THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.39896 of 2018

<u>O R D E R:</u>

In the present writ petition, petitioner is praying for a writ of Mandamus, seeking a direction to the respondents to tag on (1) FIR No 541 of 2018, on the file of Chandanagar Police Station; (2) FIR No 768 of 2018, on the file of Mailardevpally Police Station; (3) FIR No 643 of 2018, on the file of Ramachandrapuram Police Station to FIR No 710 of 2018, on the file of Kukatpally Police Station and to *set aside* all the Prisoner Transit Warrants issued against the Petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Home for the respondents.

3. According to the petitioner, he is the Director of M/s.Furture Maker Life Care Global Marketing Private Limited, a Company registered under the Companies Act, 1956 having its registered office in Hissar, Haryana State and is engaged in online sale of Agricultural, Horticulture, Forest Products and Grains.

4. On the complaint of one Mr.Javed, resident of Kajaguda, Kookatpally Police registered FIR No 710 of 2018 against the petitioner herein under Section 420 I.P.C on 30.08.2018. In the said complaint dated 30.08.2018, respondent No.10 stated as follows:

> "On 27,08.2018 I saw the classifieds in times of India news paper in which it was mentioned an advt about (LIFE, turning opportunity to earn income 20k to 10 lakhs per month. For further details Please call 9052402767/8919140099). Thereafter I contacted one of the given number 8919140099 over phone and one Mr Rajesh spoken to me and asked to come to Kukatpally. I met him at Kukatpally he informed that they were selling medicines and clothes at their FMLC Company Ameerpet for cheaper rates and asked me to visit their office at Ameerpet. Thereafter he

called me several other times from several other numbers. On that I went to purchase clothes but there I could not find anything but the said Rajesh came to me and informed that they would sell clothes and medicines only to the persons who joined in their schemes. I did not show any interest to the proposal of that person, but he kept on called me to join and requested atleast to attend their seminar to be held at Maitrivanam, Ameerpet. I agreed to attend their seminar.

On 28.08.2018, I went to Ameerpet where he took me to their seminar. In the seminar, it was explained that their company name is FMLC Global Marketing Marketing Pvt Ltd which is a registered company. The joining fee of the scheme is Rs.2,500/- for which they give Rs.2,500/- every month and clothes and medicines are given for the remaining amount. If we join some other persons in to the scheme, on every join of one person they would give Rs 2500/- credit in our account and a person can join any-number of persons in to the scheme and if our down downline member joins a new members, Rs 500/- would be credited to our account which can be given converted into cash once in a month and he also given his company account number of HDFC Bank A/C No:50200027077508, IFSC Code; HDFC 0000155 to deposit the joining fee. Their company head office, is at Hissar, Haryana State. Thereafter he gave success stories of persons who are earning lakhs of rupees as commission per month. After seminar, they have enrolled huge number of persons from the attendees meeting. So far nearly hundreds of persons joined into the scheme and huge amounts were collected from the public (as claimed in the seminar). With the inducement and promise that their amount would be returned within three months. The Scheme is so attract that Rs.2,500/- p.m is givben upto 24 months if a member pays Rs.7,500/- one time. It appears that it is highly impossible to give Rs.60,000/- for Rs.7,500/-. But, this inducement has been attracting several gullible public and under this false promise and inducement, the company has collected crores of rupees from the general public in and around cyberabad. Immediately, I recognized the scheme as illegal money circulation scheme and the scheme is nothing but cheating the promoters are deliberately knowing well that it is not workable still inducing public and cheating them by collecting huge amounts from them. On verifying the address of the phone number 8919140099 1 came to know that the said phone number belongs to Rajesh, R/o Kukatpally.

Hence, 1 pray that the Inspector of Polilce, P.S.Kukatpally, Cyberabad may be pleased to initiate criminal action the promoters and members of FMLC Global Marketing Pvt Ltd for promoting illegal money circulation and save the gullible public from cheating."

5. According to the petitioner, the said complaint which resulted in registration of FIR.710 of 2018 is a false implication and he never committed any offence as alleged under Sections 420 I.P.C and Sections 326 of PCMCS Act.

6. On 07.09.2018 polise arrested the petitioner and another and they were remanded to Judicial custody and the concerned Court had given police custody for 5 days, from 15.09.2016 to 20.09.2018. Police filed second application on 30.09.2018 in Cr.No.710 of 2018 for extension of police custody and the Court of the Assistant Sessions Judge, Ranga Reddy, dismissed the same.

