

HE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.4629 OF 2022

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner-Accused No.3 to quash the proceedings against him in C.C.No.2437 of 2022 pending on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad. The offences alleged against him are under Sections 3(1)(c), 5(1)(a), 2, 15 of Official Secret Act, 1923 read with 120-B of IPC.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent – State. Perused the record.

3. According to prosecution case it was revealed during investigation that Accused Nos.1 and 2(private person) colluded with Accused No.3 who worked as GM, Security Printing Press, Hyderabad from 14.09.2016 to 14.10.2018. The petitioner herein provided confidential information of day to day happenings in the press and the same was shared with accused Nos.1 and 2. According to the investigation, sharing of the said confidential information falls within offence punishable under the said provisions of Official Secret Act, 1923.

4. Learned counsel appearing for the petitioner would submit that there is a restriction imposed under Section 13(3) of Official Secret Act, 1923, which reads as follows:

"Restriction on trial of offences.—

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the 27 [Appropriate Government]) which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Sessions, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

*(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the 28 [Appropriate Government] 29 [***] or some officer empowered by the 27 [Appropriate Government] in this behalf: 30 [***]*

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in 31 [India] in which the offender may be found.

(5) In this section, the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government."

5. He further submits that the Criminal Court is prohibited from taking cognizance of any of the offence under Sections 3(1)(c), 5(1)(a), 2, 15 of Official Secret Act, 1923 except on a complaint made pursuant to an order by an officer authorised by the appropriate government. Since the charge sheet is filed in the present case, it does not fall within the definition of a 'complaint'. Accordingly, the cognizance is bad in law.

6. On the other hand, learned counsel for 2nd respondent and also Additional Public Prosecutor for the respondent No.1 would submit that there is a mention about the authorization which was given by the

concerned Government for investigation. The said authorization would suffice to enable the officer to file a charge sheet and accordingly same was done. For the said reason of authorization given by the Government and for investigation consequently filing the charge sheet would confirm to the provisions of section 13(3) of Official Secret Act, 1923, and it would not be a bar from the Court taking cognizance on the charge sheet. Learned counsel referred to Section 195 of Cr.P.C and argued that since the investigation officer of SIT has filed present complaint, it will amount to a public servant filing a complaint in writing. Since the charge sheet would be a complaint in conformity of Section 195 of Cr.P.C and also section 13(3) of Official Secret Act, 1923, the prosecution on basis of charge sheet should be allowed to proceed in the said Court and prayed to dismiss the petition.

7. Under Section 13(3) of Official Secret Act, 1923, the Courts are restrained from taking cognizance unless the complaint is made on a order or under any authority from the appropriate government. It is specifically mentioned under Section 13(3) of Official Secret Act, 1923, that a complaint has to be made and not a report.

8. A 'complaint' as defined under Section 2(d) of Cr.P.C., means any allegation made orally or in writing to a Magistrate for taking action in accordance with Cr.P.C., against a known or unknown person but does not include a 'Police report'. It is specifically mentioned that a complaint excludes a police report. Admittedly in the present case report was filed

under Section 173(2) of Cr.P.C. For which reason, the mandate under Section 13(3) of Official Secret Act, 1923, is not satisfied. The argument of the learned counsel appearing on behalf of respondents cannot be sustained in the said background.

9. Further, learned senior counsel appearing for the petitioner would submit that in fact no case is made out and has drawn the attention of this Court to the allegations in the charge sheet. According to the prosecution, revealing information of Security Printing Press amounts to offence under the Section 13(3) of Official Secret Act, 1923. Since there is a technical infirmity in taking cognizance, this Court is not inclined to get into facts of the case and decide whether such passing of such information by way of letter amounts to violation of the Section 13(3) of Official Secret Act, 1923.

10. In view of the aforesaid reasons, the Criminal Petition is allowed and accordingly, the cognizance taken by the XII Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.2437 of 2022, against the petitioner-Accused No.3, is set aside. However, the Police are not precluded from filing any appropriate complaint as referred under Section 13(3) of Official Secret Act, 1923, if so advised.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 05.01.2023
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