

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7488 of 2017

ORDER :

As per the submission of Sri Y.Srinivasa Murthy, learned counsel, representing Sri M.V.Hanumantha Rao, learned counsel for the petitioner, the prayer in the criminal petition to direct the learned Magistrate to dispose of CrI.M.P.No.1246 of 2017 is complied with after filing of the criminal petition and no further relief required and that the matter has become infructuous.

2. Recording the said submission, the criminal petition is dismissed as infructuous.

Miscellaneous petitions pending, if any, shall stand closed.

23rd January 2019

mar

Dr. B. SIVA SANKARA RAO, J

CRIMINAL PETITION No.5223 of 2018**ORDER :**

The only grievance in this criminal petition is despite the order of the learned Magistrate in Crl.M.P.No.836 of 2014, dated 02.012.2016, the accused are not appearing for every adjournment and Court is taking lightly.

In fact, the order of the Court is very clear for their future personal appearance and that is reiterated in the para 4 of pages 4 and 5 of the order, dated 05.09.2017, in Crl.M.P.No.1246 of 2017, as it is the duty of the Court to implement its own order. Thereby, the lower Court is directed to do so.

Accordingly, the criminal petition is disposed for no more orders required.

CRIMINAL PETITION No.10343 of 2017**ORDER :**

The petitioner is the *de facto* complainant and respondent Nos.1 to 5 are the accused in C.C.No.397 of 2015 on the file of the IV Additional Junior Civil Judge-cum-XXV Metropolitan Magistrate, Kukatpally.

Impugning the order, dated 05.09.2017, passed in Crl.M.P.No.1246 of 2017 in the pending C.C. supra, by the learned Metropolitan Magistrate dismissing the application filed under Section 340 Cr.P.C. to initiate as per the private complaint procedure

proceedings against the accused for the offence under Section 195 IPC, the present revision is filed.

Heard both sides and perused the grounds vis-à-vis the impugned order.

The factual matrix relevant only for the purpose of the petition... is that among the six accused in the C.C. supra, taken cognizance for the offences punishable under Sections, 420, 423 and 425 IPC, after the accused were summoned , A.2 to A.6 filed Crl.P.no.2147 of 2016 in this High Court seeking to quash C.C.No.397 of 2015 proceedings and the same was disposed of on 22.02.2016 by dispensing with the presence of the petitioners/A.2 to A.6 unless specifically directed by the trial Court for their appearance and it is consequent to that order of this Court, there was a direction for the appearance of A.2 to A.6 personally on 21.10.2016, against on 09.11.2016 and 02.12.2016 and for their failure to attend Non-bailable Warrangs (NBWs) issued against them and impugning the said NBWs by seeking its recall they moved petition under Section 70(2) Cr.P.C. in Crl.M.P.No.836 of 2017 and order dated 06.04.2017 passed by the Court saying NBWs cancelled on furnishing personal bond for a sum of Rs.5,000/- with two sureties in a like sum and shall appear without any default shall be remanded to judicial custody. These facts not in dispute. One of the contentions of the *de facto* complainant is that there is no service of notice on the application for recall of the warrants. Same is in fact no mandatory and on that ground, the

application under Section 70(2) Cr.P.C. allowed cannot be set aside, much less allowed to be impugned.

Coming to the other submission with contention is signature of the accused persons in the memo of appearance filed by them no way tallied with the signature on the warrant recall petitions and there is fabrication of signatures. Thereby, they are liable for the offences committed affecting the administrative of justice. The petition with these facts filed to initiate the proceedings under Section 340 Cr.P.C. against A.2 to A.6 was opposed by them by their counter before the lower Court of the impugned order, that they filed the application for recall of the warrant that was allowed within its discretion and for which no notice is mandatory to the *de facto* complainant and the contentions are untrue and the petition is liable to be dismissed.

