

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.10343 of 2017

% Dated 23.01.2019

Movva Ramakrishna, S/o.M.V. Raghavaiah,
Aged about 58 years, R/o.1-1-336/39/1, Vivek Nagar,
Chikkadapally, Hyderabad.

....Petitioner

VERSUS

\$ Sri Kommareddy Rambabu, S/o.Sri Sadasiva Rao,
Aged: about 56 years, Business,
Residing at 205, Metro Residency,
Raj Bhavan Road, Hyderabad and five others.

... Respondents

! Counsel for Petitioner : Sri T.M. Santhi Kumar

^ Counsel for Respondents : Public Prosecutor (TS)

Sri Balaji Medamalli

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2005 (2) Crimes 11 (SC)
2. 1998 (2) SCC 493
3. 2016 Cri.L.J. 1090

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**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 calendar case 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 petition is filed.

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

3. The factual matrix relevant only for the purpose of the criminal petition is that among the six accused in the calendar case 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, again on 09.11.2016 and 02.12.2016 and for their failure to attend, Non-bailable Warrants (NBWs) were issued against them and impugning the said by 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 on every date of hearing without any fail, in 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 not 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.

4. 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 signatures on the warrant recall petitions and there is fabrication of signatures and thereby, they are liable for punishment for the offences committed affecting administration of justice. The petition with these facts filed to initiate proceedings under Section 340 Cr.P.C. against A.2 to A.6 was opposed by them by their counter before the lower Court for the impugned order, that they filed the application for recall of the warrant that was allowed by the Court 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.

5. 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.

6. 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.

7. From this, it is crystal clear that the Court has to form an opinion as to it is 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 make a complaint etc., The Apex Court's Three-Judge Bench expression in this regard in **Iqbal Singh Marwah and another v. Meenakshi Marwah and another**¹ categorically observed, reiterating the earlier expression of **Sachidanand Singh v. State of Bihar**², that it is purely the judicial discretion to exercise where its expedient in the interests of justice so to do and not as a matter of course nor merely because a party seeks so to do. It also explained that if the document forged in the Court proceedings, the Court has to initiate proceeding and if it is a document already

¹ 2005 (2) Crimes 11 (SC)

² 1998 (2) SCC 493

forged out side the Court and used in Court proceeding the party aggrieved may maintain a private complaint as contemplated by Section 195 Cr.P.C. without need of initiation of the proceedings by preliminary enquiry under Section 340 Cr.P.C. by the Court. Even the latest Two-Judge Bench expression of the Apex Court in **Prem Sagar Mahocha v. State (NCT of Delhi)**³, it is observed that the expression shall substituted by 'may' in Section 340 Cr.P.C. by 1973 Cr.P.C. and thereby it is not mandatory for Court to record a finding, after preliminary enquiry, regarding commission of offence of perjury alleged under Section 195 IPC, hub of this provision is only formation of 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 of perjury under Section 193 IPC and thereby order directing filing of complaint under Section 340 Cr.P.C. by the learned Magistrate held liable to be quashed. It clearly indicates therefrom that a prima facie offence to be made out even for the Magistrate to initiate proceedings by filing a complaint or directing any subordinate to file a complaint as contemplated by sub-sections 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 by the petitioners/accused 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

³ 2016 Cri.L.J. 1090

Court record, but filed with forged signatures the document before the Court. Once such is the case, remedy is as observed in Iqbal Singh Marwah supra also left open to the aggrieved *de facto* complainant herein to file a private complaint subject to compliance under Section 195 Cr.P.C. without resort to Section 340 Cr.P.C. However, that is not the observation of the Magistrate of not chosen to initiate proceedings as not expedient in the interests of justice nor even any finding given by taking any ordeal of comparison of the signatures at least prima facie for forming opinion as to the signatures on the warrant recall application of A.2 to A.6 are forged or genuine with available signatures of them in the Court, if any, if not chosen to take specimen signatures to subscribe by them, which is a pre-requisite in the enquiry if any contemplated if at all under Section 340 Cr.P.C. However, simply dismissed the application by saying the accused are not disputing when the very complainant's averment is accused forged their signatures, the question of their disputing does not arise and dismissal of the application on that in a slipshod manner by the lower Court thereby unsustainable. The Court either choose to enquire or not choose to enquire by left open remedy to the complainant to file a private complaint and did not choose to take any of the such recourses available for its satisfaction of the expedient in the interests of justice if at all to invoke Section 340 Cr.P.C.

8. 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 of observation supra, on own merits.

Miscellaneous petitions pending, if any, shall stand closed.

23rd January 2019

Dr. B. SIVA SANKARA RAO, J

L.R. copy to be marked – Yes.

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