.986 OF 2018

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the summons issued against the petitioners in S.C.No.403 of 2017 pending on the file of Court of Sessions, Anantapuram, on the ground that they are only Principal and Accountants of the institutions and they were not arrayed as an accused in the individual capacity, but summons were issued against these petitioners also, besides the persons who were shown as an accused in

the charge sheet.

The summons, which were served on the petitioners, are placed on record. Summons were also served on listed witnesses i.e, Lws. 14 and 15 along with the present petitioners herein as if they are accused in the said Sessions Case taking cognizance of the offences punishable under Sections 420, 406 IPC and Section 5 of A.P.P.D.F.E Act, 1999, since the petitioners are the alleged Accountants of the Society and Principals of the Institutions.

Learned Additional Public Prosecutor for the State of Andhra Pradesh represented that on the instructions of the designated Special Judge for trial of cases under the Provisions of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999, issued summons to these petitioners though they were not arrayed as accused in the charge sheet and more curiously, Putta Bhagya Laxmi, Principal and Gunji Jaya Smha, Cashier of Vadiampeta, who were shown as listed witnesses as Lws. 14 and 15 were also summoned to appear before the Court to answer the charge sheet filed for the offences stated above without taking cognizance of the offences.

The Orders dt. 04.01.2018, 18.01.2018 and 01.02.2018 passed by the Special Judge are placed record. None of these orders discloses that cognizance of the offences

punishable under Sections 420, 406 IPC and Section 5 of A.P.P.D.F.E Act, 1999, were taken against these petitioners in S.C.No.403 of 2017, but simply issued summons calling upon their appearance to answer the charges to be framed against the petitioners. Therefore, issuing summons against the persons, who are not arrayed as accused, is a grave irregularity.

When an identical question came up before the Supreme Court in "*Pepsi Foods Limited v. Special Judicial Magistrate*", the Supreme Court held that "Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the

complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

In "*M.N.Ojha v. Alok Kumar Sivastav*" the Apex Court held that "it is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [Vide: *State of Karnataka v. L Muniswamy* : (1977) 2 SCC 699]"

In view of the law declared by the Apex Court in the above two judgments referred above, the Court can exercise power under Section 482 Cr.P.C to quash the proceedings when the Court committed a grave illegality in issuing summons to the person, who is not arrayed as an accused in any case.

Yet, the Court can proceed against any person, who is not arrayed as accused, if the Court finds material that 3rd party is also committed an offence, but only on finding evidence during enquiry or trial under Section 319 of Cr.P.C. But at the stage when the trial is not yet commenced, the Court cannot issue summons to any person other than the

accused person, who is not arrayed as an accused in the charge sheet. Though Section 319 Cr.P.C. conferred power on the Court, but made clear that such power can be exercised where in the course of any inquiry or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

But in this case, no proceedings have been commenced, but straight away issued summons to these petitioners though they were not arrayed as accused. The case can be proceeded under Section 319 Cr.P.C., if the evidence collected or produced in the course of any inquiry or trial of an offence, the Court is *prima facie* satisfied that such person has committed any offence for which he can be tried with other accused. So, the process issued under this Section cannot be quashed only on the ground that even though named in the complaint, the police did not charge sheeted. Thus, it means the Court has to apply its mind to the collected or produced evidence in the course of any inquiry or trial and record its satisfaction that there is *prima facie* evidence to proceed against any 3rd party, who is not arrayed as an accused in the crime, as held by the Apex Court in

*Suman v State of Rajasthan*¹.

Contrary to the principles laid down by the Apex Court referred supra, the Principal District and Sessions Judge, who is designated as Special Judge for trial of cases under A.P.D.F.E Act, 1999, issued summons to the petitioners even before commencement of inquiry or trial without producing any material and without recording satisfaction as to *prima facie* case to proceed. Hence, the Order Dt. 19.01.2018 passed by the Special Judge is illegal and accordingly, the proceedings are quashed. However, the Special Court is at liberty to proceed against any person who is not arrayed as an only exercising power under Section 319 Cr.P.C., not otherwise. This Order will not preclude the Special Court to follow the procedure contemplated under Section 319 Cr.P.C.

With the above direction, these two petitions are allowed and the proceedings dt. 19.01.2018 in SC.No.403 of 2017 passed by the Special Judge for trial of cases under A.P.D.F.E Act, 1999 against the petitioners herein, are hereby quashed.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

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¹ AIR 2010 SC 518

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