

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.13767 of 2014 & 12688 of 2017

COMMON ORDER:

Crl.P.No.13767 of 2014 is filed by A-1 and A-3 to A-8 and Crl.P.No.12688 of 2017 is filed by A-2 under Section 482 Cr.P.C. to quash proceedings in C.C.No.908 of 2014 pending on the file of the III Metropolitan Magistrate, Cyberabad, L.B.Nagar, Ranga Reddy District, registered for the offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC.

The 2nd respondent in both the petitions filed private complaint before III Metropolitan Magistrate, Cyberabad, L.B.Nagar, Ranga Reddy District, alleging that A2 and the 2nd respondent-complainant are members of Paulomi Educational Society. The 2nd respondent is the Treasurer of the Society, A1 is the Vice President, A2 is the Secretary and A3 to A7 are allegedly newly joined members of the Society. The 2nd respondent has contributed some amount for the Society unlike other members of the Society as such she was appointed as Treasurer. Some disputes arose between 2nd respondent and A2, who is no other than the brother of the 2nd respondent with regard to the amounts of the Society. As the 2nd respondent did not yield to the acts of A-2, A-2 hatched a plan to remove the 2nd respondent-complainant from the Society and in pursuance of the plan, he allegedly fabricated minutes of the General Body Meeting dated 29.04.2012, 27.10.2012 and 27.11.2012 as if the 2nd respondent has submitted resignation letter to A-2. The said resignation letter was handed over by A-2 to the Registrar of Societies and the resignation letter does not bear the signature of 2nd respondent. A2 either himself

forged the signature or got forged the signature of the 2nd respondent and created a false document in collusion with the other accused.

The petitioners in CrI.P.No.13767 of 2014 are accused Nos.1 and 3 to 8. A1 is housewife and wife of A2. A3 and A4 are the children of A1 and A2, who are prosecuting their studies. Whereas A5 and A6 are the children of one Venkateshwara Rao and they are prosecuting their studies. A7 is the wife of late Venkata Narsaiah. A-8 is an Advocate, who notarized the resignation letter allegedly submitted by the 2nd respondent to A-2 (petitioner in CrI.P.No.12688 of 2017).

The specific allegation made against the petitioners/accused is that all of them colluded with one another and created resignation letter and passed a resolution retiring the 2nd respondent from the Society, based on forged resignation letter notarized by A-8 and later the same was sent to the handwriting expert, who in turn expressed his opinion that the signature on the resignation letter was not written by 2nd respondent and, therefore, the accused committed the above offences.

The Magistrate by exercising power under Section 156(3) Cr.P.C. referred the case to Medipally Police Station, Cyberabad to investigate and file report. The Sub-Inspector of Police, Medipally Police Station, Cyberabad, registered crime and issued FIR No.142 of 2013 for the offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC. In pursuance of the FIR, the Sub-Inspector of Police took up investigation and examined as many as five witnesses and recorded their statements under Section 161(3) Cr.P.C. and the disputed signatures and admitted signatures were sent to the handwriting expert. On receipt of report from the handwriting expert,

filed charge-sheet before the Magistrate, having concluded that there is *prima facie* material to proceed against the petitioners for the offences, referred to above.

The Magistrate took the cognizance of various offences against the petitioners.

These two petitions are filed by two different sets of accused in C.C.No.908 of 2014. The grounds urged in both the petitions are identical and therefore, to avoid repetition, I find that it is appropriate to decide both the petitions by a common order.

The main contentions raised by petitioners in both the petitions are that the charge-sheet does not disclose any specific overt-acts against A1 and A3 to A8 and if at all allegations in the charge-sheet are accepted at face value, no offence is made out muchless offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC and the allegations in the charge-sheet are only against A2, who allegedly forged the signature of the President and issued a notice for conducting general body meetings on 29.04.2012, 27.10.2012 and 27.11.2012 and unanimously accepted the resignation letter of the 2nd respondent, which was allegedly forged by A2. Therefore, the allegations at best directly pointing out the complicity of A2 and no case is made out against A1 and A3 to A8. It is also contended that by acceptance of resignation of respondent No.2, A3 to A7 were joined as members in the place of old members and in which case, the allegations of cheating, criminal breach of trust and forgery of signatures are not attributable to Accused Nos.1 and 3 to 7. Therefore, the petitioners did not commit any offence muchless the offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and

472 IPC. It is also contended that when no case is made out, even after accepting the allegations made in the complaint, as true at face value, the Court can exercise the power under Section 482 to quash the proceedings against A1 and A3 to A7 in view of law laid down in “***State of Haryana v. Bhajan Lal***¹” and requested to quash the proceedings against A-1 and A-3 to A-8.

