

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

W.P.No.32336 of 2014 and CrI.P.No.3661 of 2015

COMMON ORDER

CrI.P.No.3661 of 2015

The petitioner-Ganapathy Raju, the accused in P.R.C.No.85 of 2014 on the file of the Judl.Magistrate of First class, Penukonda, Anantapur District, in the Cr.No.36 of 2013 registered for the offences punishable u/sec.324,506 of IPC and Section 3(1)(x) of the Scheduled Cast and Scheduled Tribe(Prevention of Atrocities) Act, 1989 (for short, 'the Act') on the complainant of the defacto-complainant-C.Sai Prasad, by the Puttaparthi Urban Police Station, Anantapur District, filed to quash the proceedings in the PRC supra.

W.P.No.32336 of 2014

2. The self-same petitioner filed writ petition against the 5 respondents viz; 1) Government of Andhra Pradesh rep. by its Principal Secretary, Home Department, 2) The Additional director General of Police CID, Hyderabad,3) the Superintendent of Police, Anantapur, 4) The Station House Officer, Puttaparthi Urban Police Station, Anantpaur District and 5) R.J. Ratnakar, with the prayer as follows:-

“to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, the action of the respondent Nos.3 and 4 herein in not proceeding with the investigation into Cr.No.61 of 2013 though the said crime is registered on 26.11.2013, as being illegal, arbitrary and unconstitutional and consequently direct the respondent No.2 herein to forthwith entrust the investigation of Cr.No.61 of 2013 to

the CBCID/CBI or any other independent investigating agency for fair investigation, and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case."

3. The common averments in the grounds of quash petition vis-à-vis the writ petition supporting affidavit for the two respective prayers supra are that defacto-complainant lodged a report to the Police, Puttaparthi Urban P.S., against him stating that on 14.07.2013 when the defector-complainant was waiting near Puttaparthi bus stand, the petitioner coming on his scooter saw him and abused him by touching his caste and beat him with a rod on his head saying that as to why he participated in Akhilapaksha Rally on 07.07.2013 and therefrom caused him injuries. Basing on said complaint, the police registered the crime supra and after so called investigation filed chargesheet. But he is innocent and not at all committed any offence and he is falsely implicated. The DSP K.Venkataiah and C.I. V.Sreedhar Raju who are loyal to Ratnakar-Trustee of Sri Sathya Sai Central Trust(for short, 'SSCT') Prasanthinilayam, Puttaparthi, having received hefty amount and favours and also providing special treatment to brother of the DSP-Sri Venkataiah in Sathya Sai Hospital, by shifting him from corporate hospital already taking treatment costing over Rs.5,000/- per day, the DSP-K.Venkataiah therefrom booked the false case against the petitioner who is a senior citizen aged about 62 years and it is a blatant lie and far from the truth of his attacking the brothers of the defacto-complainant aged 27 and 35 years together that too in front of defecto-complainant and others. The place of incident

as RTC Bus stand is if true, the police should have cited any RTC staff as witnesses and not from Ratnakar's aids who have signed in support of Ratnakar in token of respect for providing seats in Sathya Sai Institutions to their wards. It is a false and fabricated statement that he is the first cousin of Bhagawan Baba and was residing in Bangalore and as he was addicted to bad vices and was kept aside by Bhagwan Baba. The police have tried their best to strengthen the false case booked against him on the instigation of said Ratnakar by manipulations even he was residing at Puttaparthi until 14.07.2013 and was attending to the hospital regularly when Bhagwan Baba was hospitalized and had even offered to donate his body parts to Bhagawan Baba and he can produce live video before the Court along with several other evidences. There was a news in Andhra Jyothi on 05.07.2013 about Cyber Crime against Ratnakar, for creating a fake mail ID in the name of the petitioner-Ganapathy Raju sent to the senior trustees and demanded Rs.25 lakhs. It was true that there is an inquiry letter received by the local police months before he revealed it to the media, but they kept it secret and no enquiry was conducted but registering a crime based on the complaint by the defacto-complainant in a matter of 30 minutes from the time of complaint without any formal inquiry stating as if the petitioner was absconding. The defacto-complainant was examined and treated and was issued a wound certificate of injury was simple in nature, but it was misguided to the Court as if grievous injury. The petitioner earlier filed

