HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.3788 of 2018

ORDER:

The criminal petition is filed under Section 482 Cr.P.C. by the petitioner/A7, seeking to quash the proceedings in C.C.No.424 of 2012 on the file of the Additional Judicial 1st Class Magistrate, Anakapalli.

2. The petitioner is A7, a teacher in Mandal Parishad High School, Nallajerla Mandal, West Godavari District. The de facto complainant was one N.Mallikarjuna Rao, Branch Manager, Indian Bank, Ankapalli. He presented a report to the Station House Officer, Ankapalli, on 06.01.2011 stating that 18 accused approached the Bank for house loan and they have submitted fake salary certificates as if issued by their respective employers for availing the loans and the Bank came to know after verification of those are fake. It is referred so far as the petitioner concerned as A7 by name, Polisetti Srinivasa Rao of the loan availed on 19.10.2005 for Rs.5,50,000/-. It is there from stated by production of fake salary certificate, played fraud on the Bank for availing loans. Hence, to take action. The same was registered as Crime No.1 of 2011 for the offences punishable under Sections 420, 468 and 471 IPC.

3. So far as the offence punishable under Section 468 IPC concerned, it is forgery for the purpose of cheating, there must be a material that the employer's signatures forged by the petitioner/A7 in question. In the absence of which said provision has no application. The entire prosecution case including from the charge sheet with reference to Part-II investigation material is that a fake certificate produced. Production of fake certificates is different from forgery and production of the same. At best, it attracts the offence under Section 471 IPC. The punishment provided for Section 471 IPC for using a forged document as if genuine is two years maximum.

4. The loan sanctioned, admittedly, from the very complaint on 19.10.2005, that too, by the Bank, the question of sanctioning of loan arises only after verification of the documents including from the loan document once crystal clear, once they got knowledge if at all filing of a complaint after six years is squarely barred by limitation. It is not even mentioned when the salary certificate was issued if not before sanction of the loan and it is not even mentioned it is subsequent to the sanction of the loan, the salary certificate was obtained. It is not even a personal loan but for house loan covered by the collateral security of the property mortgage on which the loan sanctioned including from the

material vis-à-vis police final report and the contentions in the quash petition. Once such is the case, once the property is covered by immovable property security to recover and if at all any salary certificate is given additionally to impose personal liability, for not even a case of Bank was cheated with insufficient immovable property security to recover the loan and nobody proceed personally from the inception with dishonest intention, which is a prerequisite to constitute the offence under Section 420 IPC. Once that is also lacking leave about report given after six years of the accrual of cause of action as referred supra, the proceedings will not survive to subserve the ends of justice.

5. Accordingly, by placing reliance on the expression of the Apex Court in Pankaj Kumar v. State of Maharashtra,[1] the criminal petition is allowed and the proceedings against the petitioner/A7 relating to C.C.No.424 of 2012 on the file of the Additional Judicial 1st Class Magistrate, Anakapalli, are quashed.

6. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.11.2018
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[1] 2002 (1) SCC 149