

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9282 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioners-accused Nos. 9 and 10 to quash the proceedings against them in crime No. 76 of 2018 of Vanasthalipuram Police Station, Rachakonda, registered for the offences punishable under Sections 120-B, 406, 420, 467, 468, 471 and 472 of IPC.

2. The Sub-Inspector of Police, Vanasthalipuram Police Station-respondent No. 2 lodged a report on 23-01-2018 against one Mekala Venkatadri-accused No. 1 and others alleging that on 23-01-2018 at about 22.00 hours while conducting patrolling duty in B.N.Reddy Nagar, he along with his staff found one group of persons talking each other and on seeing them, they escaped and he apprehended one person; that on physical checking, they found one polythene cover containing five mee-seva birth certificates; that on questioning, accused No. 1 disclosed his name as Mekala Venkatadri and also disclosed that he was having mee-seva center at West Marredpally and that through agents/brokers, he was preparing fake date of birth certificates as he was having connections with Sub-Registrars/Health Assistants and GHMC Data Entry Operators, for which he was getting Rs.4,000/- to Rs.5,000/- per each certificate. Basing on the report of respondent No. 2, the above crime was registered for the offences referred *supra* and issued FIR.

3. The present petition is filed by the petitioners-accused Nos. 9 and 10 on the ground that none of the allegations made against the petitioners would constitute any offence much less the above offences and that they are working

as Health Assistants on outsourcing basis in GHMC and their duty is limited as per job card and they are no way concerned with the alleged offences.

4. Learned Public Prosecutor (T.S.) would draw the attention of this Court to the allegations made in the remand report dated 24-01-2018 and on the strength of the same, he requested to dismiss the petition at this stage, since investigation is not yet commenced.

5. The main ground urged before this Court is that the role played by the petitioners would not constitute any of the offences and that as per job card, they are discharging duties of registration and preparation of birth and death certificates. According to the confessional statement of accused No. 1, he was having contacts with the petitioners and other accused and with their help, he was creating fake certificates. The role of the petitioners therefore cannot be ruled out at this stage. Even according to the allegations made in the remand report, the petitioners also indulged directly in preparation of certificates by collecting amount.

6. One of the offences allegedly committed by the petitioners is punishable under Section 120-B of IPC. The word criminal conspiracy is defined under Section 120-A of IPC. When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. In **Ram Narayan Popli Vs. C.B.I.**¹, the Apex Court held that it would be extremely difficult to find direct evidence in case of criminal conspiracy and the circumstances and surrounding facts have to be taken note of. Therefore, there need not be any direct evidence at this stage pointing out the complicity of the petitioners for the offence punishable under Section 120-B of IPC. Moreover, when investigation is not yet

¹ (2003) 3 SCC 641

commenced, expecting any evidence against the petitioners is unwise. Hence, I find no ground to quash the proceedings against the petitioners for the offence punishable under Section 120-B of IPC.

7. The other offence allegedly committed by the petitioners is punishable under Section 406 of IPC. Section 406 of IPC deals with punishment for criminal breach of trust. Criminal breach of trust is defined under Section 405 of IPC and according to it, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express, or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust. To constitute the offence punishable under Section 406 of IPC, there must be an entrustment or dominion over the property. Here in this case, the petitioners were directed to discharge their duties as per job card *i.e.* collection of information about births and deaths including issue of certificates but misusing their official position as Health Assistants in GHMC by allegedly issuing fake certificates would certainly constitute the offence punishable under Section 406 of IPC *prima facie* since they are having dominion over registrations being maintained by GHMC.

8. The other offences allegedly committed by the petitioners are punishable under Sections 420, 467, 468, 471 and 472 of IPC. This Court cannot appreciate the evidence at this stage while exercising power under Section 482 of Cr.P.C. by examining the material minutely and record a finding that the allegations would attract a particular offence (*vide Mrs. Dhanalakshmi Vs.*

R.Prasanna Kumar and others²). In view of the law declared by the Apex Court in the above judgment, at this stage, this Court cannot express its opinion whether or not the allegations made in the report would attract a particular offence. At best, the duty of the Court is to verify whether the allegations made in the FIR or complaint would constitute any cognizable offence or not and if the allegations make out any cognizable offence, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings in view of guideline No. 3 of the guidelines laid down by the Apex Court in **State of Haryana Vs. Bhajanlal**³. Since the allegations made in the report and the material collected so far by the investigating agency *prima facie* show that the petitioners also indulged in commission of the above offences, following guideline No. 3 of the guidelines in **Bhajanlal's** case (3rd *supra*), I find no ground to quash the proceedings at this stage and the petition is liable to be dismissed.

9. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 31-08-2018.

JSK

M.SATYANARAYANA MURTHY, J.

² AIR 1990 SC 494

³ 1992 Supp. (1) SCC 335