

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5294 OF 2018

ORDER

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings in Crime No.371 of 2018 of Rajendra Nagar Police Station, Cyberabad, registered for the offence punishable under Sections 401, 120-B, 457, 380 and 414 of the Indian Penal Code, 1860 (for short 'I.P.C.').

The petitioner is A.9 and the second respondent is the Sub-Inspector of Police, who lodged a written report with the Station House Officer, Rajendra Nagar, Cyberabad. The gist of the allegations made in the report is as follows:

On receipt of reliable information about the movement of the members of Kalil and Sajju criminal gang, he along with Inspector Praveen Reddy, SOD Shamshabad and staff went to Kaliskhan Darga Cross Road, Rajendranagar, on 02.03.2018 at 17.30 hours and intercepted a car which was proceeding from Bandlaguda to ORR side and found four persons including the person in driving seat under suspicious circumstances then he questioned one after other than they revealed their names as 1) Syed Karrar Hussain Razvi, Aziz Ahmen Khan, Mir Musthafa Ali, Sagar Sanjeev Pagare, they further revealed that, they are members of Kalil, Sajju and Shiva Gang and they along with Mohammed Kalil @ Sharif, Mir Sazar Ali @ Sajju, Musavath Shiva Jabbar, Asgar Ali, Saleem, Murthuz Ali now at Dubai and Yousuf have conspired to earn money by illegal means by committing theft of gold ornaments, net cash and other valuables from the locked houses in different towns in Maharastra, Andhra Pradesh and Telangana States. As part of

their conspiracy Kalil and Shiva will commit theft from locked houses, Sajju will camp in Dubai and organize the disposal of the stolen property and convert into net cash, Asgar Ali will assist directly to Sajju and remaining gang members will receive the stolen property from Kalil and Shiva, after committing theft of gold ornaments and other valuables from locked houses. Further Sajju with assistance of Sagar Saneev Pagare arranged shelter in a rented house in Mumbai for the shelter of Kalil and Shiva to escape from Police Radar. It is further alleged that the said Kalil and Shiva have committed theft in the locked houses from December 2017 to January 2018 in various places. After committing the offences Kalil and Shiva used to go to Mumbai by the stolen car and as per the directions of Sajju followed by his brother Asgar Ali and other associates, Aziz and others went to Mumbai on 5 different occasions, Asgar Ali in turn with the support of the Sajju convert the stolen property into cash and distribute the money to all as per their share amount. Based on these allegations, the above crime was registered.

Based on the confessional statement, the petitioner was arraigned as A.9. The main contention of the petitioner is that based on the confession of the persons who are found in the car, the petitioner cannot be enroped with the serious offence referred supra and that the petitioner is no way concerned with the alleged offence and in the absence of any evidence to establish *prima facie* involvement of the petitioner, the above proceedings against the petitioner cannot be continued and sought to quash the proceedings.

Sri K.Venumadhav, learned counsel for the petitioner reiterated the contentions while raising specific contention that the

de facto complainant is only a police, and in the absence of any material collected by him regarding direct or indirect involvement of the petitioner in the above crime, the investigation against the petitioner cannot be taken up and prayed to quash the proceedings. As per the complaint lodged with the police by the second respondent it discloses that Murthuja Ali who is now at Dubai and Saleem are one of the persons, who conspired to earn money by illegal means committed theft of gold ornaments, cash and cash and other valuables. When the petitioner allegedly conspired with the other accused including four persons, who are found in car, the person who conspired is also equally liable for the offence subject to proof of such crime.

The police though issued F.I.R., investigation is not taken up as per the record available and when the investigation is at fetus stage, the court cannot quash the proceedings by exercising power under Section 482 Cr.P.C. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material as held by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**¹.

The offence alleged committed by the petitioner with the four persons by illegal means committed theft etc., is also liable along

¹ (2005) 13 SCC 540.

with the other accused for the offence punishable under Section 120-B I.P.C.

The word 'Criminal Conspiracy' is defined under Section 120-A I.P.C., which reads as follows:

When two or more persons agree to do, or cause to be done:

(1) An illegal act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

Therefore, the prosecution is not required to prove that perpetrator agreed to do or caused to be done by illegal act and to prove accusation of criminal conspiracy against the petitioner is a question of investigation and the offences allegedly committed by the petitioner are serious in nature. Therefore, by applying the principle laid down by the Apex Court in **Saroj Kumar Sahoo** case (referred supra), I am afraid to exercise power under Section 482 Cr.P.C. to quash the proceedings when the investigation is not commenced, consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.06.06.2018
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