7. The grievance of the petitioner precisely in the present writ petition is that the police authorities have registered a number of cases on the same allegations for the said same alleged offences. According to the petitioner, the Cyberabad Police authorities have registered the following four crimes so far:

(1) Crime No.710 of 2018 dated 30.08.2018 under Sections 420 I.P.C and 326 of PC and MCSBA Act, on the file of Kookatpally Police Station.

(2) Crime No. 541 of 2018 dated 04.09.2018 under Section 420 I.P.C and 326 of PC and MCSBA Act on the file of Chandanagar Police Station.

(3) Crime No 768 of 2018 dated 14.09.2018 under Section 420 I.P.C and 406 read with 34 I.P.C and 326 of PC & MCSBA Act, on the file of Mailardevpally Police Station;

(4) Crime No. 643 of 2018 under Section 420 and 406 I.P.C read with 34 I.P.C and 326 of PC & MCSBA Act, on the file of Ramachandrapuram Police Station. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

8. The sum and substance of the case of the petitioner, as presented by the learned Senior Counsel Sri P.Gangaiah Naidu appearing for the

counsel on record for the petitioner, is that all the complaints are on the same lines and with the same set of allegations, as such, all the later complaints which have been registered subsequent to Crime No.710 of 2018 are required to be considered as the statements under Section 162 of the Code of Criminal Procedure.

In support of his submission and contentions, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in *T.T.ANTONY VS STATE OF KERALA & ORS*[1] and the Judgment of this Court in *AKBARUDDIN OWAISI VS. THE GOVERNMENT OF ANDHRA PRADESH AND ORS*[2].

9. On the other hand, it is vehemently contended by the learned Government Pleader appearing for the official respondents herein that the contention advanced by the learned Senior Counsel on behalf of the petitioner cannot be sustained in the eye of law and the question of treating the subsequent FIRs as statements under Sections 161 and 162 of Code of Criminal Procedure does not arise as the complainants in the subsequent cases are different people and the allegations pertain to different transactions with the respective complainants.

In support of his submissions and contentions, learned Government Pleader placed reliance on the judgment of a Division bench of this Court in *JAKIR HUSSAIN KOSANGI AND ORS. VS. STATE OF ANDHRA PRADESH AND ORS*[3].

10. In the light of the above facts and circumstances and the contentions of the learned Senior Counsel for the petitioner and the learned

[1] (2001) 6 SCC 181
[2] 2013 (2) ALD (Crl) 855 AP
[3] 2018 (4) ALD 180

Government Pleader, the following issues emerge for consideration of this Court:

> "1. Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India? and
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> 2. Whether the subsequent FIRs can be directed to be treated as statements under Sections 161 and 162 of the Code of Criminal Procedure?

11. In the considered opinion of this Court, the issues raised by the petitioner herein is no longer *res integra* and in fact after elaborately considering the similar contentions advanced, a Division Bench of this Court while referring to the Judgments cited now on behalf of the petitioner herein, in *JAKIR HUSSAIN KOSANGI AND ORS (supra 3),* at Paragraphs 50, 51, 52, 55, 56, 58, 60 and 61 to 68, held as under:

> "50. From the above table, it could be seen that the cases in which the validity of multiple FIRs was raised, fell at lease into six categories, such as - (1) murder/attempt to murder; (2) mob violence leading to destruction of property, murder and/or encounter; (3) theft/dacoity; (4) abuse of official position, adoption of corrupt practices and amassing of wealth; (5) hate speech; and (6) companies receiving deposits from innumerable persons and there after defaulting in repayment. Out of the 21 cases listed above, 5 cases alone relate to non-repayment of deposit money by finance companies. In all these five cases where innumerable complaints were lodged by depositors, the Supreme Court did not choose to interfere. Therefore, the decision of the Supreme Court in TT Antony on which heavy reliance is placed by the counsel for the petitioners cannot go to the rescue of the petitioners.
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> 51. Despite the fact that the decision of the Two Member bench in T.T. Antony was not taken note of in (i) Narinderjit Singh Sahni, (ii) State of Punjab v. Rajesh Syal and (iii) Pramod Kumar Saxena, it is clear that in all those 3 decisions, the Supreme Court was concerned with the cases of persons who collected money from innumerable persons but failed to repay the same. The decision in T.T. Antony arose out of offences relating to Law and Order, Public Order and the Police Firing.
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> 52. When the offences alleged against the writ petitioners in the present batch of cases relate to collection of deposits and failure to repay, the ratio decidendi in (i) Narinderjit Singh Sahni, (ii)

Rajesh Syal and (iii) Pramod Kumar Saxena alone would apply and not the ratio in T.T. Antony.

