

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4477 of 2018

ORDER:

Accused No.6 in Crime No.151 of 2017 of Bheemunipatnam Police Station, Visakhapatnam, apprehending his arrest filed this criminal petition under Section 438 of the Code of Criminal procedure, 1973 (for short 'CrPC'), to release him on bail in the event of his arrest in connection with the above crime registered for the offence punishable under Sections 420, 465, 466, 468, 471, 120(b) read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 74 of the Information Technology Act, 2008 and Section 13(1)(c) and (d) read with 13(2) of the Prevention Of Corruption Act, 1988.

Basing on the news item published in Sakshi Telugu Daily Newspaper on 07.05.2017 and 08.05.2017 and another news item published in Andhra Jyothi Telugu Daily Newspaper on 10.05.2017, the District Collector, Visakhapatnam, called for an enquiry report from the concerned Tahasildar, Bheemunipatnam, who in turn submitted his report on 07.05.2017 & 09.05.2017. On the strength of the report submitted by the Tahasildar, Bheemunipatnam, regarding irregularities committed by the then Tahasildar, Bheemunipatnam, the Collector has taken a decision to conduct discrete enquiry, to elicit the truth in the allegations made in the news items and report submitted by the Tahasildar, appointed Sri M.V.Govinda Raju, Special Deputy Collector (LA) Steel Plant, Visakhapatnam, and Sri B.V.Ramana, Special Deputy Collector, NAOB, Elamanchili.

The District Collector, while enquiry is pending, even on receipt of preliminary enquiry report submitted by the then in-charge Tahasildar,

Bheemunipatnam by letter dated 15.05.2017, directed the Tahasildar, Bheemunipatnam, to lodge a report against B.T.V. Rama Rao the then Tahasildar (under suspension) Bheemunipatnam, with the police concerned. In turn the Tahasildar, Bheemunipatnam, lodged a report with the police along with the reports and the letter of the District Collector. On the strength of the same, the Station House Officer registered the complaint against B.T.V. Rama Rao and others, in Crime No.151 of 2017 for the offences punishable under Sections 420, 465, 466, 467, 471, 120(B) read with 34 of IPC, Section 74 of 2008 of IT Act and Section 13(1)(C) and (D) read with 13(2) of the Prevention Of Corruption Act, 1988, on 17.05.2017 and it is under investigation. During investigation several persons were found committed offences and this petitioner is such a person and hence he was arraigned as accused, subsequently.

The petitioner contended that he along with others are the absolute owners of the land to an extent of Ac.10.20 cents situated in S.No.78 at Annavaram Village, Bheemunipatnam Mandal, Visakhapatnam District. The schedule land covered by Sy.No.78 of Annavaram Village is the patta land held by Sri P.V.G. Raju, Raja Saheb of Vizianagaram Estate. The petitioner and others succeeded the above property and their enjoyment was recognised by the original owners and revenue authorities. In recognition of their continuation in possession and enjoyment of the land mutated their names in the revenue records including web land and the revenue authorities also carried sub-divisions for the same and issued pattadar passbook and title deeds in their favour. The rights of the petitioner along with others were also recognized by the original pattadar i.e. Maharajah of Vizianagaram and his successors. The land held by the petitioner does not belong to MANSAS trust or Government land. After bifurcation of the State of Andhra Pradesh, the value of the property in the state increased abnormally, more particularly,

around Visakhapatnam City. In view of the hike in the land value, several persons in collusion with the Government officials are trying to benefit from it. Accordingly, got published news papers referred supra in the local edition and on the basis of the news items published in the papers, an enquiry was conducted and lodged a report illegally and in fact, the news paper reports is secondary evidence as held by the Apex Court in AIR 1969 SC page 1201 and it cannot be relied upon.

The accusations made against the petitioner, who was arraigned as A. 6 in the above crime, is without any basis and the District Collector directed the Tahasildar to lodge a report only against B.T.V. Rama Rao, the then Tahasildar. For the reasons best known, the police registered the crime against B.T.V. Rama Rao and six others without there being any material placed by the complainant before him and the investigating agency did not collect any evidence against the petitioner and arraigned as accused though his possession was recognised and obtained pattadar passbooks and title deeds from the revenue department, and therefore, unconcerned with the officials, he is the owner of the property and the investigating agency cannot be proceeded against this petitioner.

