

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.5562 of 2019

ORDER:

1. **The** sole accused in C.C.No.32 of 2019 before the learned Judicial First Class Magistrate, Bhimadole, West Godavari District filed this criminal petition under Section 482 Code of the Criminal Procedure praying to quash the proceedings against him. The offences alleged against him are under Sections 417, 418 and 420 of Indian Penal Code. 1st respondent is the State. 2nd respondent is the Sub-Inspector of Police of Bhimadole Police Station who laid the police report/ charge sheet in C.C.No.32 of 2019. Respondent Nos.3 to 22 are the *de facto* complainants. Learned counsel on both sides submitted arguments.

2. Point that falls for consideration is:

“Whether facts on record indicate an innocent being put to criminal prosecution in violation of any procedural or substantive rights requiring this court to exercise powers inhere in it in terms of Section 482 of the CrPC?”

POINT: -

Pithily put the facts are about properties of a deity and the various actions on part of the trustee.

3. Record reveals the criminal petitioner herein has been a practicing Advocate and a Notary. There is Sri Ramalingeswara Swamy temple in Polsanapalli Village. The temple owns Ac.35.58 cents of land and a thatched house in an extent of 150 Sq.yards for the purpose of providing home for Archaka who attends duties and rituals at the deity. The criminal petitioner was appointed by the Deputy Commissioner of Endowments as a single trustee during the year 2008. He was discharging his duties as a single trustee – cum – Archaka in the above temple. On emergence of allegations of mis-management, dishonesty, lack of devotion, mis-appropriation of funds, the Deputy Commissioner of Endowments, Kakinada relieved the criminal petitioner from his duties by an order of removal dated 05.11.2014. Such result was a result of a written complaint filed by respondent Nos.3 to 22 before the learned Judicial First Class Magistrate, Bhimadole. On the said complaint, learned Magistrate passed the following order on 24.10.2014.

“Complainant present, heard. Perused the complaint. The complaint is referred to Station House Officer, Bhimadole under Section 156(3) CrPC for investigation and report”.

4. Acting upon it, FIR No. 196 of 2014 was registered by Bhimadole Police Station on 01.11.2014. The Sub-Inspector of Police investigated into it and by listing LW.1 to LW.34, he filed police report/ charge sheet arraigning A1 to A3 stating that only A1 (the present criminal petitioner) is to be charged and A2 and A3 are not sent up for prosecution since no case was made out against them. Seeking to quash those proceedings, the present criminal petition is filed by A1.

5. The complaint that was presented before the learned Magistrate which was forwarded by him under Section 156(3) CrPC made 23 specific allegations as against the present criminal petitioner. After due investigation, the state police found that for prosecution before a criminal court, the facts investigated disclosed only 3 allegations and on those 3 aspects, the charge sheet was laid alleging as mentioned below:

1. As per the records the total land in the name of Sri Ramalingeswaraswami temple is Ac.35.58 cents. As per the particulars of land obtained from the Tahsildar as well as Endowment Inspector who thoroughly examined the

counts, the land available to the Temple is only Ac.26.46 cents. There are no particulars for the remaining land of Ac.9.12 and there is no record for it and under whom possession of the said land at present.

2. Out of Ac.26.46 cents, Ac.3.03 cents was given to Cheera Vishnuprasad (LW.17) on lease. Though he is collecting the lease amount every year, the single trustee V.S.V.Bhaskaram did not opt to issue receipts and entire amounts of the said lease was utilized for his own purpose without bringing the same to cash book.
3. An extent of Ac.0.30 in R.S.No.103 with standing crop was acquired by the Government of Andhra Pradesh for Tadipudi Lift Irrigation project and as a compensation for the land an amount of Rs.1,12,500/- and Rs.3,000/- as compensation for the standing crop was issued by the Special Deputy Collector, Land Acquisition. The single trustee V.S.V.Bhaskaram by opening a separate account in his name in State Bank of India, got deposited both cheques and utilized the entire amount for his own without bringing the same to Cash book.
6. In the light of the above facts available on record, the contentions raised in this petition by the accused require consideration:
 - 3rd respondent in this petition is a kind of a man who always alone wants to control and rule the

people in the village and he is jealous of this criminal petitioner and he and at his behest others resorted to this mudslinging against the petitioner to tarnish his image.