W.P.No.29549 of 2013 questioning the registration of the crime and when the matter was listed for admission on 11.10.2013, the defacto-complainant without even receipt of any notice made his appearance through advocate and filed counter and on that the Court directed the police to follow the provisions of Section 41-A and 41-B Cr.P.C. and the writ petition is still pending for consideration. Against said observation, the petitioner filed W.A.No.1752 of 2013 and same was disposed off with a direction to the police to enquire and to take action on the complaint given by the petitioner against Ratnakar but same is with no progress but for the police simply filed chargesheet. The petitioner also belongs to the family of Bhagawan Sri Sathya Sai Baba and reporting illegal acts and misuse of Trust's money and machinery of the Trust by Ratnakar to the press reporters and also to the Senior Trustees of the SSCT namely P.N.Bhagwathi former Chief Justice of India residing in Delhi and Sri Indulal Shah, a noted Chartered Accountant from Bombay and also mails sent to Senior Trustees and press reports. The one of the Ratnakar's atrocities is that he leased out Sathya Sai Airport to a private company over night without consulting the Senior Trustees and the same was brought to the notice of the above trustees by the petitioner only and responding to that the senior trustees immediately released a press note stating that the Trust had no discussions with any private company and have no such proposal of leasing out Sathya Sai Airport to anyone. This caused a big blow to Ratnakar personally in the

form of commission from the company. With that, Ratnakar grew vengeance upon the petitioner and planned to damage his image before the Senior Trustees including former Chief Justice of India Sri P.N.Bhagwati who warned Ratnakar in this regard. Ratnakar who tried to open the petitioner's mails through experts failed to open the petitioner's mail and it is his surprise that he saw a message very often that 'someone is trying to open your mails please change the password' and the petitioner used to change the password very frequently. Again the petitioner took up the matter before Miss Kalpana Nayak, in-charge of Cyber Crime Hyderabad and submitted complaint but almost a year later almost forgotten the issue by the petitioner. To the complaint of the petitioner against police the SP-Anantapur had forwarded the inquiry order to DSP-Puttaparty Urban Police Station and report back to SP-Anantapur on the Cyber Inquiry within 10days. But, the DSP Urban PS K.Ventakataiah, loyal to Ratnakar, carried the cyber crime inquiry report direct to Ratnakar instead of starting inquiry and had discussion with Ratnakar for over two hours and kept the inquiry order pending for over a month. Having not heard of any details of the inquiry, the petitioner gave a copy of Cyber Crime inquiry against Ratnakar who in turn gave the news in Andhra Jyothi and was published on 05.07.2013. The DSP planned to corner the petitioner in two ways i.e. one is to report back to SP-Anantapur informing that the cyber crime could not be detected and the other is to book the petitioner under SC/ST

Act. Thus the petitioner was victimized under SC/ST Atrocities Act. A young constable standing near the vehicle parking at the Police Station by name Anjaneyulu(identified from the badge) recovered the blade thrown by Ratnakar after injuring himself and produced it to the Head Constable Nayak. They were silenced by knowing that the DSP and C.I.'s direct involvement in the false case. The petitioner who was shocked of having been booked with a brutal SC/ST case was helpless under the observation of the police at his residence; police had warned the petitioner not to move out of the house until police permits. Some of the national news papers investigated the facts and gave the facts of the episode. Complaints were lodged by the petitioner to several authorities and the authorities have ordered several inquiries against Ratnakar, Sai Prasad along with DSP and CI of the Station. The conversation between the petitioner and the station C.I. Sreedhar Raju at 5.10p.m. on 14.07.2013 over mobile reveals the plot by C.I. of the station who called the petitioner to the station on the pretext of some clarification on the petitioner's complaint against Ratnakar. This voice recording of the conversation between the petitioner and C.I. of the station Mobile No.9676716289 of the petitioner and mobile No.9440627228 of C.I. of the station confirms the plot by the C.I. of Urban police station himself has plotted the fabricated case with the help of Ratnakar's aid from SC community if, the voice recording is obtained from the telecom Department. The petitioner was a regular visitor to the hospital

to find the condition of Bhagwan Sathya Sai Baba for almost 20 days but were kept un-informed of what was happening to Bhagwan in the hospital and in support of this fact, the petitioner has several videos of family clippings complaining about suspense maintained by Ratnakar and Srinivasan, the Trustees of SC/ST about the treatment given to Bhagwan Baba. Also there is documentary evidence to show that the petitioner offered his body parts to Baba when he was hospitalized which reveals the attachment of the petitioner with Bhagwan Baba and how false is the chargesheet filed by the corrupt police. The petitioner is a qualified Accountant and was working for a company earning over Rs.25,000/- a month until a false SC/ST case was booked against him on 14.07.2013 and never sought any help from anybody including Bhagwan Baba as stated in the chargesheet and that the petitioner had no differences with any of the Trustees and never had any discussions of any kind or known to any trustee personally except Ratnakar (a Trustee) as a family member. As a family member of Bhagwan Baba, the petitioner was closely noticing the illegal acts of Ratnakar and had been warning Ratnakar to stop his atrocities time and again but found no change in Ratnakar's attitude. In the welfare of the SSCT, the petitioner prompted his mind to take further steps of detailing the series of illegal acts of Ratnakar to all the Senior Trustees by several mails and a Memorandum to the Governor of AP and the Chief Minister duly signed by over 500 locals. Angered by this, Ratnakar instigated his personal aids to

