

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7581 of 2018

ORDER :

The petitioners are A.1 and A.4 to A.6 in C.C.No.770 of 2017 on the file of the Additional Judicial Magistrate of First Class, Chodavaram, Visakhapatnam District. The learned Magistrate taken cognizance for the offences punishable under Sections 420, 406, 409, 467, 419, 468, 471 and 120(b) read with 34 IPC in Crime No.14 of 2016, dated 31.10.2017. The said cognizance order by following the procedure contemplated by Sections 200 to 204 read with 190 Cr.P.C. reads as follows:

“Today, the Managing Director of complainant was present and his sworn statement was recorded and this Court after thorough perusal of his sworn statement found that the contents in the sworn statement of the complainant, Prima facie is sufficient for this Court to take cognizance of the offences punishable under Sections 420, 406, 409, 467, 419, 468, 471, 120(b) and read with Section 34 IPC against accused and this Court is inclined to issue summons to all the accused duly directing them to appear before this Court in person and through their counsel by 30th day of November, 2017. The complainant is directed to pay proper bata for issuance of summons.”

2. The contentions in the quash petition are that the very cognizance order is baseless and unsustainable and no offence that constituted from the face value of the averments including from the statement of the complainant/Managing Director of M/s.Green Mint India Agritech (P) Limited, dated 31.10.2017, and the learned trial Magistrate failed to appreciate in taking cognizance and registration

of the calendar case for the offences supra even none of the ingredients attract, leave about the lis is purely a civil lis, instead of rejecting the protest. It is also the contention in the course of hearing by placing reliance on the expression of this Court in **S.Bala Krishna v. State of Telangana**¹ that taking of cognizance on a private complaint fresh one is different from the earlier private complaint referred to police or police registered a crime otherwise from report and investigated and file final report of the lis is a civil nature from protest raised if any, as the basis of the protest raised is only as to how the investigation referred report accepted by the Magistrate by not differing to the Investigating Officer's opinion if at all to take cognizance, from the notice issued on the referred report in its acceptance as to the area of the protest and then into enquiry only on that with reference to the original investigation material of the referred report in coming to the conclusion and thereby the mechanical and cryptic order without even referring to the protest petition averments or the original referred report material and as if it is a private complaint procedure is baseless and unsustainable.

3. It is the submission of the learned Senior Counsel representing the 1st respondent/complainant that it requires no interference from the order is out come of application of mind to take cognizance and a detailed reasons are not to be expected from the Court in taking cognizance, but for there is judicial application of mind that could be

¹ 2017 (1) ALD Crl. 662

made out from the reading of the cognizance order and thereby sought for dismissal of the quash proceedings.

4. Heard and perused the material on record.

5. Undisputedly, Crime No.14 of 2016 registered by Chodavaram Police Station on the report of the complainant on 29.01.2016 for the alleged occurrence on 02.12.2014 for the offences supra and from the investigation filed the final report, dated 27.02.2017, by referring as civil nature with detailed reasons in running in several pages of the investigation and in the protest application there are grounds (a) to (j) raised and the protest grounds raised must be with reference to the referred report and the recording of the sworn statement of witnesses is within the scope therefrom and taking of cognizance is with reference to the consideration of the material as held referring to the Constitution Bench of the Apex Court in **Dharmpal v. State of Maharashtra**², in S. Bala Krishna supra.

6. From the above, a bare perusal of the order of taking cognizance by the learned Magistrate no way even whispers as to the original referred report was filed and it is only a protest and not a private complaint and how the original investigation is faulty in differing with the investigation referred report material from the protest petition and recording of the sworn statement in taking cognizance. Having regard to the above, the cognizance order is liable to be set aside as unsustainable.

² 2013 SC 3018

7. Accordingly and in the result, the criminal petition is allowed by setting aside the cognizance order, dated 31.10.2017, by remitting the matter to the learned Magistrate to re-appreciate the facts and pass fresh order of cognizance if necessary by examining any witnesses.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

1st November 2018.

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