HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.10916 of 2018

ORDER:

This petition is filed under Sections 438 and 482 CrPC seeking anticipatory bail by the petitioner, who is accused in Cr.No.74 of 2018, dt.21.04.2018 of Hyderabad Police Station, Central Crime Station, registered for the offences punishable under Sections 417 IPC from the complaint dt.13.03.2018 of Smt. Y.Srilakshmi, Prl.Junior Civil Judge, Nidadavolu, West Godavari district, which was forwarded to the Prl.District Judge, West Godavari District, Eluru on 13.03.2018 and the same later transferred to Nidadavole Police Station on the point of jurisdiction, where it is re-registered as Cr.No.168 of 2018, dt.10.08.2018 for the same offence, with the contentions in the bail application that he is aged about 61 years, a senior citizen and the complaint is a cooked up story and is falsely implicated to defame him though no offence is committed by him at any point of time and the allegations in the complaint do not attract the offence supra. The police are further trying to alter the section of law into non-bailable offence with an intention to torture and harass him. Further the alleged offence is non-cognizable in nature and without prior permission of the concerned Court, no crime can be registered under the guise of vague complaint. Hence, he is entitled for grant of anticipatory bail.

2. The brief facts of the complaint are that the defacto-complainant received a phone call from an unknown cell phone bearing Number 703234229 from one male person representing himself as the petitioner herein and enquired whether she knows one

Radhika Junior Civil Judge, Kovur and one Sridevi working at Eluru, for which she replied Radhika is working as I Addl.JCJ and Sridevi is working as Addl.JCJ, Eluru. The petitioner represented that he received a confidential information from the Hon'ble Acting Chief Justice that they made enquires on Saturday and Sunday against said Judges and he(the petitioner) knows one of the Judges in the Disciplinary Authority and said High Court Judge also informed to him that they are going to dismiss the above two officers. He also further informed to the defacto-complainant that the Hon'ble Acting Chief Justice, told him to caution the above two officers and he requested the Hon'ble Justice not to take hasty decisions and not to remove them since both are lady judges. He further informed to her that one Srinivasa Rao, made phone calls to above said two officers by saying that he (Srinivasa Rao) is younger brother of Hon'ble Acting Chief Justice and sometimes said Srinivasa Rao made phone calls as if he is Justice Ramesh Ranganadhan. The petitioner further informed to her that the High Court took call data of said two officers and recorded the conversation. He further informed to her that said Srinivasa Rao collected amounts from them under the guise of transfers to their places of their choice in coming April and by saying so, he asked her to inform the same to caution the officers. The defacto-complainant told the petitioner that though she knew the two officers, she has no intimacy with them and she being junior Civil Judge, she could not inform about the same. He further informed her that the two officers were trapped by said Srinivasa Rao, and further stated that the two officers did not commit any offence and their desire is only to be

nearer to their family. It is further informed to her that he attended marriage in Nellore in the last week and from there he went to Hyderabad and met Hon'ble the Chief Justice. He also met the Hon'ble Justice at Visakhapatnam and the Hon'ble Justice also enquired him about the case. The defacto-complainant immediately informed the same to the Prl.District Judge, by phone and on her directions she submitted the complaint.

3. Heard learned counsel for the petitioner and the learned Public Prosecutor representing the State in opposing the application and perused the FIR, application averments and the other material on record.

4. Undisputedly the Respondent-SHO, Nidadavole Police Station in registration of the Cr.No.168 of 2018 for the offence u/sec.417 IPC, which is a non-cognizable and bailable offence, did not obtain any permission of the local Magistrate(JFCM) or even of the Chief Judicial Magistrate concerned, despite the prior permission of the local Magistrate concerned is mandatory for registration of a crime to issue FIR in a non-cognizable offence u/sec.155 CrPC as held by the Apex Court to the above extent in Tilak Nagar Industries Vs. State of Andhra Pradesh & others[1]. Even taken for arguments sake that the CCS, Hyderabad for earlier registration of the Cr.No.74 of 2018 obtained any prior permission of the local Magistrate concerned at Hyderabad, that confines to its crime registration and investigation by the CCS, Hyderabad, that too for Nidadavole Police Station is in a different State of Andhra Pradesh to the CCS, Hyderabad of Telangana

[1] AIR 2012 SC 521

State. It is because as per the mandate of the very Section 155(2) CrPC *no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such a case or commit the case for trial*. The provisions under Section 155(1) CrPC provides for forwarding of the information to the local Magistrate for enabling the local Magistrate to pass an order in appropriate case for enabling the police to register crime and investigate the matter under Section 155(2)CrPC. Instead of that, in this particular case, straight away a crime has been registered and commenced investigation by the Nidadavole Police, which is *per-se* illegal and unsustainable. The entire procedure adopted by the Sub Inspector of Police, Nidadavole Police Station supra in registering the crime and issuing the FIR are not at all legally sustainable in view of the decision in Tilak Nagar Industries Limited supra and as such they have no right to continue the crime and investigate, but for closing by filing of a referred report to the above extent.