The learned counsel appearing for the 2nd accused-petitioner in CrI.P.No.12688 of 2017 contended that the allegations made in the complaint do not constitute any offence, muchless offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC and that the 2nd accused was falsely implicated in the present case and various cases are pending against A2 and 2nd respondent. He further contended that the allegation against A2 that he forged the signature of the 2nd respondent on resignation letter and also General Body Meeting resolutions dated 29.04.2012, 27.10.2012 and 27.11.2012 is a serious allegation, but not based on any material and the delay in filing complaint is another aspect to be taken into consideration while considering the application filed under Section 482 Cr.P.C.

The members, who are admitted in the Society i.e., A-1 and A-3 to A-7, consequent upon the resignation of 2nd respondent accepted in the General Body meetings dated 29.04.2012, 27.10.2012 and 27.11.2012 and describing them as accused is nothing but an abuse of process of Court and requested to quash the proceedings against A2. He also contended that A2 and the 2nd respondent are brother and sister and due to differences among the family members, many false complaints against A2 are filed and pending so as to cause

¹ 1992 Supp (1) SCC 335

inconvenience to A2. Thus, initiation of various proceedings against petitioners by 2nd respondent is a strong circumstance to conclude that this complaint is one such complaint filed before the Magistrate, who in turn referred to the police and after completion of investigation filed charge-sheet without any basis.

During hearing, Mr. Metta Chandrasekhar Rao, learned counsel for A2 contended that the allegations made in the charge-sheet even if accepted at face value, do not constitute any of the offences referred supra and apart from that, A2 is entitled to the benefit of Section 212 of Cr.P.C., which deals with particulars as to time, place and person. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219; provided that the time included between the first and last of such dates shall not exceed one year.

Taking the advantage of the above provision, the counsel for petitioners requested the Court that in the absence of any details in the charge-sheet, the proceedings against the petitioners are liable to

be quashed. He also placed on record the judgment of this Court in Criminal Revision Case No.1788 of 2011 to contend that when similar allegations are made against the accused in other crime, the accused was discharged for the offences mentioned therein and requested to allow both the petitions, quashing the proceedings against petitioners.

The other contention urged before the Court is that the Magistrate is incompetent to take cognizance of the offences as the limitation under Section 468 Cr.P.C. to take cognizance of the offences was expired long back. On the ground of limitation also, the proceedings against A2 are liable to be quashed. He finally contended that in case the Court comes to any conclusion that there is material against A2 to proceed for various offences, issue necessary direction to the Magistrate to take into consideration of Section 212 of Cr.P.C. while framing of charges.

Considering rival contentions and perusing the material on record, the points that arise for consideration are as follows :-

(1) *Whether the petitioners-A-1 and A-3 to A-7 were admitted as members of the Society consequent upon acceptance of the alleged resignation of the 2nd respondent-complainant. If so, whether the petitioners-A-1 and A-3 to A-7 committed any offence punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC ?*

(2) *Whether 7th petitioner-A-8, who is an Advocate Notary, committed any offence of forgery, if the allegations made in the notary are in collusion with A2. If so, whether the proceedings against petitioner No.7-A-8 in Crl.P.No.13767 of 2014 are liable to be quashed ?*

(3) *Whether the allegations made in the charge-sheet against A-2-sole petitioner in Crl.P.No.12688 of 2017 constitute*

any offence and if so, whether non-compliance of Section 212 Cr.P.C. is fatal and the proceedings against A2, the petitioner in Crl.P.No.12688 of 2017 are liable to be quashed in C.C.No.908 of 2014 ?

POINT No.1:

The 2nd respondent filed private complaint before III Metropolitan Magistrate, Cyberabad, LB.Nagar, on the specific allegation made against the petitioners in Crl.P.No.13767 of 2014 that no meetings dated 29.04.2012, 27.10.2012 and 27.11.2012 were held and those resolutions are fake. But according to the Minutes of the said General Body meeting held on 27.11.2012, the address of the office of the Society was changed from Plot No.8-2 and B-17, Rukminipuri Colony, A.S.Rao Nagar main road to Flat No.921 and 932, Budda Nagar Colony, Peerzadiguda, Ghatkesar (M), but no specific role is attributed to A-1 and A-3 to A-7 to attract the offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC, but bald allegation is made in paragraph '18' of the charge-sheet that accused 3 to 7 are allegedly newly added managing committee members and the signatures of the complainant and the witnesses were forged with knowledge of them and they illegally joined as members. Hence, they are also arrayed as accused. Except this allegations in para '18' of the charge-sheet, no specific allegation is made to attract any of the offences. Even the statements recorded by police during investigation do not disclose commission of offence by A-1 and A-3 to A-7 as they joined as members subsequent to the acceptance of alleged resignation in a General Body Meeting dated 27.11.2012, based on the alleged forged resignation letter submitted by 2nd respondent. Either private complaint or charge-sheet filed

