

HONOURABLE JUSTICE G.SRI DEVI

CRL.R.C.Nos.1894 and 2594 of 2014

COMMON ORDER:

These two Crl.R.C.Nos.1894 and 2594 of 2014 have been filed by A-1 and A-2 respectively against the orders, dated 02.04.2014, passed by the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, in Crl.M.P.Nos.40 of 2014 and 61 of 2014 in S.C.No.456 of 2013, whereby the learned Sessions Judge, dismissed both the petitions seeking to discharge them from the offences alleged against them in the said S.C.No.456 of 2013.

The facts, in brief, are that the 2nd respondent/complainant filed a private complaint against the revision petitioners/ A-1 and A-2 stating that he is running an Electrical Shop under the name and style of "Sairam Electricals" at Sagar Road, Ibrahimpatnam Village. On 14.03.2004 at about 9.00 P.M., the 2nd respondent was returning back to his house in his Maruthi Van and when he reached near Tirumala Nursing Home, Ibrahimpatnam, three persons came from his backside on a Hero Honda Motor Cycle and dashed against his Maruthi Van on its right side, on account

of which, the person, who was riding the Hero Honda Motor Cycle has received simple injuries to his arms. It is further stated that when the 2nd respondent stopped his Maruthi Van, the said three riders of the Hero Honda Motor Cycle disclosed their identity as Police Constables and abused the 2nd respondent as if he was at fault and an altercation took place between them and that the Police Constables threatened the 2nd respondent with dire consequences of killing him in an encounter and then the 2nd respondent left the place out of fear towards his house. Thereafter, some Police Constables came to the house of the 2nd respondent and forcibly took him to the police station, Ibrahimpatnam, in spite of the requests made by the wife of the 2nd respondent and neighbours and after reaching the Police Station, both the revision petitioners/A-1 and A-2, who were working as Inspector of Police and Sub Inspector of Police, removed his clothes and beat him with hands and shoes brutally, as a result of which, the 2nd respondent received injuries all over his body and bleeding injury on the bottom of left ear and that his baniyan was totally drenched with blood and thereafter the

revision petitioners/A-1 and A-2 asked the 2nd respondent to clean the blood and wash the baniyan and ultimately freed him at about 1.00 A.M. midnight on 15.03.2004. It is also stated that after reaching the house, the 2nd respondent fell unconscious and he was taken to Chaitanya Nursing Home, wherein he was examined by Dr.Sadasiva Reddy and on account of seriousness of injury, he was shifted to Aware Super Speciality Hospital, Bairamalguda, Hyderabad and Dr.Srimannarayana attended on him and sutured the lacerated injury over the left ear and that he was discharged on 18.03.2004 and the treatment was recorded as M.L.C. Register No.235 and that the 2nd respondent incurred Rs.8,618/- towards hospital bill and medicines. Since the senior police officials have not taken the complaint even though the Media flashed the incident, the 2nd respondent filed a private complaint against the revision petitioners/A-1 and A-2. After recording the sworn statements of the 2nd respondent, his wife and the doctors, who treated the 2nd respondent, the learned Judicial First Class Magistrate, Ibrahimpatnam, has taken cognizance of the said private complaint against the revision

petitioners/A-1 and A-2 for the offences punishable under Sections 2 (d) and 30 of the Human Rights Act and Sections 324 and 342 of the I.P.C., and numbered as P.R.C.No.23 of 2004 and on committal, the Metropolitan Sessions Judge, Cyberabad-cum-I-Additional Sessions Judge, Ranga Reddy, Designated Human Rights Court, numbered the same as S.C.No.456 of 2013.

During the pendency of the aforesaid Sessions Case, the revision petitioners/A-1 and A-2 filed two separate petitions seeking to discharge them for the offences alleged against them in said Sessions Case. *Vide* separate orders, dated 02.04.2014, the learned Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, had dismissed the said petitions. Aggrieved by the same, the present Criminal Revision Cases have been filed by the revision petitioners/A-1 and A-2.

Heard the learned Counsel appearing on either side and perused the material available on record.

Sri P.Venugopal, learned Senior Counsel appearing on behalf of Sri M.Venkat Ram Reddy, learned Counsel for the

revision petitioners submits that since there is no prior sanction of the Government, under Section 197 Cr.P.C., to prosecute the revision petitioners, taking cognizance of the private complaint by the learned Magistrate itself is not proper and therefore, no charge can be framed against the revision petitioners/ A-1 and A-2. In support of the said contention he relied on the judgments of the Apex Court in *Matajog Dobey v. H.C. Bhari*¹; *Pukhraj v. State of Rajasthan and another*²; *Shankaran Moitra v. Sadhna Das and another*³ and *D.Devaraja v. Owais Sabeer Hussain*⁴. It is also submitted that prior to the private complaint, the 2nd respondent-*de facto* complainant did not complain that the revision petitioners beat him. It is further submitted that in the discharge application itself, the revision petitioners have taken a ground that there is no prior sanction of the Government before taking cognizance of the case and since the allegations levelled against the revision petitioners are made when they were discharging their official duty, the sanction is necessary. It is