55. The decision in Akbaruddin Owaisi arose out of a single cause of action, if we may borrow the said expression from the Civil Law. A single speech propagated or published or televised or publicised in different places cannot result in the prosecution of the individual in different Courts since the transmission of a single message cannot tantamount to different acts of crime. We must also point out at this stage that while the learned Judge, in his decision in Akbaruddin Owaisi, took note of T.T. Antony, S. Khushbu and M.F. Hussein, he did not take note of the decisions of the Supreme Court in Narinderjit Singh Sahni, Rajesh Syal and Pramod Kumar Saxena. Therefore, we do not think that the decision rendered in a case relating to a single act of crime committed by an individual, which, when propagated or publicised, is taken advantage of by several individuals to witch-hunt the person, cannot apply to a case where innumerable persons are alleged to have been cheated at different places at different points of time. To say that the offences committed against all those persons are punishable under the very same provisions and that therefore there cannot be multiple FIRs would be equivalent to saying that a person committing a series of thefts in several places cannot be made to face separate prosecutions in respect of each act of theft committed against different individuals at different points of time.

56. Unfortunately, the decisions of the Supreme Court in (1) Narinderjit Singh Sahani (2) Rajesh Syal and (3) Promod Kumar Saxena were not cited before the learned Judge in Akbaruddin Owaisi. As a consequence, the learned Judge opined in Paragraph-21 of his decision in Akbaruddin Owaisi that the declaration of law in TT Antony had not been diluted in any subsequent judgments of the Supreme Court even though exceptions were carved out.

58. It may be of interest to note that in Akbaruddin Owaisi a forceful argument was made against the prohibition of a second FIR on the ground that if the information provided by the de facto complainants in the second or subsequent FIRs are treated only as a statements under Section 162 of the Code, it may be possible for the State to withdraw the prosecution without the knowledge or objection from the victim, leaving the victim in the lurch. But, the said argument was rejected by the learned Judge in Akbaruddin Owaisi in paragraphs 34 and 35 of the report on the ground that there is no prohibition in the law even for an informant or complainant or an initiator of criminal prosecution to object to the withdrawal of a complaint by the State.

60. Therefore, the decision of the Single Judge of this Court in Akbaruddin Owaisi, which arose out of registration of multiple FIRs in relation to a single speech, can have no application to the cases on hand. Actually there are enough and more indications to this effect in the very judgment itself.

61. It appears that the contentions, same as those raised before us by the petitioners, found favour with a learned Judge of the Madras High Court in Viswapriya (India) Ltd. v. Government of Tamilnadu and Others (MANU/TN/2482/2015 : 2015 3 MLJ (Crl) 385). In that case two companies against which criminal complaints were registered for offences under the IPC as well as under the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 filed Writ Petitions challenging the registration of complaints as without jurisdiction. The challenge was on several grounds namely (1) that the Deputy Superintendent of Police of the Economic Offences Wing of the police had no power to investigate offences under the special enactment; (2) that the police have no power to investigate offences relating to incorporated companies; and (3) that it is only the Competent Authority under the special enactment who will be entitled to investigate into such offences. But all these contentions were negatived by the learned judge of the Madras High Court. The last contention was that there cannot be multiple FIRs. This contention was raised on the strength of the decision of the Supreme Court in T.T Antony. This contention was accepted by the learned Judge of the Madras High Court and a direction was issued to the police not to register any fresh FIRs but to treat all further complaints as statements under Section 161 of the code.

62. Interestingly, the complaints against both the companies in the case before the Madras High Court was also that both these companies collected deposits from the public and failed to repay them and that several depositors filed complaints all over the country.

63. But, the learned judge of the Madras High Court did not take note of any of the decisions of the Supreme Court, both before and after T.T Antony. We have analysed all the decisions of the Supreme Court on this question, starting from Ram Lal Narang up to Yanab Sheikh @ Gagu, delivered over a span of about 35 years. Therefore, the decision of the Madras High Court based solely upon TT Antony, with great respect, does not lay down the correct law.