before the Court is totally silent as to the role played by accused Nos.1 and 3 to 7, except alleging that based on the forged resignation letter and forged general body meeting resolutions, they joined as members of the Society. Therefore, the material placed on record at best would disclose that they were admitted as members in the Society allegedly after resignation of the 2nd respondent. The case-diary part-II contains the statement of witnesses recorded under Section 161(3) Cr.P.C during investigation by the Sub-Inspector of Police, Medipally. The defacto-complainant was examined as LW.1. Her statement disclosed that the 2nd accused-petitioner in Crl.P.No.12688 of 2017 forged her signature on the resignation letter and based on such forged document, a resolution was passed and submitted to the Registrar of Societies terminating her as Treasurer of the Society. But, none of the allegations made against A-1 and A-3 to A-7 constitute any offence much less offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC. The statement of the 2nd respondent is totally silent as to the role played by accused Nos.1 and 3 to 7. In the absence of any allegations to constitute any offence much less offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC, on the basis of their admission as members, subsequent to alleged resignation based on the forged letter produced by A2 in the General Body Meeting do not constitute any of the offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC. Similarly, the statement of LW.2 at best disclosed that the 2nd accused without knowledge of the other members of the Society misappropriated funds dishonestly and the signatures of P.Narsimha Rao (President) and other members by name P.Bharathi (Joint

Secretary) and Y.B. Shekaram (Executive Member) were forged on the resignation letters. The said persons did not attend the meeting but their signatures were forged on the resolutions of General Body Meeting and submitted the same to the Registrar of Societies. The statement of LW.2 also did not disclose any specific allegation against A-1 and A-3 to A-7. The statements of LWs.3 and 4 are also to the same effect and none of the statements disclose the active role played by A-1 and A-3 to A-7 to constitute offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC. Therefore, in the absence of any allegation against A-1 and A-3 to A-7, the proceedings against these accused shall not be continued.

In “*State of Haryana v. Bhajan Lal*”² the Apex Court considered in detail the powers of High Court under Section 482 Cr.P.C. and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

² 1992 Supp (1) SCC 335

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of guideline No.3, where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against A-1 and A-3 to A-7, the proceedings against A-1 and A-3 to A-7 are liable to be quashed. However, the allegations in charge-sheet disclosed commission of various offences by A2/petitioner in CrI.P.No.12688 of 2017 *prima facie*.

Accordingly, Point No.1 is answered in favour of A-1 and A-3 to A-7 and against the 2nd respondent.

POINT No.2:-

The allegation against A8-7th petitioner in CrI.P.No.13767 of 2014 is that he notarized the forged resignation letter of 2nd respondent. The basis for this conclusion is the report of an expert collected by investigating agency and the expert opined as follows:-

“There are no fundamental similarities between standard and questioned. The differences in the writing characteristics are significant and sufficient to form a definite opinion.”

This opinion is sufficient to conclude *prima facie* that the signature of the 2nd respondent is forged on the resignation letter. The 7th petitioner-A8 is an Advocate notary and to notarize such document, the executant must sign in his presence or acknowledge his/her signature on the letter and make necessary entry in the Registers maintained by the notary public as per the Rules framed thereunder, without admission or acknowledgement of complainant 2nd respondent/the executant, the signature was attested being a notary public and it ultimately proved to be not written by 2nd respondent in view of the opinion of hand writing expert. In such case, in view of the attestation of signature of the 2nd respondent without signing on the document by her in his presence or without any acknowledgment that she has signed on the letter, A8 is liable to be prosecuted for the offences punishable under Sections 120-B, 465, 468 and 472 IPC *prima facie*.

Accordingly, point No.2 is answered against A8 and in favour of 2nd respondent.

POINT No.3 :-

The 2nd accused is petitioner in CrI.P.No.12688 of 2017. He allegedly forged the signature of the 2nd respondent and misappropriated the Society fund and forged the signatures of the

other members, who are examined as LWs.1 to 5 by the investigating agency during investigation and recorded their statements under Section 161 (3) Cr.P.C. Both in the complaint and in the charge-sheet, the role played by A2 is explicitly mentioned and the allegations pointing out direct involvement of A2 in creation of letter of resignation by the 2nd respondent with forged signatures and basing on resolutions without attendance of other members, who were examined as LWs.2 to 5 by the investigating agency. Basing on the attestation of A8, advocate notary submitted the same to the Registrar of Societies, admitting accused 1 and 3 to 7 as members in the Society is sufficient to proceed against A2 *prima facie* for the offences, referred to above.