- A written complaint before a learned Magistrate could be forwarded by the learned Magistrate to the police for investigation in terms of Section 156(3) CrPC. However, the written complaint shall be accompanied by a sworn affidavit and it must indicate that earlier to filing that complaint before the court, the complainants attempted to have FIR registered in terms of Section 154 CrPC and the police failing to register such an FIR they should put up their grievance to the Superintendent of Police in terms of Section 154(3) CrPC. In the case at hand, the written complaint failed to disclose these two aspects.
- An order under Section 156(3) CrPC shall contain brief reasons which prompted the learned Magistrate in forwarding the complaint to the police. In the case at hand, the order of the learned

Magistrate is bereft of reasons. It is in that context the complaint and order passed by the learned Magistrate under Section 156(3) CrPC failed to comply with the legal mandate of the Hon'ble Supreme Court of India in ***Priyanka Srivastava V. State of Uttar Pradesh***¹.

- Referring to the factual allegations, it is stated that the land acquisition compensation was spent by the criminal petitioner for the purpose of digging borewell for the temple lands and he had rightly accounted for all the details of those expenses and in fact in addition to that amount, he spent Rs. 2,00,000/- from out of his own pocket for digging borewell and for purchase of necessary machinery and all that occurred to the knowledge of department of Endowments.
- Referring to the mis-appropriation of lease amounts received, it is stated that lessee failed to pay lease amounts after 2011 and this criminal petitioner had

¹ (2015) 6 SCC 287

sent written intimation of the same to the endowment authorities. It is for the endowment authorities to cancel the lease.

- Referring to non-availability of Ac.9.12 cents of land out of Ac.35.5 cents of land of the temple, even by the time this criminal petitioner was made single trustee only so much of the land was there and only so much of the land was leased by way of auction and therefore he could not be prosecuted for non-availability of the remaining land.

7. It is on these aspects, learned counsel for petitioner put forth his arguments laying high emphasis on the ruling of the Hon'ble Supreme Court of India in Priyanka Srivastava's case referred earlier.

8. As against it, learned Assistant Public Prosecutor and the learned counsel for other respondents raised serious objections and argued that the allegations made in the charge sheet *prima facie* disclose cognizable offences and therefore it cannot be quashed. The argument of the criminal petitioner based on Priyanka Srivastava's case is a procedural safeguard engrafted

by the Hon'ble Supreme Court of India in the year 2015 which came into existence much subsequent to the presentation of complaint before the Magistrate and forwarding it by the learned Magistrate to the police under Section 156(3) CrPC and therefore the procedural acts that occurred earlier cannot be tested on the touch stone of the above stated ruling. Alternatively, the learned counsels argued that all the other precedents could be considered to see the legality and maintainability of the argument advanced for the petitioner. Learned counsel cited ***M/S. Supreme Bhiwandi Wada Manor Infrastructure Pvt Ltd. V. The State of Maharashtra***² and ***Srinivas Gundluri V. Sepco Electric Power Construction Corporation***³

9. Having considered the entire material on record and the submissions on facts and law made by the learned counsel on both sides, the following aspects are to be stated:

Charge sheet as it stands now makes serious allegations of mis-appropriation of funds, namely, lease amounts received,

² (2021) 7 S.C.R. 226

³ (2010) 8 SCC 206

land acquisition compensation amounts received but were not accounted for. The explanations offered by the petitioner in this criminal petition are replies to those aspects. The replies indicate other elaborate expenditures alleged to have been made by the criminal petitioner. It also indicates about criminal petitioner's studious disclosure of information to the endowments department. All the above do indicate that a fact is alleged and a fact is denied. That makes it eminently necessary for a trial to find out the truth of the facts and that has to be done by the trial court concerned and such aspects do not fall for consideration in a quash petition. Therefore, on such aspects of facts nothing need be stated in this order.

10. On due completion of investigation of a crime filing a report, explaining the outcome of the investigation to a competent Magistrate is the duty of the police. Sections 170 and 173 of the CrPC makes it clear. In the case at hand, respondent/ police merely discharged that duty as provided in the statute. Therefore, filing a charge sheet, making allegations against an accused is not by itself violation of any law or principles. Section 190(1)(b) of the CrPC directs the Magistrate to consider such police report and the facts on record and take

a decision about taking cognizance or otherwise of it. While doing that legal exercise, the embargoes contained in Sections 195, 195(A), 196, 197, 198, 198(A), 198(B), 199 of the CrPC are required to be followed by the cognizance taking Magistrate. If the order of taking cognizance falls foul of any of these provisions, then the same is invalid and any subsequent action emanating from out of such invalid order could not be upheld. The above provisions are not the grounds urged in the petition and are not the grounds argued by the learned counsel for petitioner. The allegations made in the charge sheet *prima facie* disclose facts constituting cognizable offences. Thus, there is nothing for the criminal petitioner in praying this court to quash the criminal proceedings against him.