¹ AIR 1956 SC 44

² (1973) 2 SCC 701

³ (2006) 4 SCC 584

⁴ (2020) 7 SCC 695

further submitted that even though two crimes were pending against the 2nd respondent, the Court below gave a finding that no case is pending against the 2nd respondent and as such, the said finding is contrary to the facts on record. It is also submitted that the prayer of the 2nd respondent in his private complaint is only for the offences under Sections 324 and 342 of I.P.C., but at the time of taking cognizance, Section 2 (d) of Human Rights Act was referred. It is further submitted that the committal order should contain proper and valid reasons as to why the case is being committed to the Sessions Court, but on a reading of the committal order, it is clear that except stating the allegations, there is nothing indicates as to why the case was committed to Sessions Court. It is also submitted that the Human Rights Act provides State Human Rights Commission to deal with the situations, where the alleged violations of Human Rights have taken place. Without resorting the remedies available under the Human Rights Act, the 2nd respondent- *de facto* complainant made a complaint before the Magistrate and without appreciating the said fact, the learned Magistrate took cognizance, as if the

offence has taken place by violating the Human Rights and committed the case to the Sessions Court, who in turn, without appreciating the same, dismissed the discharge application, though the revision petitioners have raised the above ground in their discharge application. It is further submitted that the act done by a public servant in good faith is protected and exempted them for prosecution and since there is no sanction, the revisions have to be allowed.

Learned Assistant Public Prosecutor appearing for the 1st respondent-State contended that the offence committed by the revision petitioners is not while discharging their duties as public servants and, therefore, prior sanction under Section 197 is not necessary. He further contended that whether sanction was necessary or not, had to be decided keeping in mind the nature of the complaint, which, in this case was of physical torture and ill-treatment of the 2nd respondent-complainant, which could never be in exercise of official duty. He further contended that in any case whether sanction was necessary or not would have to be determined during the course of trial having regard to the

materials brought on record by the respective parties. He further contended that the complaint should not be nipped in the bud on the ground of want of sanction.

In *R.S.Naik v. A.R.Antule*⁵, the Apex Court held that “It is well settled that existence of a valid sanction is a prerequisite for taking cognizance by Courts. It is incumbent on the Courts before taking cognizance that they enquire whether there is a valid sanction to prosecute the public servant for the offences alleged to have been committed by him as public servant while discharging his duties.”

In *R.R.Chari v. State of U.P.*⁶ the Apex Court held that “a trial without a valid sanction where one is necessary has been held to be a trial without jurisdiction. Any case instituted without a prior sanction must fail. It is a manifest defect in the prosecution rendering the entire proceeding *void ab initio*”.

Since the revision petitioners are public servants, valid sanction is required to prosecute them. A perusal of the record

⁵ AIR 1984 SC 684

⁶ AIR 1962 SC 1573

would show that no prior sanction has been obtained before taking cognizance. In the absence of any such sanction, the trial Court had no jurisdiction to take cognizance of the case. Hence, the proceedings before the trial Court were void *ab initio* being without jurisdiction.

Apart from that, it is the case of the revision petitioners/A-1 and A-2 that what all happened are in the course of discharge of their official duty. Further, the record reveals that two cases were pending against the 2nd respondent/*de facto* complainant filed by third parties vide Crime No.46 of 2004, Ibrahimpatnam Police Station, registered for the offences punishable under Sections 337 and 327 of I.P.C., and Crime No. 47 of 2004, Ibrahimpatnam Police Station, registered for the offence punishable under Section 353 of I.P.C. Both the crimes were registered on 14.03.2004 at 22.00 hours. The private complaint was filed on 15.04.2004. Admittedly, the revision petitioners/A-1 and A-2 are police officials and at the time of alleged incident they were working at Ibrahimpatnam Police Station. Therefore,

the acts done by the revision petitioners are in connection with discharge of their official duty.

For the aforesaid reasons and having regard to the facts and circumstances of the case, this Court is of the view that it is clear that the act done by the revision petitioners regarding which, a criminal prosecution/proceedings have been initiated against them was intrinsically connected with discharge of their official and statutory duty. The protection under Section 197 of Cr.P.C. from prosecution is very much available to the revision petitioners/A-1 and A-2 as they are public servants and they could not have been prosecuted without prior sanction. The Investigating Officer committed legal error in submitting the charge sheet against the revision petitioners without obtaining prior sanction under Section 197 of Cr.P.C. from the authority concerned and the learned Magistrate has also committed legal error in taking cognizance of the aforesaid charge sheet in the absence of sanction order under Section 197 of Cr.P.C. The trial Court, without proper appreciation of material available on record, has mechanically passed the impugned order, which is *per*

se illegal. Therefore, this Court is of the view that the orders passed by the trial Court warrant interference of this Court.

Accordingly, both the Criminal Revision Cases are allowed, setting aside the orders, dated 02.04.2014, passed by the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, in CrI.M.P.Nos.40 of 2014 and 61 of 2014 in S.C.No.456 of 2013 and the revision petitioners have been discharged for the offences alleged against them in S.C.No.456 of 2013.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

25.02.2022
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