

HON' BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

THE HON' BLE SRI S. V. BHATT

And

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Petition Nos.5658,5667, 5976, 5977, 5978, 5981, 5982, 5983,
5984, 5985, 5986, 5987, 5988, 6498, 6868, 6869, 8636, 8638, 8639,
8640, 8641, 8642, 8643, 8646, 8652 & 8660 of 2010

And

CrI.P.Nos.3422, 3423, 3424, 3425 & 3426 of 2012

COMMON ORDER: [per Hon' ble Sri Justice M. Seetharama Murti]

The petitioners in the first batch of Criminal Petitions are some of the accused in C.C.Nos.155 (Old 76 of 2000), 156 (old 77 of 2000), 157 (Old 78 of 2000), 158 (Old 79 of 2000), 159 (Old 80 of 2000), 160 (Old 82 of 2000), 309 (Old 101 of 2000), 310 (Old 100 of 2000), 311 (Old 98 of 2000), 312 (Old 96 of 2000), 313 (Old 93 of 2000), 314 (Old 99 of 2000) & 315 (Old 97 of 2000) of 2010 on the file of the Court of the learned Additional Judicial Magistrate of First Class, Anakapalle. These petitions are filed under Section 482 of the Code of Criminal Procedure, 1973, requesting to quash the proceedings against the petitioners –accused in the said Calendar Cases.

1.1 The second batch of the petitions is filed by the State. CrIP.3422 of 2012 is filed requesting to direct the learned Senior Civil Judges, Anakapalle & Chodavaram, to file complaints, as envisaged under Section 340 CrPC, against the persons concerned before the respective Courts with regard to the offences committed in respect of each of the 255 (Land Acquisition Reference) OPs. CrIP.No.3423 of 2012 is filed to direct the learned District Judge, Visakhapatnam, to constitute Special Cells with sufficient Ministerial Staff at Chodavaram & Anakapalle Sub-Courts to assist the Presiding Officers concerned in filing the complaints. CrIP.No.3424 of 2012 is filed to permit the CID/Investigating Agency to file charge sheets against all the 27 accused persons of Judicial & Revenue Departments and other Agencies besides

professionals & their servants, the officers of the Banks and others involved in the crime registered with regard to the offences committed in and in relation to Court proceedings in the OPs. CrIP.No.3426 of 2012 is filed to direct the Government to constitute a Special Court at Visakhapatnam to exclusively conduct trials in 'Yeleru scam cases' and dispose of the same in accordance with the procedure established by law. CrIP.No.3425 of 2012 is filed to issue directions to transfer all the cases so filed & numbered to the Special Court/ CID Designated Court at Visakhapatnam for speedy disposal and securing ends of justice.

2. We have heard the submissions of the learned counsel for the accused and the learned Public Prosecutor appearing for the State.

3. To begin with, it is apposite to mention the factual matrix and the past events to have a comprehension of the matter.

"Lands situated in Pisinikada village of Visakhapatnam District were acquired by the State for providing house sites to weaker sections of society. Awards in respect of the acquired lands were passed by the Land Acquisition Collector. References against the said Awards were made to the Civil Court at the instance of the owners, whose lands were acquired. A large scale fraud, allegedly took place in awarding huge compensations. In the said fraud, the then Presiding Officers of the Senior Civil Court, Anakapalle, Court staff, advocates of the claimants, advocates for the State, officials of the Government & Banks and certain others were said to have been involved. Upon obtaining requisite permission from this Court, CBCID registered a case and carried on investigation. The said Agency, in its report, dated 04.05.1998, given to the Additional Director General of Police, CID, Hyderabad, indicated about a large scale conspiracy and fraud committed by the said persons/ accused. The investigation was said to have revealed that the accused committed various offences coming within the purview of Section 195 CrPC.