11. Despite having no case, the criminal petitioner continued to argue his case based on the principles laid down by the Hon'ble Supreme Court of India in Priyanka Srivastava's case. Therefore, that aspect of the matter requires consideration. That was a case where Sri Prakash Kumar Bajaj availed housing loan from financial institutions and defaulted in repayment and thereby invited proceedings under SARFAESI Act. He challenged them in writ petition and that was dismissed. It was then he

filed a complaint before learned Magistrate for offences under Sections 163, 193, 506 of the IPC as against the vice president, Assistant President, Managing director and other officers of a Nationalized Bank. That complaint was dismissed. Then Sri Prakash Kumar Bajaj filed a revision and a learned Additional Sessions Judge allowed the revision and remanded the matter to the learned Magistrate. Thereafter the learned Magistrate took cognizance and issued summons. Then the high ranking officers challenged it under Section 482 CrPC. The High Court quashed the proceedings. Then Sri Prakash Kumar Bajaj filed another application under Section 156(3) CrPC making certain more allegations against so many people and that was forwarded by the Magistrate and thereupon FIR was registered. Thereafter those officers filed quash petitions and writ petitions. It is in the context of above facts, their Lordships had to state the mis-use of criminal justice machinery by un-scrupulous elements such as Sri Prakash Kumar Bajaj. The grief was depicted at the outset by their Lordships which require a reading here.

“The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir

compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurize in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for “one-time settlement” with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.”

Their Lordships noticed that the Code of Criminal Procedure does not contain any legal obligation for a complainant to file an affidavit along with the complaint. However, looking at the kind of misuse of the provision, their

Lordships at Paragraph No.30 stated that a stage has come in this country to direct that applications/ complaints filed under Section 156(3) CrPC are to be supported by affidavits duly sworn by applicants. Thus, the context of facts in which this principle of law and other principles, one could find in the ruling, is a consequence of mis-use of criminal justice machinery by unscrupulous elements. The prayer under Section 156(3) CrPC straight away requesting the Magistrate to forward the complaint to the police is the one that was there on facts in that ruling. However, in the case at hand respondent Nos.3 to 22 in their complaint filed before the learned Magistrate did not make any such request praying the Magistrate to forward the case to the police for FIR and investigation. Therefore, on facts, the case at hand is not covered by the above ruling. The complaint at hand is a prayer to the Magistrate himself to inquire into and proceed further. In such an event, two options were available for the learned Magistrate. He may embark upon enquiry in terms of Sections 200 and 202 of the CrPC. The other alternative available for him was to forward the complaint to the police for investigation. In the case at hand, as the complaint alleged various cognizable offences, the verification of truth or

otherwise of it would require the Magistrate to look into voluminous documents and records of the endowments department and records maintained by the temple trustee. It seems he thought it fit that the best suited agency in such circumstances is the police and therefore exercised power under Section 156(3) of the CrPC. Therefore there was no obligation on part of the complainants first to go to police and then to go to the superiors in the police department and only then go to the court. The fact that there was no mis use of criminal justice machinery is very clear since that complaint was thoroughly investigated into by the state police and they filed the charge sheet also. It is at that belated stage, this accused is not entitled to raise a question as to the efficacy of the complaint before the learned trial court. Even otherwise, the order of the Magistrate in forwarding a complaint to the police under section 156(3) CrPC does not really require any more elaboration except a direction is clear from the mandate laid down by the Hon'ble Supreme Court of India in Supreme Bhiwandi wada's case mentioned earlier. It is in these circumstances, this court finds no merit in the petition and there is no merit in the legal submissions argued on behalf of the petitioner. This court's

interference is not warranted. Hence point is answered against the petitioner.

12. In the result, this criminal petition is dismissed. Criminal petitioner is at liberty to move an application under Section 205 CrPC before the learned trial Court and if such a petition is filed, the learned trial Court may consider the same in accordance with law.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 13.12.2023

Dvs

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