5. In this background, there is a force in the submission to the seeking of anticipatory bail from apprehension of arrest by Nidadavole police by showing in filing of a remand report with altering Section of Law to a cognizable and non-bailable offence of Section 420 IPC from the non-cognizable and bailable offence of Section 417 IPC.

6. It is thereby just to take the petition by not confined to Section 438 CrPC but to exercise of the inherent power under Section 482 CrPC which inheres from the very constitution of this Court to exercise to undo a wrong and to subserve the ends of justice and also to prevent any abuse of process. The Apex Court Constitution Bench

by scanning the law held in the recent past in Prabhu Chawla Vs. State of Rajasthan[2] that the High Court's inherent power to exercise under Section 482 CrPC to subserve the ends of justice is unlimited including in taking any proceeding under Section 482 CrPC irrespective of any other provision mentioned, to render complete justice. Way back in Kailash Verma V. Punjab State Civil Supplies Corporation[3] it was held under Section 482 CrPC that in view of the prohibition under Section 397(3) CrPC, the complainant or the accused cannot be allowed to take recourse to a second revision, but the High Court can entertain a petition under Section 482 CrPC when there is miscarriage of Justice or abuse of process of the Court or mandatory provisions of law are not complied with or when the High Court feels that the inherent power is to be exercised to correct any mistakes. In fact, in Ranbaxy Laboratories Ltd. & Ors Vs. State of Telangana & Ors[4] at para-30(xvi), after referring to Mohit@Sonu, Madhulimaye, V.C.Shukla, Krishnan, Rajan Kumar Machananda, Sujith Kumar Rana, Popular Muthaiah, Southern Coal Fields and several other expressions of the Apex Court, this Court in Tamilnadu Mercantile Bank V. M/s.Subbaiah Gas Agency[5] held at para Nos.12(c), 13, 13(a) to (h), 14 and 15 as follows:

> "12-C) Even otherwise for arguments sake, the appeals are not maintainable from contention of the accused as Respondent No.2 to the present appeals in saying there can be no appeal against the lower Courts revision order reversing the trial Courts conviction judgment in acquitting the accused; then this Courts inherent power to decide the case by invoking Section 482 CrPC is there.
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> 13) It is important to note in this context from the expression in Krishnan (supra) referring to Section 397 read with Sections 401 and 483 and also

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[2] (2016) 16 SCC 30
[3] (2005)2 SCC 571
[4] CRLP.NO. 5797 OF 2015 & Batch = MANU/AP/0171/2016
[5] Crl.A.No.1686 and 1687 of 2009 decided on 13.01.2015

Section 482 CrPC that; though a second revision before High Court against the revision orders of the Sessions Court impugning the order of any Magistrate, under Section 397(3) is a bar, the inherent power of the High Court is still available under Section 482 CrPC to proceed with the matter in accordance with the requirements of justice. It was observed that besides the suomotu power of the High Court under Section 401 CrPC to convert the appeal as revision and vice-versa including by invoking Section 482 CrPC or to sit against the impugned order in revision either under Section 483 CrPC or even under Section 482 CrPC. Where it is found that miscarriage of justice or abuse of process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, it is but the duty of the High Court to have it corrected by exercising the inherent powers.

13-A) It is therefore to meet the ends of justice or to prevent abuse of process or otherwise, where it is necessary the High Court is preserved with inherent power and would be justified so to exercise such inherent power in appropriate cases even filed as an appeal or a revision or the like and for that conclusion the apex Court referred the maxim of exdebito justitiae i.e., in accordance with the requirements of justice. Thus, from that principle, the prohibition under Section 397(3) on revision power given to High Court or otherwise for no appeal provision, such a bar have no application and no way coming in the way for the High Court to decide the lis by sitting against the order of the Sessions Judge. It was observed particularly at para No.9 of the judgment in Krishnan (supra) on the inherent power of the High Court under Section 482 CrPC referring to the said maxim that this power is not conferred by the Code but inherent in the High Court that is preserved by the Code. It was also observed by referring to the four Judges bench expression in V.C.Shukla V. State through C.B.I that refers the three Judge Bench expression in Madhulimaye v. State of Maharashtra that even the bar under Section 397(2) CrPC to maintain a revision not coming in the way to decide the matter before the High Court under Section 482 CrPC as nothing in the provisions of the Code shall be deemed to limit or affect the inherent powers of High Court.