CONCLUSION:

64. As we have pointed out earlier, in almost all the five decisions of the Supreme Court where finance companies and its directors were accused of collecting deposits and not repaying them, the Supreme Court did not adopt the same view as adopted in T.T Antony. Though in V.K Sharma and P.K Sharma the Supreme Court granted a small reprieve, the Supreme Court did not grant the reliefs that the petitioners have sought in these writ petitions. It must be pointed out that a staggering amount of nearly Rupees seven thousand crores was admittedly due, when the first PIL was filed. The number of depositors to whom such a huge amount was due from Agri Gold group of companies and Akshaya Gold, was about 32 lakhs of people. These companies had branches in several places. The depositors, who invested money in various branches, have independent causes of action.

65. Therefore, the prayer made by the petitioners to treat the earliest complaint registered against them as the First Information Report and to treat all subsequent complaints as statements under Section 161/162 of the Code, cannot be granted. Similarly, no Court can issue a mandamus directing the Station House Officers of all the police stations within the jurisdiction of the High Court not to register any further FIR, as the same would also tantamount to a restriction upon the victims of such a huge scam from taking recourse to lawful remedies.

66. On the question as to whether there could be a trial of hundreds of criminal complaints and as to how the accused could be subjected to so many trials, the answer is not far too difficult to seek. In so far as the States of Andhra Pradesh and Telangana are concerned, there is a special enactment known as The Telangana/Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. The Act contemplates the constitution of a Special Court under Section 6(1). Under Section 6 (2), no Court including a Court constituted under the Insolvency Laws, other than a Special Court shall have jurisdiction in respect of any matter to which the provisions of the Act apply. Under sub-section (3) of Section 6, any pending case in any other Court to which the provisions of the Act apply, shall stand transferred to the Special Court. The Act has been given overriding effect upon the other laws, under Section 14, which states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In fact, under Section 13 (1), the Special Court constituted under this Act can take cognizance without the accused being committed to it for trial.

67. The only area, which may be a grey area, is that after the bifurcation of the State into two, there will be Special Courts in both the States of Telangana and Andhra Pradesh and both may have concurrent jurisdiction. But as and when an appropriate occasion arises, the High Court can interfere at that stage to transfer all cases to the Special Court in any one of the two States. The occasion for exercise of that power has not arisen so far.

68. Therefore, the petitioners are not entitled to any relief and the writ petitions are liable to be dismissed. However, for the purpose of facilitating the investigating agencies to get a clear and comprehensive picture of the range and width of the offences allegedly committed and to trace the trail of money, the State Governments may consider the constitution of a special wing in each of the two States and notifying them under Section 2 of the Code of Criminal Procedure, 1973, so that all FIRs pending all over the two States could be transferred to a single agency and dealt with conveniently. With these observations, the writ petitions are dismissed”

12. It is also significant to note that in *JAKIR HUSSAIN KOSANGI AND ORS (supra 3),* at paragraph 68, this Court held as follows:

> "68. Therefore, the petitioners are not entitled to any relief and the writ petitions are liable to be dismissed. However, for the purpose of facilitating the investigating agencies to get a clear and comprehensive picture of the range and width of the offences allegedly committed and to trace the trail of money, the State Governments may consider the constitution of a special wing in each of the two States and notifying them under Section 2 of the Code of Criminal Procedure, 1973, so that all FIRs pending all over the two States could be transferred to a single agency and dealt with conveniently. With these observations, the writ petitions are dismissed."

13. While referring to the said paragraph of the Judgment, it is the submission of the learned Senior Counsel that a special Economic Offence Wing (EOW), CCS, Cyberabad has already been constituted and the same may be directed to conduct investigation into the other FIRs also.

14. In view of the law laid down by Division Bench of this Court in the above referred Judgment in *HUSSAIN KOSANGI AND ORS (supra 3),* to the extent of the relief prayed for a direction to consider all the subsequent FIRs as statements under Section 161 and 162 of the Code of Criminal Procedure, this writ petition fails. However, the respondent authorities may consider transfer of FIR No.541 of 2018, on the file of Chandanagar Police Station, FIR.No.643 of 2018, on the file of Ramachandrapuram Police Station and F.I.R.No.768 of 2018, on the file of Mailardevpally Police Station and other FIRs if any in this connection, within the limits of Cyberabad Commissioenrate to the special Economic Offence Wing (EOW), CCS, Cyberabad.

15. Accordingly, the writ petition is disposed of. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs

A.V.SESHA SAI, J

Date:27.11.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.39896 of 2018

Dated:27.11.2018

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