It is the main contention of the petitioner that he is not the public servant to attract the provisions of Prevention of Corruption Act, and therefore, registration of crime along with B.T.V. Rama Rao, the then Tahasildar of Bheemunipatnam, is a serious illegality and irregularity and the proceedings against the petitioner cannot be continued for the said offence. It is further contended that no private individual can tamper any revenue record and the apprehension of his interference with the investigation in the event of granting anticipatory bail is without any basis, and therefore, at this stage he is apprehending arrest in connection with

the above crime and it would cause irreparable injury to his personal reputation and it would irreparable injury to his personal reputation. It is also contended that F.I.R. is bereft of allegations against the petitioner, but he is arraigned as accused and in the absence of any material against him, he cannot be arraigned as accused and it is another serious irregularity.

Learned counsel for the petitioner contended that this Court already passed Order in CrI.P.No.3130 of 2018 dt. 19.04.2018 granting pre-arrest bail to A.17 and A.18, who are similarly placed person, and requested to direct the Station House Officer, Bheemunipatnam Police Station, Visakhapatnam, to release this petitioner on bail in the event of their arrest in connection with the crime number.

Whereas, the learned Public Prosecutor appearing for the State of Andhra Pradesh contended that accused filed Criminal Petition Nos.5938,5939,6153 and 6633 of 2017, and among them, Accused No.5 and 6 are the petitioners in CrI.P.No.5938 of 2017, but this Court dismissed the petitions while directing the Station House Officer concerned to follow the procedure under Section 41-A Cr.P.C. and the guidelines issued by the Apex Court in *Amesh Kumar v. State of Bihar and another*¹. When this Court recorded a finding that there is *prima facie* material to proceed against this petitioner for the same offences while deciding an application under Section 438 Cr.P.C., this Court cannot substitute its findings and requested this Court to dismiss this petition.

Undoubtedly, this Court granted pre-arrest bail to Accused No.17 and A.18 in CrI.P.No.3130 of 2018, but they did not file a petition under Section 482 Cr.P.C. inviting a finding therein in the other petition, but in the present petition, the petitioner invited an adverse Order, where this Court

¹ 2014(8) SCALE 250

having concluded that there is *prima facie* evidence to proceed against the petitioner and declined to quash the proceedings.

Even to grant pre-arrest bail, the Court is required to record its conclusion that there is no *prima facie* material to proceed against the petitioner, but this Court in CrI. Petition No.4938 of 2017 recorded a specific finding as to availability of *prima facie* material to proceed against this petitioner, this Court, at this stage, while deciding an application under Section 438 Cr.P.C., cannot substitute its finding that there is no *prima facie* material to proceed against this petitioner, as it amounts to reviewing the Order passed by the trial Court.

Learned counsel for the petitioner contended that by the date of disposal of Criminal Petition under Section 482 Cr.P.C. investigation was not completed, but as on today, entire investigation is completed as observed by this Court in the earlier petition. When the Court at the initial stage itself, based on the material available, i.e., on the date of disposal of criminal petition concluded that there is *prima facie* material against this petitioner to proceed against the petitioner for various offences. Even after completion of major part of the investigation, it is difficult to substitute its findings, contrary to the findings recorded against this petitioner in the earlier Criminal Petition referred supra. Hence, on this ground alone, I am afraid to record a finding that there is no *prima facie* material against this petitioner to proceed, which is the basic requirement under Section 438 Cr.P.C.. Therefore, the petitioner is not entitled to a direction against Station House Officer to release this petitioner on pre-arrest bail, in view of the specific findings recorded in the earlier Criminal Petition and consequently, this Criminal Petition is liable to be dismissed.

The other ground urged by the petitioner is that, he is not a public servant and he cannot be tried for the offences along with the

Government Servant, against whom an allegation of corruption was made. But, this contention cannot be accepted in view of the law declared by the Apex Court in *P. Nallammal and another v State Represented by Inspector of Police*², wherein the Apex Court held that, clause (b) of the Section 3 (1) of encompasses the offences committed in conspiracy with others or by abetment of ‘ any of the offences’ punishable under the Act if such conspiracy or abetment of “any of the offences” punishable under the Act can be tried ‘ only’ by the Special Judge. It is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter.

In view of my foregoing discussion, I find no merit in the Criminal Petition and consequently, the same is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 02-05-2018
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² (1999) 6 SCC 559

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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