

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.11712 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings against him in C.C.No.661 of 2011 on the file of I Additional Chief Metropolitan Magistrate, Hyderabad at Nampally.

2) The factual matrix of the case is thus:

a) The 1st respondent/complainant filed a private complaint for the offence under Section 166 IPC allegedly committed by the petitioner wherein he averred that he gave complaints dated 29.06.2009, 21.06.2010 and 27.01.2011 to the petitioner/accused against the Advocates Mutually Aided Co-operative Society (Credit) Limit (for short "the Society"), City Civil Court Premises, Hyderabad, against evasion of income tax and fudging of accounts committed by the said society in its annual reports. However, even after a lapse of 1½ years from the date of respective complaints the accused has not conducted enquiry against the said society. Hence, the 1st respondent/ complainant issued legal notice dated 18.07.2011 to the petitioner/accused to furnish the status of his complaints and if the petitioner has not initiated any steps against the society, then, to show cause as to why an appropriate action should not be taken against him under appropriate laws particularly under Section 166 IPC for the negligence on his part to perform his duties and responsibilities which would amount to dereliction of duties, within 7

days of the notice. The petitioner/accused having received the legal notice on 19.07.2011 did not give any reply.

Hence, the complaint.

b) The learned I Additional Chief Metropolitan Magistrate, City Criminal Court, Hyderabad took cognizance of the complaint and registered it as C.C.No.661 of 2011 and issued summons to the petitioner/accused.

Aggrieved, the petitioner filed the instant quash petition.

3) Heard arguments of Sri J.V.Prasad, learned Standing Counsel for Income Tax appearing for petitioner, Sri G.Srinivas Reddy, 1st respondent, who appeared as party-in-person and learned Addl. Public Prosecutor (TS) for respondent No.2.

4 a) Severely fulminating the complaint allegations, Sri J.V.Prasad, learned standing counsel argued, the complaint besides being motivated to blackmail a responsible public servant, not maintainable either on facts or law. In expatiation, he would firstly argue that the complainant addressed and sent letters dated 29.06.2009 and 21.06.2010 directly to Director of Income Tax (Investigation) Hyderabad and filed in his office, but not in the office of the petitioner who is the Director General of Income Tax (Investigation). The letter dated 27.01.2011 is concerned, it was also addressed to Director of Income Tax (Investigation), Hyderabad, but wrongly filed in the office of petitioner. Since the said letter was addressed to Director of Income Tax (Investigation), it was

forwarded to him on 01.02.2011. So far as the legal notice dated 18.07.2011 sent by complainant to the petitioner is concerned, in the said notice he wanted to know the status of his three earlier complainants and steps taken against the society and therefore, the said legal notice which was received on 19.07.2011 in the office of Director General of Income Tax (Investigation), Hyderabad was forwarded to Director of Income Tax (Investigation) on 01.08.2011 as all the three earlier complaints were addressed to Director of Income Tax (Investigation). Learned counsel would thus strenuously argue that in the entire process there was no iota of fault or dereliction of duty and responsibility on the part of petitioner to launch criminal prosecution. He would further submit that as per the system of the department, all the complaints received even in the office of petitioner i.e. Director General of Income Tax (Investigation), Hyderabad are also required to be forwarded to Director of Income Tax (Investigation), Hyderabad who will then decide as to the course of action to be taken in respect of such complaints. Hence, inaction cannot be attributed against the petitioner even in respect of the complainants addressed directly to Director General of Income Tax (Investigation), Hyderabad i.e. the petitioner. Therefore, he emphasized, on facts complaint is not maintainable.

b) Secondly, on legal facet he would argue, assuming even remotely the prosecution under Section 166 IPC gets attracted, still the trial Court was not right in taking cognizance without insisting for compliance of mandatory requirement under Section 197 Cr.P.C. by the complainant i.e.

by obtaining requisite sanction from the competent authority (Government of India) before taking cognizance of the complaint. The petitioner is a public servant within the meaning of Section 21 IPC and his appointing authority is President of India/Central Government and as such, the 1st respondent was required to secure sanction for prosecution sans which, criminal case is legally unsustainable. However, the trial Court completely ignored this vital requirement.

c) Thirdly, he would argue that the prosecution is not maintainable also for the reason of bar under Section 293 of Income Tax Act (I.T Act) which says that no suit or prosecution shall lie against the Government or any officer of the Government for anything done in good faith or intended to be done under the said Act. Learned counsel relied upon the following decisions to buttress his argument:

i) *Rakesh Kumar Mishra v. State of Bihar and others*¹

ii) *P.K.Choudhury v. Commissioner, 48BRTF (GREF)*²

d) So far as the complaints given by the 1st respondent/complainant against the society are concerned, learned counsel would submit that as per the information furnished by Director of Income Tax (Investigation), Hyderabad the said authority got conducted enquiries into the case but did not find any merits in the complaint petitions vide his letter dated 11.11.2011. In the said letter, learned counsel would submit, the Director of Income Tax (Investigation), Hyderabad reported that complainant was

