

SMT JUSTICE T. RAJANI
CRIMINAL PETITION Nos.268 and 270 of 2012

COMMON ORDER:

The criminal petitions are filed seeking quash of the proceedings in CC.Nos.8 and 2 of 2008, against the petitioner, who is the accused, on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad and III Additional Metropolitan Sessions Judge, Hyderabad, respectively. The offences alleged are under Sections 199(2) and 200 of the Criminal Procedure Code.

2. The facts mentioned in the complaints in both the CC's are as follows:

CC.No.8 of 2008:

The complainant submits that, Smt. K. Ratna Prabha joined the Indian Administrative Service in 1981 and was allotted to the State of Karnataka and married to an IAS officer. She came to the State of Andhra Pradesh on Inter State Deputation and she received several awards both in the State of Karnataka and in Andhra Pradesh. She was deeply hurt when suddenly a news item sprung up in daily newspapers and widely reported in electronic media on 15.09.2007 and 16.09.2007 where the former Vigilance Commissioner of State of Andhra Pradesh made serious allegations touching her conduct and greatly tarnishing her image and reputation. She was surprised with the news item published in Andhra Jyothi and Deccan Chronicle newspapers. She addressed a letter to the Chief Secretary to the Government of Andhra Pradesh on 24.09.2007 expressing anguish and requesting to furnish any information or material available with them, which could be the basis for Mr. Samal to make such accusations.

But her application was transferred to the General Administration Department on the ground that the Vigilance Commission does not keep any file with them. She applied to the Secretary to the Government, General Administration Department on 17.10.2007 under the Right to Information Act, requesting the appellate authority to take action on the appeal. The Deputy Secretary to Government informed her that the appeal dated 17.10.2017 is sent to GAAD and she received a letter dated 13.11.2007 addressed by the Principal Secretary to Government informing that as on that date no complaint/enquiry report against her was pending in that department and it made it clear that there was no complaint against her. The report released by Mr. Samal, who is the petitioner/accused herein, to the newspapers and electronic media, is without any basis and due to the said publication, she was put to mental agony. Hence, the complaint.

CC.No.2 of 2008:

3. In the present case, the complainant submits the case and cause of one Sri Vinod K Agarwal, an IAS Officer and the averments and the allegations in this complaint are also similar to the allegations in the complaint in CC.No.8 of 2008 levelled against the same accused.

4. Heard the counsel for the petitioner, the counsel for the second respondent and the learned Public Prosecutor appearing for the first respondent.

5. The argument of the counsel for the petitioner is three fold viz. (1) with regard to the limitation in filing the complaint, (2) with regard

to the *locus standi* of the Public Prosecutor to file the complaints under Section 199 Cr.P.C. on behalf of the complainants and (3) merits of the case.

6. As regards limitation, there is no dispute that the complaints are filed beyond six months from the date of offence.

7. The learned Public Prosecutor contends that the complaints are filed within limitation by virtue of the saving provision under Section 470 Cr.P.C.

8. The counsel for the petitioner submits that Section 470 Cr.P.C. cannot be applied to the complaints filed under Section 199 Cr.P.C. as the said provision is an independent provision.

9. Section 470 Cr.P.C. excludes the period taken for obtaining sanction while computing the period of limitation. This Court finds some force in the argument of the counsel for the petitioner. By virtue of Section 470 Cr.P.C, being placed under chapter XXXVI, which is limitation for taking cognizance of certain offences, it has to be understood that Section 470 Cr.P.C has a reference to the limitation mentioned under Section 468 Cr.P.C. Section 199 Cr.P.C is included under Chapter XIV by which it has to be construed as an independent provision.

10. The counsel for the petitioner also relies on few decisions, to support the said argument and reasoning.

The decision in *N. VEERASWAMI v. STATE*¹ is rendered by the Madras High Court wherein the High Court relied on a decision of the Andhra High Court in *SMT. REKHA VARMA v. PUBLIC PROSECUTOR* [1982 MAD LJ (CRI.) 159] while arriving at the conclusion that Section 199(5) Cr.P.C is not controlled by Section 470 of the Code and that the respondent-Public Prosecutor is not entitled to invoke the provisions of Section 470(3) of the Code and claim exclusion of the time required for obtaining sanction of the Government. This Court in *SMT. REKHA VARMA*'s case, referred supra, held that Section 199(5) Cr.P.C made a special provision that in all cases where the Public Prosecutor made the complaint, it shall be filed within six months from the date on which the offence is alleged to have been committed and the power under Section 473 Cr.P.C cannot be invoked to extend the period of limitation prescribed under Section 199(5) Cr.P.C. Chapter XXXVI of Cr.P.C dealing with limitation for taking cognizance of certain offences provides for the general period of limitation and the circumstances in which the period can be extended in certain cases. It held that the provisions of that Chapter cannot be invoked where the Public Prosecutor filed the complaint under Section 199(2) Cr.P.C.

