

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No. 12031 of 2011

ORDER:

Heard the learned counsel for the petitioner/A-1, first respondent and the learned Public Prosecutor for the State-2nd respondent.

The present criminal petition is filed invoking the jurisdiction under Section 482 Cr.P.C. to quash the proceedings in PRC No.42 of 2011 on the file of the IV Additional Judicial First Class Magistrate, Warangal.

The facts of the case are that the petitioner/A-1 and two others are the accused in S.C.No.517 of 2010 on the file of the V Additional Sessions Judge (II Fast Track Court), Warangal. A-2 and A-3 are facing trial in the said sessions case for the offences under Sections 302, 307 r/w 34 IPC. The trial in the said sessions case has already been commenced and is at the stage of examination of prosecution witnesses. In fact, Manukanti Vanamma, Manikanti Ravinder Reddy and Manikanti Devender Reddy (LWs.1 to 3 respectively) were inclined to give evidence in favour of the prosecution. In that connection, the said witnesses were waiting in the office of the Public Prosecutor in District Court at Warangal. In those circumstances, the petitioner and two others have threatened the witnesses with dire consequences in the event of deposing in favour of the prosecution. Therefore, the said witnesses were under severe fear and they have not reported the matter. In

those circumstances, a report was lodged on 15.04.2011 stating that the petitioner and two others threatened them not to give evidence in favour of prosecution in the said sessions case. Pursuant to the said complaint, a crime was registered vide F.I.R.No.129 of 2011 for the offences under Section 195-A, 506 r/w 34 IPC. After investigation, charge sheet is filed. Thereafter, the lower court has taken cognizance of the said offences under Sections 195-A, 506 r/w 34 IPC and numbered as PRC No.42 of 2011 on the file of the IV Additional Judicial Magistrate of First Class, Warangal. Aggrieved by the same, the present criminal petition is filed.

The learned counsel appearing for the petitioner would contend that to take cognizance of an offence under Section 195-A IPC, the complaint should be by the Court or officer of the Court. Further, as per the said section, no court shall take cognizance of an offence punishable under Sections 133 to 136 IPC except on a complaint in writing of that Court or by such officer of the court as that court may authorize in writing in that behalf. In the case on hand, admittedly no complaint has been given by the Court. However, on a complaint given by the de facto complainant in the police station that he was threatened to give false evidence, a crime has been registered. After investigation, on filing charge sheet, the Court has taken cognizance of the offence. As per Section 195(1)(b) of Cr.P.C. there is a bar to take cognizance of an offence of the complaint other than by the court concerned. Therefore, the proceedings in PRC No.42 of 2011 are liable to be quashed.

Per contra, the learned counsel appearing for the first respondent would contend that as per Section 195 of Cr.P.C. no court shall take cognizance of any offence punishable under Sections 199, 200, 205 to 211 and 228 IPC, when such offence is alleged to have been committed in, or in relation to any proceeding in any court except on the complaint in writing of that court or some other court to which that court is subordinate. In the case on hand, the alleged offence, is not committed in the court and as such Section 195 Cr.P.C. is not applicable. He also would contend that the petitioner is innocent of the charges leveled against him and he has been falsely implicated at the instance of his political rivalries.

Before appreciating the contentions raised by both the parties, the basic object of Section 195 Cr.P.C. is that no Court shall take cognizance of any offence punishable under Sections 193 to 196 IPC and etc. when such offence is alleged to have committed in, or in relation to, any proceeding in any Court except on the complaint in writing of that Court or some other Court to which that court is subordinate. To appreciate the same, it is necessary to extract Section 195 Cr.P.C. and is as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

From the perusal of the said provision, it is clear that the offence alleged should have been committed in relation to or any proceeding in any Court. Admittedly, in the case on hand, the said incident according to the petitioner happened in the office of the Public Prosecutor. A perusal of the record would reveal that the said incident was not brought to the notice of the Court either by the Public Prosecutor or by filing an application requesting the court to lodge a complaint for commission of the said offence. Therefore, when the incident happened is not committed in or in relation to any proceeding in any Court, it cannot be said that the Court alone is competent to file a complaint and not the other person against whom the said offence is committed. The scheme of Clause (a) & (b) of Section 195(1) Cr.P.C. being that the offence described

therein should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or as a direct correlation with the proceedings in a court of justice, the expression when such offence is alleged to have been committed. Further, in view of the language used in Section 340 Cr.P.C. the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C., as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice.” This shows such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in [Section 195\(i\)\(b\)](#). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice.

In **IQBAL SINGH MARWAH AND ANOTHER v. MEENAKSHI MARWAH AND ANOTHER**¹ the Apex Court was pleased to observe as under, as far as the offences which come within the purview of Section 195(1)(b) Cr.P.C.

“The heading of this Chapter is — “Provisions as to Offences Affecting the Administration of Justice”. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the

¹ 2005 (4) SCC 370

enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See *Craies on Statute Law*, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."

Further, the nature and ambit of Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the court to take cognizance of certain types of offences enumerated therein. Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. under Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the

Section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice.

In the case on hand, the allegation made is that when the witnesses were waiting in the office of Public Prosecutor, they were said to have been threatened. However, this fact was not brought to the notice of the Court as per the record placed before this Court. In such circumstances, it cannot be said that merely because the offence is under Section 195(A), the aggrieved person is remediless in the absence of a complaint by the court or any officer authorized in this regard. In fact, Chapter XXVI of Cr.P.C. deals with the offences affecting the administration of justice. Therefore, the offence is said to have been committed, in any view cannot be said or treated as if it is directly affecting administration of justice by the concerned court. That apart, the proceedings under challenge are at P.R.C. stage. This Court in similar

circumstances, when the proceedings are at PRC stage, have dismissed the criminal petition by holding that a petition under Section 482 Cr.P.C. cannot be invoked and is not maintainable when the proceedings are at PRC stage. In these circumstances, this Court is of the opinion that there are no merits in the case and the same is liable to be dismissed.

Accordingly, the criminal petition is hereby dismissed. Interim order, if any, passed by this Court shall stand vacated.

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

Date:19.04.2018
Ccm



P. KESHA VA RAO,J

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