

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6495 of 2016

ORDER:

The petitioner is the accused in CC.No.3 of 2016 on the file of II Additional Judicial First Class Magistrate, Kakinada, East Godavari District. The learned Magistrate has taken cognizance for the offences punishable under Sections 6, 10(D) and 13 read with Section 23 of the Foreign Contribution (Regulation) Act, 1976 (for short 'the Act') and for the offences punishable under Sections 406, 409 & 420 IPC against the accused.

It is pursuant to the impugned order dated 02.02.2016 of the learned Magistrate in fact the CBI Visakhapatnam registered crime dated 09.10.2013 in the FIR RCVSP2013S0010 for the offences punishable under Sections 6 r/w 23 of FCRA, 1976 supra. It is after investigation they filed the final report under Section 173(2) Cr.P.C. before the learned Magistrate on 04.11.2015 having conducted detailed investigation with reference to 80 documents and by examination of 60 witnesses in the final report of 15 Paras by saying the case not made out from the report of the complainant dated 03.09.2014 from the investigation and it is to be referred as mistake of fact and law and it is also mentioned what is mandatory requirement of sanction under Section 27 of the Act impossible to obtain from lack of material thereby final referred report to accept the same as

mistake of fact. It is by deferring to said opinion by impugned order taking cognizance by saying particularly in the order running in 14 Paras at Para 10 of the mandatory requirement of sanction is there from perusal of the Section 27 of the Act and also mentioned by the IO, however by saying in the previous Paras of the conclusion arrived by the police particularly observation in Para 7 of no material is not correct for there is a prima facie sustainable accusation to take cognizance and referred to the expressions of the Apex Court saying even the investigating officers final report opinion can be deferred by the Court provided the material discloses even though filed referred report has a case to take cognizance, to take cognizance and thereby taken cognizance by totally ignored the scope of Section 27 of the Act and it is not even observation that no sanction is required and Section 27 of the Act bar has no application to take cognizance. The learned Magistrate thus committed grave error in taking cognizance from the requirement of the sanction under Section 27 of the Act having discussed the requirement and what is simply observed is if the Court satisfied that there is prima facie case from the material to defer with the police final report opinion, it can proceed to take cognizance and sanction is not of much relevancy. It is an outcome of non-application of mind having discussed mandatory requirement of the sanction under Section 27 of the Act and even from lack of sanction in taking cognizance.

Having regard to the above, the cognizance order of the learned Magistrate is per se unsustainable. It is no way a bar if at all the learned Magistrate has chosen to ask to obtain sanction if at all there is prima facie case and any such sanction taken then to proceed and from perusal of the material it is not even such case so to direct.

With these observations, this Criminal Petition is allowed.

Miscellaneous petitions, if any, shall stand closed.

Date: 03.12.2018
ska

Dr. B. SIVA SANKARA RAO, J