damage the petitioner's image before the Senior Trustees by sending a fake mail to all Senior Trustees demanding an amount of Rs.25lakhs to stop further allegations against the Trust. The petitioner had given complaint about the false mail sent by Ratnakar's aid to Cyber Crime authorities at Hyderabad and Addl.DGP-CID had ordered an inquiry after a lapse of over one year, addressing SP-Anantapur who in turn ordered the local police to conduct an inquiry but, the inquiry was kept pending by the local police for several months who are loyal to Ratnakar. The petitioner gave a copy of Cyber Crime inquiry against Ratnakar to the press reporter of Andhra Jyothi and the same was published in Andhra Jyothi Telugu newspaper on 05.07.2013. Angered by the news in Andhra Jyothi, Ratnakar ordered his men of SC community who are guarding his house at the cost of Trust to attack, drag and place on his feet, for which they attacked and burnt the petitioner's effigy and same was also covered by news channels. Meanwhile, the Head Constable by name Ramana who was conscious and loyal to his post disbursed the mob from the petitioner's house saved him from a certain life threat from Ratnakar's mob. The same day i.e. on 07.07.2013, the petitioner submitted a memorandum to DIG B.Balakrishna about the life threat to him from Ratnakar and his men and also faxed the same to DGP-AP and gave an interview to a TV Channel detailing about the incident along with a copy of Cyber Crime against Ratnakar. Upon viewing the petitioner's interview with a TV Channel on 07.07.2013,

Ratnakar and his associates along with the police have discussed for over two hours and planned to book him under the SC/ST atrocities case. Accordingly C.I.Sridhar Raju of the station phoned to the petitioner on 03.07.2013 while he was in Bangalore for the fear of attack asked to attend Puttaparthi Police Station to clarify on certain doubts on his complaint of Cyber Crime against Ratnakar. The petitioner assured C.I. to attend the station on 14.07.2013 and on which day just before starting, he asked C.I. if he was present in the station for which the C.I. answered that he would be present in a minute's time. By the time the petitioner reached the station entrance, there were 3 strange persons in white uniform waiting at the entrance asked him if his name was Ganapathy Raju and in utter surprise he said yes and all of a sudden they attacked him and not allowed to enter into the station. For his confusion, one of them suddenly took out a blade from his pocket and injured himself with a mild press on the right side of his forehead. The defacto-complainant who was bleeding never tried to stop the blood until his shirt was fully covered by blood stains to show it to the media to make the press believe who is physically strong. Ratnakar selects such youth from SC community as his body guards. It is far from one's belief that, a man of 62 years attacking two brothers of 27 and 35 years as stated in Chargesheet by police showing as one is victim and the other person is the first witness.

4. The petitioner filed W.P.No. 32355 of 2014 seeking to entrust the above crime to the CBCID or CBI for proper investigation and also filed another W.P.No.32336 of 2014 to entrust Cr.No.61 of 2013 registered against Ratnakar to the CBCID or CBI. However, the case registered against the Ratnakar is closed as 'undetected' but with regard to the Cr.No.36 of 2013, the police have laid chargesheet by showing the petitioner as absconding. That the police have filed charge sheet after the petitioner filing the Writ Petition only to avoid entrusting the matter to the CBCID and to defeat the relief sought for by the petitioner in the W.P.No.32355 of 2013. The devotees of SSB and local people have made a representation to the Governor of Andhra Pradesh to remove Ratnakar from the post of Trustee and in that connection a letter was addressed to the Endowment Department to take action against Ratnakar. Apart from the above, on the application made to the Prime Minister of India on 09.10.2014, regarding the illegalities and irregularities committed by Ratnakar, a letter dt.06.01.2015 was addressed to the Endowment Department to take action and to intimate same to him and also to the President's Secretariat, Govt. of India. The complaint given by the defacto-complainant is mollified, oppressive and vexatious and there is no prima facie case make out to connect the petitioner to the alleged offence. The allegations made against the petitioner herein, even if they are taken at their face value and accepted in their entirety do not constitute the alleged offence. It is a

matter merely of looking at the contents of the FIR/complaint to decide whether the offence alleged is prima facie made out or not. In the present case, there is no prima facie case made out, hence the FIR is liable to be quashed. As a counter blast to put the complainant in trouble, the false SC/ST case is implicated upon the petitioner. Hence, to quash.