13-B) Thus, the power of revision to entertain by High Court, even taken away under any of the provisions of CrPC that can be exercised under Section 482 CrPC. The Apex Court also referred for that several expressions including Rajan Kumar Machananda V. State of Karnataka another expression of the Three Judge Bench holding the bar under Section 397 CrPC is not coming in the way to the High Court to decide the matter under Section 482 CrPC. Further, the Apex Court in the other expression in State of West Bengal V. Sujith Kumar Rana held that inherent power under Section 482 CrPC can be exercised by the High Court in deciding the matter pending before it, even there is any bar to exercise of power under CrPC or any other law, the High Court within its inherent power can exercise the jurisdiction in that matter before it under Section 482 CrPC by sitting against the order impugned of any authority or Court to which it is superior.

13-C) Further more, in the later expression in Mohit @ Sonu Vs. State of U.P, the Apex Court referred the settled expression of Madhu Limaye(supra) besides the expression earlier to it in Amarnath Vs. State of Haryana saying the orders which are not purely interlocutory in nature and which could be corrected in exercise of revisional power, the High Court would refuse to exercise inherent power; but where if revision is not maintainable, the High Court can exercise inherent powers; to exercise inherent power, the order clearly brings a situation of abuse of process of the Court or for securing ends of justice or interference is absolutely necessary. It also referred Rajkumar Vs. State in distinguishing the power of revision and inherent power of the High Court in holding that none of the CrPC provisions will affect the amplitude of the inherent power reserved in the High Court by Section 482 of

CrPC but for inherent power should not invade the area set apart for specific power under a specific provision of the Code.

13-D) It also held referring to the Municipal Corporation of Delhi Vs. Ramakishan Rahatagi which relied upon Madhu Limaye (three judge Bench expression) supra, saying on the question whether, where a power is exercised under Section 397 CrPC., the High Court could exercise those powers under Section 482 CrPC.; that the matter is however no longer res-integra as the entire controversy has been set at rest by Madhu Limaye(supra)- where it was pointed out that Section 482 CrPC. had a different parameter to exercise the inherent power to pass necessary orders and is a provision independent of Section 397 CrPC. A plain reading of Section 482 CrPC. follow that, nothing in the Code (which include Section 397(2) CrPC. also), shall be deemed to limit or affect the inherent powers of the High Court but for to say the order brings about a situation which is an abuse of process of the Court or for the purpose of securing the ends of justice or interference by the High Court is absolutely necessary for exercise of the inherent power in such a situation. It is also observed that the High Court alone can pass such orders ex debito justitiae- to do real and substantial justice in the lis. It was also observed referring to Section 151 C.P.C. and the earlier expressions of the Apex Court in Padamsen Vs. State of Uttar Pradesh & Manoharlal Chopra Vs. Rai Bahadur that it is well recognized that the High Court is vested with inherent power, however, said inherent power is not to be exercised contrary to any express provision that being the intention of legislature in enacting the civil & criminal procedure codes vis-a-vis the law laid down by the Apex Court.

13-E) It was also held by the Apex Court in Popular Muthaiah Vs State rep. by Inspector of police that the inherent power is not confined to procedural or adjectival law, but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts exdebito justitiae-to mean to do real and substantial justice in the lis for which alone the power exists inherently. The Apex Court in Popular Muthaiah (supra) referred the earlier expressions in 1) Nawabganj Sugar Mills Vs. Union of India holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity and in 2) South Eastern Coal Fields Ltd. Vs State of M.P. holding that act of court does not confine to act of primary court, but even appellate or revisional or other superior court, as it is an act of court as a whole. In Popular Muthaiah (supra) it is also held referring to the scope of the Maxim actus curiae neminem gravabit-that this principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.

13-F) It is also in this juncture to mention the expression of the Apex Court in Rajendra Prasad Gupta Vs. Prakash Chandra Mishra relying upon the Full Bench expression of Allahabad High Court in Rajnarayana Saxena Vs. Bhimsen which relied upon the earlier Full Bench expression of the Allahabad High Court in Narsing Das Vs. Mangal Dubey holding that the Courts have to act upon the positive principle that every procedure is permissible till it is shown to be prohibited and prohibition as a general principle cannot be presumed.

