

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8180 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') by accused Nos.9 and 10 requesting to quash the proceedings against them in S.C. No.476 of 2018, pending on the file of the II Additional District Judge, Cyberabad at L.B. Nagar, registered for the offence punishable under Section 176 of the Indian Penal Code, 1860 (for short 'IPC'), as they failed to give information about commission of offence by other accused, on the sole ground that the Court cannot take cognizance in view of bar under Section 195 (1) (a) of the Code.

2. During hearing, the learned counsel for the petitioners - accused Nos.9 and 10 would draw the attention of this Court to the allegations made in the charge sheet and the offence allegedly committed by the petitioners. At the end of charge sheet, it is made clear that accused Nos.9 and 10 allegedly committed the offence punishable under Section 176 of IPC, as they failed to give information to the police about commission of offence punishable under Section 395 IPC by other accused.

3. *Per contra*, learned Public Prosecutor for the State of Telangana contending that when a crime was registered for both the accused, only for the offence punishable under Section 395 IPC, police are competent to investigate into the offence. Even otherwise, the

offence punishable under Section 176 IPC is also registered along with other accused and issued FIR in view of Sub-section - 2 of Section 155 of the Code, the police are competent to investigate into the offences, and that when the investigation done by a competent Police Officer, the Court can take cognizance and proceed further, and finally requested the Court to dismiss the Criminal Petition.

4. Undisputedly, a crime was registered against all the accused including these petitioners for the offences punishable under Sections 395 IPC. But, after completion of investigation, the Investigating Agency concluded that these petitioners - accused Nos.9 and 10 committed the offence punishable under Section 176 IPC. Section 195 of the Code deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence, and clause (a) of sub-section 1 deals with that no Court shall take cognizance of an offence punishable under Section 172 to 188 (both inclusive) of IPC, except on the complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Sub-Section (2) of Section 195 of the Code envisages that 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. Thus, in view of the clear bar under Section 195 (1)

(a) of the Code, the Court cannot take cognizance for the offence punishable under Section 176 IPC. But, in the present case also, the offence allegedly committed by the petitioners is punishable under Section 176 IPC, and it is governed by Section 195 (1) (a) of the Code. However, the learned Public Prosecutor contended that when some of the accused (i.e., accused Nos.1 to 8) committed an offence punishable under Section 395 IPC, these petitioners can also be tried along with them since charge sheet arising out of the investigation taken up by the Inspector of Police in the crime registered only for the offence punishable under Section 395 IPC. But, this contention cannot be accepted for the reason that there is clear bar under Section 195 (1) (a) of the Code, which prohibits taking cognizance by the Court. Therefore, the Court is incompetent to take cognizance for the offence punishable under Section 176 IPC, and consequently, the proceedings in S.C. No.476 of 2018, pending on the file of learned II Additional District Judge, Cyberabad at L.B. Nagar against these petitioners - accused Nos.9 and 10 for the offence punishable under Section 176 IPC are hereby quashed.

5. Accordingly, the present Criminal Petition is allowed. But, however, this order will not preclude the Investigating Officer to make appropriate complaint as contemplated under Section 197 (1) (a) of the Code.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

September 04, 2018
Mgr