Therefore, the following of the procedure envisaged under Section 340 CrPC became imperative. Hence, the Inspector General of Police holding Full Additional Charge of the post of Additional Director General of Police, CID, wrote a letter, dated 04.05.1998, to the Registrar (Vigilance) of this Court. In the said letter, it was mentioned that eight persons had committed various offences punishable under Sections 419, 420, 466, 467, 468, 471, 474 & 406 of IPC read with Sections 120-B & 109 IPC. This Court got the matter examined by a special Committee of two Hon'ble Judges, which opined in its report that it is desirable that the High Court itself takes action under Section 340 CrPC and recommended that the enquiry may be conducted by the District Judge, Visakhapatnam, to whom the appeals ordinarily lie from the judgment of the Senior Civil Court, Anakapalle. The Committee also opined that the District Judge is competent to conduct an enquiry and that, if necessary, he may file a complaint in a competent Court. The said report of the Committee was approved by the Full Court. Accordingly, *vide* proceedings, dated 27.10.1998, this Court directed the District Judge, Visakhapatnam, to initiate proceedings under Section 340 CrPC. The said proceedings of this Court permitted the District Judge to initiate proceedings against persons, whose complicity is noticed in the commission of the offences enumerated in Section 195 CrPC and other offences mentioned in the report of the CBCID. During the course of enquiry, the learned District Judge examined number of witnesses. While so, the District Judge sought clarification from this Court as to his competency to hold enquiry and initiate proceedings under Section 340 CrPC. The said aspect was also considered by two Hon'ble Judges of this Court. They were of the opinion that the District Judge was competent to enquire into the matter. After enquiry, the learned District Judge filed a complaint under Section 340 CrPC. Aggrieved thereof, CrI.A.No.587 of 1999 and batch were filed before this Court. A Division Bench, by a common order, dated 27.09.2002, held that the District Judge has no jurisdiction to entertain an application under Section 340 CrPC

and had accordingly set aside the order passed by the District Judge. Nonetheless, the Division Bench, while observing that it could have ordered an enquiry under Section 340 CrPC by the Sub-Judge himself, refrained from doing so; and, directed that the matter be heard and decided by the High Court as the matter had earlier been considered by two Judges of this Court, though administratively, and the report of the Committee had been approved by the Full Court. The said common order of the Division Bench of this Court was challenged in the Supreme Court. The Supreme Court, by judgment, dated 10.11.2006, while confirming the order of the Division Bench and dismissing the State's CrI.A.No.1136 of 2006, requested this Court to consider the desirability of implementing the decision of the Division Bench. Afterwards, the matters were again listed before the Division Bench. The Division Bench, in its common order, dated 05.10.2007, observed that the letter, dated 04.05.1998, of the Inspector General of Police and the report of investigation be part of its common order, and then referred in extenso to the contents of the letter, dated 13.06.1997, of the Additional Director General of Police, CID, to the Registrar (Vigilance) and opined that it is expedient to make a complaint relating to the offences before a competent Court and accordingly directed the Principal Junior Civil Judge, Anakapalle, Visakhapatnam District, to file complaints before the Additional Judicial Magistrate of First Class, Anakapalle, against the persons concerned who were alleged to have committed various offences in relation to judicial proceedings relating to land acquisition reference OPs before the Senior Civil Courts, Chodavaram and Anakapalle. Thereafter, the learned Principal Junior Civil Judge, Anakapalle, prepared and filed criminal complaints and the learned Additional Judicial Magistrate of First Class, Anakapalle, having received the complaints, took cognizance and had taken on file various Calendar Cases (including the subject CCs) and issued summonses to the accused arraigned in the Calendar Cases."

4. Before proceeding further, it is also relevant to note the following vital aspects, which are discernable from the submissions made before us: - 'On references made, the reference Court/ civil Court enhanced the compensations in the OPs taken on file. However, when the matters came up before this Court, this Court felt that there was no acceptable evidence to come to a conclusion that the compensation awarded by the reference Court was justified and, hence, confirmed the Award of the Land Acquisition Officer by setting aside the orders of the reference Court/ Civil Court. Thereafter, the Supreme Court, while allowing various batches of appeals filed by the claimants, observed in its orders that the High Court while setting aside the orders of the reference Court/ civil Court ought to have remitted the matters to the reference Court for fresh consideration. The Supreme Court had accordingly set aside the orders of this Court and remitted the matters to the reference Court for fresh consideration and determination of compensation after giving due opportunity to the parties to adduce further evidence. However, no further orders are passed by the reference Court in the remitted matters (OPs) and the same were shelved, as the claimants/ parties did not evince interest to proceed further in the said matters. Thus, it appears that the Award/ s of the Land Acquisition Officer became final. In the interregnum, certain applications for grant of cheques towards enhanced compensation amounts were filed including allegedly in the names of dead persons and by allegedly resorting to acts of forgery & impersonation and other illegal acts. Resultantly, huge amounts were withdrawn illegally and by ineligible persons in collusion & connivance and by playing fraud. Thus, enormous loss was caused to the exchequer.' Be that as it may.

