THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3937 OF 2018

ORDER:

A.1 to A.8, 10, 12, & 15 to 19 filed this criminal petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'CrPC') apprehending their arrest in connection with Crime No.59 of 2017 of Hanamkonda Police Station, Warangal Police Commissionerate, Warangal District, registered the offence punishable under Sections 420, 419, 467, 468, 471, 120(b) read with 149 of the Indian Penal Code, 1860 (for short 'IPC').

One Kaduduri Rajender filed a private complaint under Section 200 CrPC against the petitioners and the other accused for various offences referred supra, before the VI Additional Judicial Magistrate of First Class, Warangal, alleging that A.1 to A.3 with the assistance of other accused to do hardware business created fake firms, opened current accounts on the name of A.4, 5, 6 and 7 and did benami transactions on their name. The complainant further alleged that the firms were neither established nor in existence and they were not registered and there were no employees in the IT firms and addresses given in the firms are bogus and were created to evade tax to the Government saying that the amounts drawn from those banks are being paid to the employees working in the said firms. It is also contended that the petitioners and other accused colluded with the officials and opened accounts without following KYC norms while opening accounts in the names of firms and thus violated KYC norms and thus the petitioners and other accused defrauded several persons and committed the offence under various provisions referred supra. The complaint was referred to the police under Section 156(3)

CrPC and on receipt of reference the police registered the above crime for various offences and issued F.I.R.

Thus the petitioners apprehending their arrest filed this criminal petition raising several contentions and one among them is that the *de facto* complainant has no *locus standi* to file complaint and for the offence of defraud etc., the person who aggrieved alone has to file complaint, but the *de- facto* complainant at the behest of A.3 and others filed several complaints. The petitioners are no way concerned with the offence allegedly committed by them and prayed to grant pre-arrest bail.

The learned counsel for the *de facto* complainant, who came on record by filing independent vakalath opposed the petition on the ground that these petitioners committed several offences referred in the complaint and any citizen of India can lodge a report with the police when the offence came to the notice of that person and thereby he is competent to file complaint and prayed to dismiss the petition.

The main contention of the petitioners is that the *de facto* complainant has no *locus* standi and thereby, the complaint itself is not maintainable and apart from that no material is placed on record to establish that these petitioners committed any offence, and therefore, requested this Court to pass appropriate orders directing the police to release the petitioners on bail in the event of their arrest in connection with the above crime.

The petitioners 1 to 3 herein filed writ petitions in W.P.Nos.37370,37876, and 40394 of 2016 before this Court and it was disposed of by this Court by order dated 02.11.2016 and 04.11.2016 issuing a direction to complete the investigation as expeditiously as possible and file final report, in accordance with law.

Aggrieved by the orders passed by the Single Judge, the petitioners filed writ appeals in W.A.Nos.249, 250, 251 and 253 of 2017 and the Division Bench of this Court by order dated 06.03.2017 set aside the order passed by the Single Judge in the writ petition while making an observation that the investigating agency has to follow the procedure contemplated under Section 41-A CrPC and guidelines laid down by the Apex Court in **Arnesh Kumar v. State of Bihar.**

The Division Bench of this Court in Writ Appeal, having concluded that there is material against the petitioners, directed the investigating agency to follow the procedure under Section 41-A CrPC and guidelines laid down by the Apex Court in **ARNESH KUMAR v. STATE OF BIHAR**[1]**,** before affecting the arrest of the petitioners.

Hence, this court cannot come to a different conclusion that there is no material against the petitioners to proceed against them and therefore, this Court recorded different finding, it amounts to reviewing order passed by the Division Bench. Therefore, the investigating agency is directed to follow the procedure prescribed under Section 41-A CrPC and the guidelines laid down by the Apex Court in **Arnesh Kumar**, strictly.

With the above observation, the criminal petition is disposed of.

M. SATYANARAYANA MURTHY, J

Date: 13.04.2018

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[1] 2014(5) Supreme 324