

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.3999 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.56 of 2018 of Anantapur II Town Police Station, Ananthapur District, registered for the offences punishable under Sections 320, 406, 426, 120b read with 34 IPC and 447 of the Companies Act.

Respondents 1 and 2 filed private complaint before the Additional Judicial Magistrate of First Class, Ananthapuramu for various offences making serious allegations against the petitioners alleging that petitioners 1 and 2 are directors of the 3rd respondent trust, which was established as Educational Trust and A4 is the Chairman of the 3rd respondent trust. The said complaint was referred to the police for investigation and on receipt of the same, the police registered a crime and filed final report exercising power under Section 156(3) Cr.P.C.

The said proceedings are challenged before this Court mainly on the ground that the Judicial Magistrate has no jurisdiction in view of Section 435 of the Companies Act, and shall be tried by Special Courts and punished with imprisonment of two years. The offence punishable under Section 447 of the Companies Act is punishable with imprisonment for a term which shall not be less than six months, but which may extend to ten years and also liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Similarly, the offence under Section 447 of the Companies Act is for violation of Section 212 of the Companies Act. Hence, the offence punishable under Section 447 of the Companies Act is not triable by a Magistrate and the police are incompetent to investigate into

in view of establishment of Special Court under Section 435 of the Companies Act.

The other ground urged before this Court is that the Magistrate without passing appropriate order, without looking into the allegations made in the complaint and the jurisdiction of the Court took cognizance of offence and referred the complaint to the police for investigation by exercising power under Section 156(3) Cr.P.C. Therefore, prayed to quash the proceedings in the above crime.

This Court ordered notice to the 1st and 2nd respondents, notices were served and proof of service was filed, but none appeared.

During hearing, learned counsel for the petitioners mainly relied on Section 435 of the Companies Act to contend that the Magistrate is in competent to entertain the complaint and referred the same to the police for investigation exercising power under Section 156(3) Cr.P.C.

According to Section 435 (1) of the Companies Act, the Central Government may, for the purpose of providing speedy (trial of offences punishable under this Act with imprisonment of two years or more), by notification, establish or designate as many Special Court as may be necessary. Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

According to Section 436(2) of the Companies Act, when trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial. Thus the Special Court alone is competent to entertain a complaint and exercise power under the Code of Criminal Procedure to try such offence under the

Companies Act. Respondents 1 and 2 filed complaint before the Additional Judicial Magistrate of First Class, Ananthapuram instead of filing complaint before the IV Additional-cum-II Additional Metropolitan Sessions Judge for trial of Cases under the Companies, Visakhapatnam. Andhra Pradesh designated by Government as per Section 435 of the Act. In turn, the Judicial Magistrate referred the same to the police for investigation and the police filed report. The very referring of the complaint to the police by the Judicial Magistrate without any jurisdiction it is a serious illegality and on this ground alone the proceedings are liable to be quashed without touching the other aspects.

Accordingly, the criminal petition is allowed quashing the proceedings in Crime No.56 of 2018 of Anantapuram II Town Police Station, Ananthapuram District. However, if law permits, this order will not preclude respondents 1 and 2 to take appropriate steps against the petitioners.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

20.07.2018
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