5. In this setting of background facts, the accused/ petitioners in the first batch of petitions seek to quash the proceedings in the subject calendar cases against them. The State also filed one of the petitions in the second batch of petitions viz., CrIP.3422 of 2012 requesting to direct the learned

Senior Civil Judges, Anakapalle & Chodavaram, to file complaints, as envisaged under Section 340 CrPC, against the persons concerned before the respective Courts with regard to the offences committed in respect of each of the 255 (Land Acquisition Reference) OPs.

6. The sum and substance of the case of the accused, who are before this Court, is this: “The Supreme Court confirmed the first common order of the Division Bench, dated 27.09.2002, and directed this Court to consider the desirability of implementing the decision of the Division Bench wherein the Division Bench opined that it could have ordered an enquiry under Section 340 CrPC by the Senior Civil Judge himself. However, in the latter common order, dated 05.10.2007, the Division Bench, quite contrary to the orders of the Supreme Court, directed a Junior Civil Judge to file complaints before the competent Court. Nevertheless, the offences alleged against some of the accused were said to have been committed in relation to judicial proceedings. But, while lodging the complaints the procedure contemplated under Section 340 CrPC is completely ignored and the complaints were filed by the learned Junior Civil Judge by simply following the directions of this Court. Therefore, the subject Calendar Cases, which are not validly instituted and taken on file, are liable to be quashed insofar as the present accused.”

7. In this backdrop, it is profitable to refer to Sections 195 & 340 CrPC, which read as under:

Section 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, 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 by such officer of the Court as that Court may authorise in writing in this behalf, 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 in 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.

Section 340. Procedure in cases mentioned in Section 195. - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of the Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, sent the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195.

8. The issue raised in our considered view need not engage us for long, in view of the settled legal position. It is settled law that when offences enumerated under Section 195 CrPC are alleged to have been committed and a prosecution has to be launched pursuant to a complaint alleging commission of such offences, the procedure envisaged under Section 340 CrPC has to be necessarily followed. As per the said provision, when the Court is of the opinion that any offence punishable under the Sections of the Indian Penal Code, which are enumerated under Section 195(1)(b), appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court, as envisaged, shall conduct a preliminary enquiry, if any, as it thinks necessary & record a finding to that effect, make a complaint thereof in writing and send it to a Magistrate of First Class having jurisdiction. In the case on hand, the afore-said procedure which is an essential pre-requisite, has not been admittedly followed. Further, the Supreme Court in CrI.A.No.1136 of 2006 as already noted supra, approved the common order, dated 27.09.2002, passed by a Division Bench of this Court and held that Land Acquisition Judge is not subordinate to District Judge but to High Court.

9. Dealing with the legal position, it is trite to mention that The Hon'ble The Chief Justice, who is one of the members of the present Full Bench, when his Lordship was a Judge of the Kerala High Court, had an occasion to deal with the import and purport of Sections 195, 340 & 341 CrPC in extenso in the decision in K.A.Kuttiah v. The Federal Bank Ltd., & others¹. In the said decision, after considering the judgments of the Supreme Court, it was held as follows:

“Chapter XXVI of Cr.P.C., wherein fall Sections 340 and 341 and other attendant provisions, deals with "Provisions as to Offences affecting the Administration of Justice". Section 340 provides that when any Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which may appear to have been committed in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, the Court may proceed to act in accordance with the different clauses under Section 340(1), after such preliminary inquiry, if any, as it thinks necessary. This is eloquent enough a legislative material to note that the embargo in Section 195(1) is absolute and any prosecution for offences enumerated therein could be only by following the procedure prescribed in Section 340. Section 195(1) imposes an inhibition on a Court to take cognizance of the different offences as enumerated therein except upon satisfaction of the conditions laid down therein. Section 195 and Section 340 insulate persons from criminal prosecutions by all and sundry and by persons actuated by personal malice or ill-will. This is ensured by insisting on there being prosecutions, only when the interest of public justice renders it necessary. The said provisions effectively interdict prosecutions when public interest cannot be served. They provide protection to persons from prosecutions on insufficient grounds and ensure that there shall be prosecution only when the Court, after due consideration, is satisfied that there is a proper case to put a party to trial. At the same time, if offences affecting the administration of justice are committed, then the offender ought not to escape from the due process of law. Striking a balance between the public requirement to bring an offender against public justice to face the consequences and to insulate misuse of the law, is the legislative wisdom in providing

¹ 2006 SCC Online Kerala 118

the mechanism available by a conjoined application of Section 195 and Section 340 Cr. P.C.