5. Ratnakar who is the 5th respondent to the present writ petition, feeling humiliated and seeking to wreck vengeance, appears to have created a fake e-mail ID in his name and sent to the members of the trustees demanding Rs.25.00 lakhs to stop further action and a Senior Trustee Sri Indulal Sha who sent a strong mail warning of the dire consequence, basing on which he lodged a complaint on 22.06.2012. Responding to his complaint, the Addl.D.G.of Police, CID, vide his Memo in C.No.6509/C75/CID/2012 dot.03.05.2013 directed to enquire into the complaint and the S.P. of Anantapur, in turn entrusted said enquiry to the SHO, Puttaparthi Urban Police Station, who is loyal to Ratnakar and therefrom as a counterblast to the complaint given by him with an intention to extricate himself from the clutches of penal law, by utilizing one Sai Prasad-the defacto-complainant, belongs to Scheduled Caste Community, got lodged a report against him resulting in the present crime. The main purpose of registering the above FIR was to see that he should withdraw all his allegations against the huge defalcation of funds committed by Ratnakar and further to see that the cyber crime should reach its logical conclusion. It is

relevant to mention here that the complainant viz; Sai Prasad is a stranger to him and he has been set up by Ratnakar to drag him into the above said false case, without there being any incident as alleged. Having been aggrieved by registration of FIR No.36 of 2013, he approached the High Court and got filed W.P.No.29549 of 2013 seeking to quash the proceedings in FIR No.36 of 2013 on 09.10.2013. Except registering the crime, the police have not moved an inch to proceed with the investigation even after a lapse of about one year. Hence, the Writ Petition.

6. From the above, the petitioner in the quash petition and the writ petition sought for quash proceedings of Cr.No.36 of 2013 i.e. at the pre-charge stage from the police final report taken cognizance and also to entrust the investigation to CBCID or CBI in Cr.No.61 of 2013 registered on his report against Ratnakar among others if any.

7. The learned counsel for the self same petitioner in both the matters reiterated the grounds in the petitions during the course of hearing with reference to the facts supra. Whereas, the learned Govt. Pleader for Home and the learned counsel for the unofficial respondents in the writ petition opposed in seeking to dismiss.

8. The learned Public Prosecutor and the learned counsel for the defacto-complainant in the quash petition sought for dismissal of the same saying the investigation is fair and several

allegations made by the petitioner in the quash petition and the writ petition are false and baseless.

9. Undisputedly from the police final report of the crime chargesheet was filed and cognizance was taken. Even from the averments, there is a wound certificate of the defacto-complainant for the injury claimed sustained by the defacto-complainant and so far as abuses in public view if any concerned, whether it attracts or not from the investigation material of the provisions of the Special Act Section 3 is a matter from the case material before the trial Court.

10. A perusal of the para-11 case diary filed in USR No.5802/dt.04.10.2017 shows there are allegations. Once such is the case, this Court is not in a position to readily quash the proceedings against the petitioner but for left open the defence of the petitioner before the trial Court including in the course of hearing before charges if at all seeking for discharge. It is made clear that for such recourse, the disposal of the quash petition will not come in that way and influence the trial Court.

11. So far as the investigation of Cr.No.61 of 2013 by the CBCID or CBI concerned, in view of the allegations referred supra of the so called influence by Ratnakar on the local police and from the expressions of the Apex Court in Vinay tyagi Vs. Irshad Ali @ Deepak¹ where the distinction between re-investigation and further investigation also laid down in saying

¹ (2013) 5 SCC 762

only the Magistrate Court or Special Judge concerned, where the investigation of a crime pending can ask for any further investigation but has no right to order re-investigation and re-investigation can be ordered only by the constitutional Courts either invoking Section 482CrPC or Article 226 of the Constitution of India.

12. As fairness of investigation is also one of the important aspects in detecting the crime and filing of final report and there is a cloud as to any final report is filed so far as Crime No.61 of 2013 from no clarity even from the submission of both sides, this Court feels it to subserve the ends of justice, the Addl. Director General of Police, CBCID, State of Andhra Pradesh be directed to call for the records of Cr.No.61 of 2013 by virtue of this order from the local police whether it is pending investigation or if any final report is filed and re-investigate the case including on the part of investigation already done if any by its verification to file final report thereafter.

13. Accordingly and in the result, the quash petition (Crl.P.No.3661 of 2015) is disposed of and the Writ Petition (W.P.No.32336 of 14) is allowed. Consequently, miscellaneous petitions pending in both the petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.01.2018
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