The counter no way specifically answered about so-called impersonation of the signatures concerned. The impugned order of the lower court with reference to the pleadings supra in determining as to whether the proceedings under Section 340 Cr.P.C. can be initiated against A.2 to A.6 observed that they are not disputing the signatures available on the warrant recall petition filed under Section 70(2) Cr.P.C. and also their appearance before the Court on the date and thereby there is no prima facie material to initiate enquiry under Section 340 Cr.P.C. Learned counsel for the petitioner/ *de facto* complainant impugned the same, as untenable and the learned counsel

for the accused are supporting the said order from hearing both sides and perusal of the material.

In fact, Section 340 Cr.P.C. speaks of the procedure in cases mentioned in Section 195 Cr.P.C. that (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

From this, it is crystal clear that the Court has to form an opinion as to expedient in the interests of justice for any enquiry to be made into the allegation and then if come to the conclusion as contemplated supra in its discretion after such preliminary enquiry as it thinks fit record a finding or as make a complaint etc., The Apex Court's Three-Judge Bench expression in this regard in ...2005 categorically observed reiterating the earlier expression of 1998 SC that it is purely the judicial discretion to cases where its expedient in the interests of justice so to do and not as a matter of course nor merely because a party not so to do. It also expedient that if the

document forged in the Court proceedings, the Court has to initiate proceedings and if it is a document already forged out side the Court and used in Court proceedings the party aggrieved may maintain a private complaint as contemplated by Section 195 Cr.P.C. without need of initiation of proceedings by preliminary enquiry under Section 340 Cr.P.C. by the Court. Even the latest Two-Judge Bench expression of 2016 CrL LJ 1090 in ...v. NCT Delhi, it is observed that the expression shall substitute by 'may' in Section 340 Cr.P.C. by 1973 Cr.P.C. and thereby it is not mandatory for Court to recall and finding, after immediately enquiry, regarding commission of offence prejudgely allotted under Section 195 IPC hub of the opinion as to whether offence should be duly enquired into. It is observed that the stand taken by the appellant does not attract the offence prejudging under Section 193 IPC and thereby the order directing filing of application under Section 340 Cr.P.C. by the learned Magistrate held liable to be quashed. It clearly indicates therefrom that a prima face offence to be made out even for the Magistrate to initiate proceedings by filing complaint or directing any subordinate to file a complaint as contemplated by sub-section 2 and 3 of Section 340 Cr.P.C. on such enquiry contemplated by sub-section (1) of Section 340 Cr.P.C. Here, as observed supra, it is not even the case that the signatures put up by the petitioners in the warrant recall petition in the Court and submitted to the Court to say as part of the forgery in the Court proceedings before the Court, much less in any Court record, but filed with forged

signatures the document before the Court. Once such is the case, remedy is as observed in Iqbal Singh M... also left open to the aggrieved *de facto* complainant herein to file a private complaint subject to compliance under Section 195 Cr.P.C. that resort to Section 340 Cr.P.C. However, that is not observed by the Magistrate of not chosen to initiate proceedings as not in the expedient in the interests of justice even a finding given by taking any ordeal of ...of the signature at least *prima facie* for forming only as to the signature on the warrant recall application of A.2 to A.6 or forged or genuine with ..signature of them in the Court if any, if not chosen to take specimen signatures to move at that ...reply to ..if at all under Section 340 Cr.P.C. if simply dismissed the application by saying the accused are not disputing when the complaint averments is accused forged their signatures, the question of their disputing its own order and dismissal of the application on that in a ... by the lower Court thereby ...the Court either choose to enquire or not choose to enquiry by left open remedy to the complainant to file a private complaint and did not choose to take any of the such recourse available for its satisfaction of the expedient in the interests of justice if at all to invoke Section 340 Cr.P.C.

Having regard to the above, the criminal petition is allowed and the impugned order is set aside and the matter sent back to the lower Court to re-determine within the scope as observed *supra* on own merits.