The offences falling under clause (b)(i) of Section 195(1), as already noticed, are those which relate to false evidence and offences against public justice, included as Chapter XI in IPC. The bunch of offences which are dealt with under the said Chapter are such that they are intricately connected with the administration of justice. It would be wholly unsafe to allow a private litigant to put the law in motion in relation to an offence falling under Chapter XI IPC. So much so, it is the predominant requirement of the public justice system that the prosecution of an alleged offender, referable to Chapter XI IPC, has to be determined by the justice delivery system itself. This is the reason why the court before which an offence under Chapter XI is seen, shown or alleged, to have been committed, would have to prima facie come to the conclusion as to whether it is a fit case to put an alleged offender to trial and whether such a prosecution is necessary in the interest of justice. It is after this process of shifting, would such prosecutions be initiated by the institution of a complaint or other modes as provided under Section 340 Cr. P.C.”

The ratio in the above decision squarely applies to the facts of the present case as in the case on hand no enquiry as contemplated under Section 340 CrPC was conducted and as no necessary finding as contemplated under facts and in law was recorded by the Presiding Officer of the Land Acquisition Court and further, as a complaint was made by the learned Principal Junior Civil Judge instead of the Judge competent to make a complaint that too without following the legal pre-requisites enunciated under Section 340 CrPC. Hence, we agree to accede to the requests of the accused – petitioners in the first batch of petitions and also to the request of the State in CrIP.3422 of 2012, subject to certain directions *infra* which we would like to issue to meet the ends of justice by invoking Articles 226 & 227 of the Constitution of India in view the poignant gravity of the alleged fraud and the alleged offences related to the matter, which is being popularly referred to as ‘Yeleru Land Acquisition Scam’. In our considered view, giving apposite directions, while parting with the matter, is necessary in the larger public interest besides the institutional

interest and as otherwise there is a likelihood of alleged offender and perpetrators of fraud going scot-free even without facing trial. The said Articles indisputably clothe this Court with the necessary jurisdiction to give directions not only to see that the culprits, if any, are brought to book but also to see that justice is not overwhelmed by mere technical considerations.

10. On the above analysis and keeping in view the observations in paragraph no.9 supra, we find that the first batch of criminal petitions filed by the accused are to be allowed and the proceedings earlier initiated under Section 340 CrPC have to be quashed and that the CrIP.No.3422 of 2012 filed by the State is also to be allowed subject to certain directions, as in our considered opinion giving necessary directions by invoking the provision of Section 482 CrPC and Articles 226 & 227 of the Constitution of India is essential to maintain the purity of the fountain of justice.

11. In the result, the criminal petitions filed by the accused and the CrIP.No.3422 of 2012 filed by the State are accordingly allowed subject to the following directions:

(I) The Presiding Officers of the Reference Courts-cum-Senior Civil Courts concerned at Chodavaram and Anakapalle of Visakhapatnam District, are directed to re-open all the cheque applications related to the subject land acquisition OPs on the files of the said Courts and issue notices to the claimants, the State, the advocates for the claimants therein, the advocates for the State at the relevant time, the advocates, who attested the affidavits and vakalats purportedly signed by the cheque petitioners, and other necessary persons concerned and conduct a preliminary enquiry in each of such matters and arrive at necessary factual finding/s as envisaged under Section 340 of CrPC and, if necessary, lodge complaint/s before the Court of the competent Jurisdictional Judicial Magistrate of First Class by following the procedure established by law.

(II) The CBCID agency, which conducted investigation into case in Crime No.327 of 1996 on the file of Anakapalle Town Police

Station, Visakhapatnam District, registered for the offences punishable under Sections 466, 467, 468, 409, 406, 471, 474, 419, 420 read with Sections 120-B & 109 IPC and which came to an opinion that certain persons/ accused committed various offences is directed to further proceed in the matter and complete the investigation, by conducting further necessary investigation, if any, as per procedure established by law and file a final report either way before the Court of the competent jurisdictional Judicial Magistrate of First Class, without any further delay. It is needless to state that in the event the said Agency comes to a conclusion that a final report/ charge sheet is to be filed, it may do so, if so advised, by omitting from the final report/ charge sheet the penal provisions enumerated in Section 195 CrPC, in view the direction no.I which will take care of the said aspect of the matter.

As a sequel, the remaining four criminal petitions filed by the State are closed as no further orders are necessary in the said petitions.

Needless to state that the State, if it so desires, may renew its requests for establishment of Special Court and Special Cells etcetera at an appropriate stage by making representations to this Court on the administrative side.

Miscellaneous petitions pending, if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

M. SEETHARAMA MURTI, J

28.12.2018

Vjl