¹ AIR 2006 SC 820

² 2008(3) ALT (CrI.) 385 (SC)

the member of the society and due to differences with the Board of Members of the society he filed complaint before the jurisdictional Assessing Officer and the said officer completed the assessment for the Assessment Years .2007-08 and 2008-09 on 22.12.2009 and 23.12.2010 respectively and did not find any merits in the complaints made by the complainant. It was further informed that complaint was also filed with Assessing Authority/Additional Commissioner of Income Tax, Range-9, Hyderabad who completed the assessment for the assessment years 2007-2008 and 2008-2009 and did not find any substance in the complaint. On similar issue the complainant filed criminal case in the Court of II Additional Metropolitan Magistrate, Cyberabad, Rangareddy District, L.B.Nagar, Hyderabad in C.C(SR) No.489 of 2011 on 21.01.2011 and made 15 persons including the President, Institute of Chartered Accountants and 11 Advocates as accused. The said society is an assessee on the roles of Income Tax Department and has been filing income tax returns from year to year. Hence the complaints filed by the 1st respondent/complainant are bereft of substance. He thus prayed to dismiss the complaint.

5) Per contra, 1st respondent who is party-in-person argued that he submitted two complaints to the petitioner on 29.06.2009 and 21.06.2010 against the society for maintaining incorrect accounts, non-payment of Income Tax as shown in their annual audit reports and playing fraud on the Income Tax Department as well as on the members and shareholders of the society and thereby committing the offences of criminal breach of

trust, cheating, falsification of accounts etc. On 27.01.2011, he submitted a letter of request to expedite the investigation to take appropriate steps but there was no response from the petitioner and therefore, he issued show cause notice on 18.07.2011 to the petitioner why the criminal proceedings against the petitioner cannot be initiated under Section 166 IPC for which also there was no reply from him. He further argued that the Director of Income Tax (investigation) is Subordinate to the petitioner, who is the Director General of Income Tax (Investigation) and therefore, though letters were addressed to Director of Income Tax (Investigation), nevertheless, the petitioner could have given directions to the Subordinates to act upon the complaint petitions sent by him against the society. However, the petitioner by remaining silent, derelicted from his duty and therefore, he is liable for the offence under Section 166 IPC. Refuting the contention of the petitioner that the complaint is not maintainable without sanction, the 1st respondent argued that the complainant in fact made an application dated 09.07.2012 to the Central Finance Minister for granting sanction to prosecute the petitioner and so far he has not received any reply and in view of the decision of the Apex Court reported in *P.K.Pradhan v. State of Sikkim*³, a private person can secure sanction and produce before the Court even after cognizance of the offence was taken against the public servant or even during trial stage also. Further, in the decision reported in *Subramanian Swamy v. Manmohan Singh and another*⁴, Hon'ble Apex Court held that sanctioning authority shall decide the proposals for sanction within three

³ AIR 2001 SC 2547

⁴ (2012) 3 SCC 64

months after receipt of the proposals by the authority concerned and in case same is not possible and where the consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State as the case may be and same is not possible within three months, an extension of one month period may be allowed and at the end of the extended period of time limit if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution and the prosecuting agency or the private complainant, will proceed to file the charge sheet/complaint in the court to commence the prosecution within 15 days of the expiry of the aforementioned time limit and therefore, in the instant case, sanction shall be deemed to have been granted. He further argued that Section 293 of I.T Act has no application. He thus prayed to dismiss the petition.

6) The points for determination in this petition are:

- i) *Whether the facts in this case prima facie constitute an offence under Section 166 IPC against the petitioner to take cognizance of the complaint?*
- ii) *If point No.1 is held affirmatively, whether the cognizance of the complaint is hit by Section 197 Cr.P.C and Section 293 of I.T Act?*

7) **POINT No.1:** The private complaint is lodged by the 1st respondent for the offence allegedly committed by the petitioner under Section 166 IPC. The said Section reads thus:

“166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys

any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

For recording conviction under this Section, the following ingredients must be present:

- i) The accused must be a public servant
 - ii) There must be a direction of the law as to how he should conduct himself
 - iii) He must have disobeyed such direction
 - iv) By such disobedience, he must have intended to cause or knew it to be likely to cause injury to any person.
- a) In *Bihar State Electricity Board and another v. Nand Kishore Tamakhuwala*⁵, the Apex Court held that to make out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant.
- b) The phrase “Direction of the law” employed in Section 166 IPC means any direction given by a written law or a mandate proceeding from a competent authority which the public servant is bound by law to obey. In *Jeewa Ram and others v. Madan Lal and another*⁶, the Rajasthan High Court has observed that for the application of Section

⁵ AIR 1986 SC 1653

⁶ 1985(1) WLN 565 = MANU/RH/0356/1985

166 IPC, it has to be shown that a public servant knowingly disobeys any direction of law as to the way in which he is to conduct himself and thereby intending to cause or knowing it to be likely that he will by such disobedience, cause injury to any person. The disobedience must be of a direction of law and not an order of a Court. Further, this direction must be with respect to the conduct of such public servant and the disobedience must be with the intention to cause injury to any person or with the knowledge that it is likely to cause injury to any person.