13-G) It is also as per the well laid down expression of the Apex Court five judge Bench way back in Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay referring to the earlier three judge bench expression in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar that the High Court is having the inherent power under Section 561-A(old) 482(new) CrPC, where such an order is necessary to secure the end of justice or to prevent abuse of

process of Court as this power is always preserved to the High Court under the Code. It was also observed that the inherent power of the High Court is not conferred by CrPC. but for to say the power which inheres in the High Court no way limited or effected for its exercise by High Court by the provisions of CrPC.

13-H) Thus, from the above settled propositions of law, even revision or appeal is a bar by virtue of any of the specific provisions of CrPC the High Courts inherent power can be exercised in deciding the matter before it under Section 482 CrPC within its scope; that is not a bar from what is discussed supra from several and settled expressions of the Apex Court to decide the two appeals on merits by taking the same under Section 482 CrPC for otherwise not maintainable under Section 378(4) CrPC or proviso to Section 372 amended CrPC.

14) The other contention of the learned counsel for the accused/2nd respondent to these two matters is that, the subject under Section 482 CrPC not entrusted in allotment of work to this Court in distribution by the Honourable the Chief Justice. In fact, the two matters are filed and numbered as appeals and the criminal appeal matters under Section 138 of Negotiable Instruments Act are undisputedly entrusted to this bench. When such is the case, in the case covered by Section 138 of the Act in deciding the matters filed as appeals; from contention of appeal wont lie; when the inherent powers of this Court which inheres from the very constitution that are saved by the CrPC to decide the lis, it no way requires further entrustment, much less to say, this Court is powerless to invoke Section 482 CrPC.

15) Thus, the inherent power of the Court which inheres in it, enables to decide the appeals otherwise under Section 482 CrPC by sitting against the revision reversal and acquittal Judgments (orders), reversing the trial Courts conviction judgment against the two accused persons on the two private complaint cases maintained by the present appellant-Complainant bank."

7. From the apprehension got a basis as referred supra and the police who have registered FIR and taken up investigation in the non-cognizable offence u/sec.417 IPC, cannot cure the very inherent defect on its illegality and unsustainability to make it sustainable by conversion of a non-cognizable offence into a cognizable offence now by altering or adding section of law to Section 420 IPC or other IPC cognizable offences and any such attempt is nothing but abuse of process and to prevent the same it is made clear by virtue of the inherent power and to subserve the ends of justice in observing that the police cannot cure the inherent defect supra including by adding or altering with any cognizable section of law.

8. Even coming to the facts of the case on hand, there is no offence of cheating made out from the very reading of the FIR of the defacto-complainant, leave about what the oral submission of the learned counsel for the petitioner of what the petitioner informed the defacto-complainant is from what Hon'ble Justice Amarnath Gowd, informed him about the mischief of one Srinivasa Rao and to caution any known judicial officers not to fall to such traps and nothing beyond and it is only as a caution informed and there is nothing to complain for no offence made out even taken from any little bluffing or misconception in receiving and understanding for what Justice Amarnath Gowd referred as Justice Ramesh Ranganathan. In fact, there is practically no deception and no favour sought by the petitioner from the defacto-complainant much less any offence of cheating with dishonest intention to deliver any valuable property or thing etc.

9. Having regard to the above and in the result, the Criminal Petition is disposed of while directing the SHO, Nidadavole Police Station, not to arrest the petitioner pending any investigation in the present non-cognizable offence for which the crime is registered without permission of the local Magistrate even mandatory u/sec.155 CrPC, for the offence u/sec.417 IPC, and to complete the investigation and file report preferably within 15days from the date of receipt of this order and it is made clear that if at all police not closed the crime, for continuation is illegal as referred supra and any final report filed and any cognizance taken by the learned Magistrate concerned and any summons issued to the petitioner with supply of

copies for hearing on the accusation, liberty is given to the petitioner to file fresh petition to quash the same u/sec.482 CrPC before this Court if not chosen to file any petition before the trial Magistrate u/sec.258 read with 251 CrPC, as per the settled law of the Apex Court laid down in Bhushan Kumar Vs. State(NCT of Delhi)[6] that the accused is entitled to approach the Magistrate u/sec.251 CrPC even in a summons case to stop the proceedings where the proceedings cannot continue. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date: 12.10.2018
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[6] (2012) 5 SCC 424