11. Hence, going by the reasoning, which seems to be an appropriate reasoning, this Court has to hold that the complaints, filed by the learned Public Prosecutor, are beyond the period of prescribed limitation.

¹ 1985 CRI.L.J. 572

12. As regards the second aspect, which is the *locus standi* of the Public Prosecutor, the counsel for the petitioner contends that it is only when the offence alleged pertains to the discharge of official duty that the Public Prosecutor, in the interest of the State, can file the complaints.

13. The publication, in this case, shows that the petitioner, who is a retired Vigilance Commissioner, has given disturbing news to the press, stating that there are few officers, who are extremely corrupt and he also mentioned the names of those officers, which includes the name of the second respondent herein.

14. The counsel for the petitioner argues that being corrupt is not part of the official duty and hence, the State does not get any right to file any case on behalf of the second respondent in these criminal petitions. In support of the said argument, the counsel places reliance on a decision of the Supreme Court in K.K. MISHRA v. STATE OF MADHYA PRADESH² wherein the Supreme Court dealt with the offence of defamation, which was allegedly committed against the Chief Minister of the State of Madhya Pradesh. Before the High Court, the case ended in conviction but the Supreme Court held that notwithstanding the conviction of the appellant, the question of validity of the very initiation of prosecution against the appellant was being considered. It observed that none of the alleged defamatory statements, in respect of which sanction was accorded to file a complaint against the accused under Section 199(2) Cr.P.C, even if

² (2018) 6 SCC 676

admitted to have been made by the appellant, can be said to have any reasonable connection with discharge of public duties by or the office of CM. The allegations made against the CM in the said case are as follows:

6. The aforesaid three statements mentioned in the order dated 24-6-2014 granting sanction/permission are as follows:

“(1) 19 amongst the Transport Inspectors appointed in Madhya Pradesh are from the in-laws house Gondiya (Maharashtra) of Chief Minister Shivraj Singh Chouhan.

(2) Conversation has been made with the accused persons of the Vyapam Scam from the mobile of Sanjay Chouhan, son of Phoolsingh Chouhan, mama of the Chief Minister Shri Shivraj Singh Chouhan.

(3) Conversation has been made from the Chief Minister’s house by an influential women through 139 phone calls with the accused of Vyapam Scam Nitin Mahendra, Pankaj Trivedi, Lakshmikant Sharma.”

The above allegations are more specific that the Chief Minister had adopted illegal means.

15. In this case, the allegations are very general in nature. They being that the officers are in general corrupt. Hence, when the Supreme Court holds that the State would not have *locus standi* when allegations are of the nature referred to above, it cannot be said that the State would have *locus standi* to file complaints based on the nature of allegations, which are made in the present case.

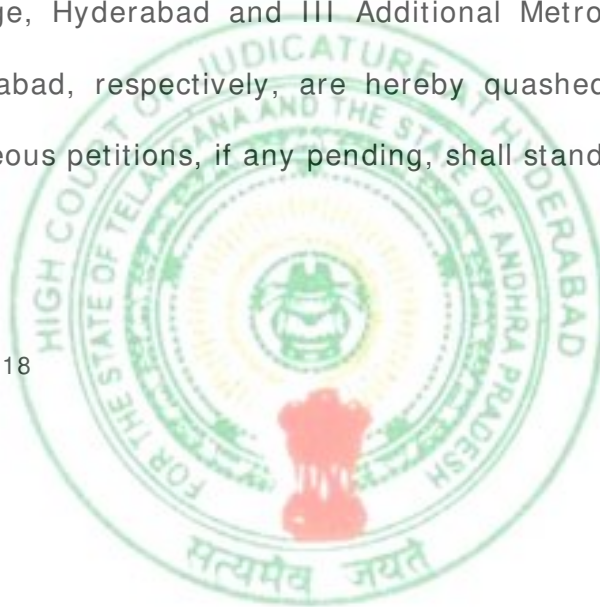
16. As regards the merits of the case, the counsel for the petitioner contends that the second respondent officers made an application under the Right to Information Act, wherein it was stated that no report as on that date was pending in the department.

17. The learned Public Prosecutor, by virtue of the above, would submit that absolutely no report was sent by the petitioner and hence, the allegations of corruption have to be held as baseless.

18. However, the press notes would show that the petitioner herein wanted to submit a report but the Principal Secretary has objected for the same and hence, he released it to the media.

In the light of the above, the criminal petitions are allowed and the proceedings in CC.Nos.8 and 2 of 2008, against the petitioner, who is the accused, on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad and III Additional Metropolitan Sessions Judge, Hyderabad, respectively, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 31, 2018
DSK



T. RAJANI, J