

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.11285 of 2018

% Dated 04.12.2018

Y. Sivaramakrishnaiah

....Petitioner

VERSUS

\$ The State of Andhra Pradesh, represented by its Public Prosecutor,
High Court at Hyderabad and P. Ravi Kumar

... Respondents

! Counsel for Petitioner : Sri A. M. Rao

^ Counsel for Respondent : Public Prosecutor

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2016 (2) ALT (CrI.) 165
2. 2009 (1) ALT (CrI.) 31 (Mad.)



HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**CRIMINAL PETITION No.11285 of 2018****ORDER :**

The petitioner is the proposed accused in the un-numbered C.C.C.F.No.1269 of 2012. It was the private complaint filed by one P. Ravi Kumar/respondent No.2 to the present criminal petition against the petitioner as accused. R.2 is no other than Post Graduate Teacher in Sanskrit and the petitioner is no other than the Principal of Sri Satya Sai Higher Secondary School, Prasanthi Nilayam, Puttaparthi. The private complaint, dated 28.12.2012, refers to Sections 177, 192, 195, 196, 420, 463, 466, 471, 477-A and 406 IPC. It was referred to police for investigation by the learned Magistrate, from which the Police Puttaparthi Urban registered Crime No.12 of 2013 on 09.02.2013 by incorporating all the sections mentioned in the private complaint against the petitioner as sole accused. The police ultimately filed the final referred report without charging the accused and it is impugning the correctness, a protest petition was filed by the *de facto* complainant and in the protest petition filed on 22.05.2013 in C.F.No.2961 of 2012 before the Judicial First Class Magistrate, Penukonda.

2. As per the direction of this Court, dated 25.10.2018, report received from the Judicial Magistrate of First Class, Puttaparthi. The statement of the *de facto* complainant was recorded in three adjournments in part on 22.02.2014, 09.02.2015 and 14.05.2015

respectively by the learned Magistrate, Penukonda, and with no progress till November 2017 there ultimately after the new Judicial First Class Court established at Puttaparthi, the case was along with other records transferred to the new Court, where the present learned Magistrate, it appears, recorded the continuation of the statement of the *de facto* complainant on 11.09.2018.

3. It is on that day the *de facto* complainant/protest petitioner filed application under Section 91 Cr.P.C. to send for certain documents from Principal of the School at Prasanthi Nilayam saying those are required. The Court passed the order to send for the documents invoking Section 91 Cr.P.C. on 25.09.2018. If at all the documents to be called for is only from the Chairman of the School as sought in the application under Section 91 Cr.P.C. on 11.09.2018. However, the learned Magistrate having allowed the application directed by issuing summons to the accused/petitioner by mentioning him as accused and the summons addressed to him as Y. Sivarama Krishnaiah with address Principal of the School by saying in the body of the three paras summons that the Chairman is likely to give material evidence or to produce documents or thing for the prosecution. The same is now impugned herein.

4. No doubt, the learned Magistrate also committed a mistake as pointed by learned Public Prosecutor in permitting participation of the accused at the pre-cognizance inquiry in passing the order for production of the documents after hearing the counsel for the accused

also. In fact, the accused has no role at the pre-cognizance stage, much less of any right of audience or to file any appearance for none of the provisions under Sections 200 to 202 read with 190 Cr.P.C. provided any right of hearing to the accused at the pre-cognizance stage of the protest to be followed as per the procedure of the private complaint, but for the difference that it is not a fresh private complaint but only a protest to the earlier investigation done by the police with referred report as to how the referred report is not acceptable and how the earlier investigation and where faulty. The learned Magistrate is proceeding, it appears, as if it is a fresh private complaint which is not permissible. In a protest petition securing new documents does not ordinarily arise, but for to point out how investigation is faulty, for that the learned Magistrate has to peruse the earlier investigation and what is the area of fault pointed out in the protest petition if at all to take as a private complaint procedure. The position of law is clear from the expression of this Court in **Sun Pharmaceuticals Limited, Mumbai vs. State of Telangana and another**¹. Thereby, the summoning of documents is not as a matter of course, that too an accused cannot be compelled to produce a document against him by testimonial compulsion as it is hit by Article 20 of the Constitution of India from accused got a fundamental right of silence, which is one of the fundamental principles in criminal law. It is only rider, if at all accused want to disclose waiving the right including by any

¹ 2016 (2) ALT (Crl.) 165

confession or disclosure statement he has to disclose the truth and not the falsehood as truth alone triumphs and not falsehood. Even on the scope of the accused cannot be compelled to produce a document under Section 91 Cr.P.C., the Madras High Court in **H. Mohamed Ibrahim Kaleel v. State**² also observed the same that accused cannot be compelled to produce a document invoking Section 91 Cr.P.C.

5. Having regard to the above, the summons issued by the learned Magistrate, Puttaparthi, to the accused to produce the documents is unsustainable and same is quashed. Even the learned Magistrate could not have been ordered the production of documents under Section 91 Cr.P.C., merely because the *de facto* complainant sought for without considering what is the scope of the protest raised against the earlier investigation and where faulty to the referred report and how it can be differed by taking cognizance by following the private complaint procedure on the protest. Thereby, the order directing to summon the documents also set aside. If at all any fresh application filed to consider on own merits.

6. With these observations, the criminal petition is allowed to the above extent.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

4th December 2018.
L.R. copy to be marked - Yes
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² 2009 (1) ALT (Crl.) 31 (Mad.)