The case on hand has to be tested on the anvil of above jurisprudence to know whether any *prima facie* is made out warranting cognizance of the complaint to be taken against the petitioner.

8) The allegation of the 1st respondent/complainant is that he addressed three complaints against the society to the petitioner stating that during the Assessment Years 2004-05 to 2007-08 the said society committed certain financial misdeeds as it has not shown in its Income Tax Returns certain facts and hushed up gold loan particulars, interest on the gold loan and also advance provided to the A.P High Court (Credit) Society etc., and thus mischievously not paid the tax of Rs.49,97,332/- to the Income Tax Department but in its Annual Report and Auditor's Report mentioned as if tax of Rs.58,32,890/- was paid. His grievance was that in spite of his addressing three complaints against the society to the petitioner, he being the Director General of Income Tax (Investigation) and having powers under Income Tax Act, 1961 to conduct search and seizure of the records to exhume the facts relating to hushing up of

income and tax evasion, totally neglected his duties and responsibilities ordained by Income Tax law and inspite of issuing show cause notice, he did not give reply and thus rendered himself liable for the offence under Section 166 IPC.

9) I gave my anxious consideration to the allegations in the complaint and other relevant facts. The complaint letter dated 29.06.2009 alleging certain omissions and commissions made by society, is addressed to the Director of Investigation, Ayakar Bhavan, Basheerbagh, Hyderabad. The copy of letter dated 29.06.2009 is filed by the petitioner along with material papers. The said letter was received by the office of Director of Income Tax (Investigation) on 29.06.2009 as is evident from the stamp of that office. Similarly the complaint letter dated 21.06.2010 alleging that the society hushed up certain financial transactions was also addressed to Director of Income Tax (Investigation) and the copy of the said letter contains the stamp of the office of Director of Income Tax (Investigation) dated 21.06.2010. It is not in dispute that the Director General of Income Tax (Investigation) and Director of Income Tax (Investigation) are hierarchy wise two different entities and former one is officiated by the petitioner. Thus as rightly contended by the learned Standing Counsel for petitioner, the complaint letters dated 29.06.2009 and 21.06.2010 were directly addressed to Director of Income Tax (Investigation) and not to the petitioner. Therefore, the question of petitioner disobeying any direction of the law as to the way in which he is to conduct himself and thereby knowing that his disobedience will cause injury to the petitioner

does not arise. Then the complaint letter dated 27.01.2011 is concerned, it was also addressed to the Director of Income Tax (Investigation). However, the petitioner admits that the said letter was filed in the office of Director General of Income Tax (Investigation) on 27.01.2011 and since it was addressed to Director of Income Tax (Investigation), the petitioner's office forwarded the said letter to the Director of Income Tax (Investigation) on 01.02.2011 for proper action. Copy of complaint letter dated 27.01.2011 is also filed along with material papers which contain an endorsement "send to D.I".

10) So on a conspectus of material on record, it is clear that none of the three complaint letters were addressed directly to the petitioner seeking his indulgence or action. It may be that the petitioner in hierarchy wise superior to the Director of Income Tax (Investigation). That does not mean that he disobeyed any direction of law. The first two letters were directly addressed to Director of Income Tax (Investigation) and received in the said office and so the petitioner had no occasion to take any action on those two letters. The third letter was though addressed to the Director of Income Tax (Investigation) but filed in the office of petitioner and so the same was forwarded to the office of Director of Income Tax (Investigation) for necessary action. It is the submission on behalf of petitioner that as per the information furnished by Director of Income Tax (Investigation), Hyderabad, the said authority got conducted enquiries into the case but did not find any merits in the complaint petitions. So no inaction can be attributed against the petitioner. Thus in

the entire episode, the petitioner cannot be found fault for the disobedience of any law. In the considered view of this Court, there is absolutely no *prima facie* material warranting the Court to take cognizance for the offence under Section 166 IPC against the petitioner. Unfortunately, the Trial Court has not considered the facts and law in proper perspective before taking cognizance. Therefore, continuation of criminal proceedings against the petitioner would amount to abuse of process of the Court. In the decision reported in *State of Haryana and others v. Ch. Bhajan Lal and others*⁷, the Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C. to quash the proceedings to prevent abuse of process of the Court. They are:

“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 F.I.R. 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.

3. Where the uncontroverted 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence,

⁷ AIR 1992 SC 604

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.”

The petitioner's case falls under the guideline No.1, as the allegations in the complaint even if taken at their face value, do not *prima facie* constitute any offence against the petitioner. So point No.1 is held in negative.

11) **POINT No.2:** Since point No.1 is held in negative holding that there is no *prima facie* material to take cognizance of the offence under Section 166 IPC against the petitioner, the further discussion and determination as to whether the complaint is hit by the provisions under Section 197 Cr.P.C and Section 293 of I.T Act, is redundant.

12) In the result, this Criminal Petition is allowed and the criminal proceedings against the petitioner in C.C.No.661 of 2011 on the file of I Additional Chief Metropolitan Magistrate, Hyderabad at Nampally, are quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 10.10.2018

Murthy/Scs