When adverted to the statements recorded under Section 161 (3) Cr.P.C., the witnesses, the defacto-complainant as LW.1 attributed specific role against A2 and A8 in forging the signature of 2nd respondent on the resignation letter and attestation of the same by A8, passing of resolutions by forging her signatures and the other members of the Society, who are examined as LWs.2 to 5 and submitted the Resolution to the Registrar of Societies, while making serious allegations that A-2 misappropriated the Society funds with dishonest intention. The allegations made in the statements are the basis for filing charge-sheet including the opinion of an expert. The allegations made in the charge-sheet coupled with the evidence collected during investigation including statements recorded under Section 161(3) Cr.P.C, are that A-2 conspired with A8, created the letter of resignation of 2nd respondent and placed the same in the General Body Meeting removed her as Treasurer of the Society and

submitted the Resolution to the Registrar of Societies. Those allegations directly constitute offences punishable under Sections 120-B, 406, 417, 420, 465, 468 and 472 IPC. Therefore, the material on record prima facie discloses commission of offence, if those allegations taken as face value are accepted as true.

Keeping in view the principles laid down by the Apex Court in the judgment referred supra, considering the material collected by the investigating agency during investigation, directly incriminate A-2.

One of the contentions urged before this Court is that the charge-sheet is not in strict compliance of Section 212 of Cr.P.C. No doubt, either the allegations made in the charge-sheet or the statements of the witnesses recorded under Section 161 Cr.P.C. by the Investigating Officer do not disclose the compliance of requirements of Section 212 Cr.P.C., when the petitioners allegedly committed an offence punishable under Section 406 IPC i.e., dishonest, misappropriation of Society funds. But that is not a ground to quash the proceedings and it is left open for the petitioner to raise such contention at the time of hearing on charges and if non-compliance of Section 212 Cr.P.C. is raised before the Magistrate at the time of framing charges, the Magistrate has to consider the same and if the Magistrate finds that charge-sheet does not disclose the details as required under Section 212 of Cr.P.C., the Magistrate may frame appropriate charge against the petitioner or discharge the petitioner for such criminal dishonest, misappropriation of funds of the Society.

At this stage, it is difficult to exercise power under Section 482 Cr.P.C. to quash the proceedings against A2, even for the offence punishable under Section 406 IPC.

The other contention raised before this Court is that the Court shall not take cognizance as the complaint is barred by limitation in view of Section 468 Cr.P.C.

Section 468 of Cr.P.C. reads as follows :-

Bar to taking cognizance after lapse of the period of limitation :-

- (1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be –
 - (a) six months, if the offence is punishable with fine only;
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year ;
 - (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
- (3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

Thus, the limitation is prescribed only for the offences punishable with imprisonment with fine for one year or three years. The offences allegedly committed by A-2 are punishable with imprisonment for more than three years. Therefore, the bar under Section 468 Cr.P.C. is not applicable to exercise power under Section 482 Cr.P.C. to quash the proceedings for the above offences.

By applying the law laid down in the aforesaid judgment, it is difficult for me to quash the proceedings on the ground of limitation since the same cannot be taken into consideration for quashing the proceedings. Moreover, all the offences are punishable with imprisonment for more than three years and consequently, the bar under Section 468 Cr.P.C. has no application to the present facts of the case. Therefore, on the ground of limitation, this Court cannot

quash the proceedings against sole petitioner in Crl.P.No.12688 of 2017 i.e., A-2 and against 7th petitioner in Crl.P.No.13767 of 2014 i.e., A-8.

In the result, Cr.P.No.13767 of 2014 is allowed in part quashing the proceedings against the petitioners 1 to 6 (A1 and A3 to A7) while declining to quash the proceedings against 7th petitioner-A-8.

CrI.P.No.12688 of 2017 is dismissed leaving it open to the petitioner-A2 to raise plea of compliance of Section 212 Cr.P.C. for the offence punishable under Section 406 IPC and charge-sheet is not in compliance of Section 212 Cr.P.C. before the Magistrate at the time of hearing on charges.

Miscellaneous petitions pending, if any, shall stand closed.

Date :17.09.2018
Prv

M.SATYANARAYANA MURTHY,J

