

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No. 7598 of 2013

Between:

P.Nageswara Rao,
S/o.Bikshamaiah, Aged about 49 years,
Working as Panchayat Secretary, Parimpudi,
C/o.M.Dayananda Rao, Near GDM Church,
Koyyalagudem Mandal, West Godavari District.

... Petitioner/A.1

And

1. The State of A.P., Represented by Public Prosecutor,
High Court of A.P., Amaravati.
2. K.Sai Baba, The Divisional Co-Operative Officer,
Jangareddygudem, West Godavari District. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **11-09-2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

+ CRIMINAL PETITION No.7598 of 2013

% 11-09-2023

Between:

P.Nageswara Rao,
S/o.Bikshamaiah, Aged about 49 years,
Working as Panchayat Secretary, Parimpudi,
C/o.M.Dayananda Rao, Near GDM Church,
Koyyalagudem Mandal, West Godavari District.

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1. The State of A.P., Represented by Public Prosecutor,
High Court of A.P., Amaravati.
2. K.Sai Baba, The Divisional Co-Operative Officer,
Jangareddygudem, West Godavari District. ... Respondents

! Counsel for Petitioner : Sri V.Mallik

^ Counsel for Respondents : Asst.Public Prosecutor

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> Head Note:

? Cases referred:

1. (2017) 9 SCC 641
2. (2018) 3 SCC 104
3. AIR 1992 SC 604

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.7598 of 2013

ORDER:

In this Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") the petitioner/A.1 seeks to quash the criminal proceedings in Crime No.124 of 2013 of Jangareddygudem Police Station, West Godavari District, registered for the offence under Sections 409, 420 and 109 read with 34 IPC, against him.

2. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor.

3. The facts in issue are that the 2nd respondent is the *de facto* complainant, who is the-then Divisional Panchayat Officer, Jangareddygudem and he lodged a report with the Police alleging that, during the year 2011-12 the Panchayat Raj funds were misappropriated by the employees of Jangareddygudem Panchayat and the Principal Secretary to the Government, Panchayat Raj ordered for enquiry through the Vigilance and Enforcement Authority and to submit a report. As per the said report of the Vigilance and Enforcement Authority in respect of misappropriation of funds in the year 2011-12 committed by the Staff of Jangareddygudem Gram Panchayat and Nagara Panchayat, the Principal Secretary to the Government of Andhra

Pradesh, Panchayat Raj Department, issued a memo dated 25.04.2013 to the District Collector stating that there was misappropriation of funds in the year 2011-12 at Jangareddygudem Gram Panchayat and Nagar Panchayat and to initiate appropriate action against the concerned. In turn, the District Collector issued proceedings dated 08.05.2013, directing the 2nd respondent/*de facto* complaint to file a criminal case against the Surpanch and others. The allegations in the complaint are that the petitioner/A.1 the-then Panchayat Secretary of Jangareddygudem Gram Panchayat during the above period opened a bank account making transactions of panchayat in the banks other than the Treasury Account, by violating the guidelines in G.O.Ms.No.124, Finance (IF) Department, dated 23.04.2009 due to which A.2 the-then Panchayat Secretary kept huge amount of Panchayat Revenue on hand for long periods of time since 24.08.2011 for an amount of Rs.99,77,604/- without remitting them to the Sub-Treasury, soon after the expiry of the Panchayat tenure, kept an amount of Rs.1,43,832/- with him without remitting to the Sub-Treasury. A.3 the-then Divisional Panchayat Officer (retired) failed to supervise the duties of the Panchayat on 27.06.2009 and 08.01.2010 and failed to submit comprehensive report during his tenure and not to insist to deposit the amount of

Rs.18,42,912/- in the Gram Panchayat funds and A.4 the-then District Panchayat Officer (retired) directed the Divisional Panchayat Officer to stop the enquiry on the representation of M.Srinivasarao, ZPTC Member, Jangareddygudem. Based on the said report, a case in Crime No.124 of 2013 was registered in Jangareddygudem Police Station, West Godavari District for the offence punishable under Sections 409, 420 and 109 read with 34 IPC. While the crime was under investigation by the Investigating Officer, the petitioner/A.1 filed the present petition to quash the proceedings against him in the above crime.

4. Learned counsel for the petitioner/A.1 would submit that there has been no misappropriation of funds by the petitioner/A.1 and except opening of account in the bank instead of Treasury Account, the petitioner has not operated the account either to remit or to withdraw the amount. Further, he would submit that the petitioner/A.1 never misappropriated nor converted the Panchayat funds for his own use. He would further submit that to constitute an offence of criminal breach of trust by a public servant it is essential that the prosecution must prove first of all that the petitioner/A.1 was entrusted with some property and further, the prosecution has to establish that in respect of the property so entrusted, there was dishonest misappropriation, dishonest conversion or dishonest use or

dishonest disposal of or disposal in violation of a direction. Further, he would submit that the petitioner/A.1 is nothing to do with the commission of the offence. He would further submit that the 2nd respondent mechanically gave a report to the Police. He would further submit that no useful purpose would be served by continuance of criminal proceedings against the petitioner/A.1. Therefore, he prays for quash of the criminal proceedings against the petitioner/A.1.

5. Learned Assistant Public Prosecution vehemently opposed the criminal petition. He would submit that, on the basis of the complaint, the Government authorized the Vigilance and Enforcement Authority to conduct enquiry and submit report for the misappropriation of funds in Jangareddygudem Gram Panchayat and Nagara Panchayat. Further, he would submit that on the basis of the report of the Vigilance and Enforcement Authority, the Principal Secretary to the Government informed to the District Collector that there was a misappropriation of funds during the year 2011-12 at Jangareddygudem Gram Panchayat and Nagara Panchayat and in turn the District Collector directed the 2nd respondent to initiate criminal action as there was due misappropriation done by the petitioner/A.1 and A.2 to A.4 by violating the Orders in G.O.Ms.No.124, Finance (IF) Department, dated 23.04.2009 and directed them to

keep the funds in Treasury account or P.D account. Further, he would submit that the petitioner/A.1 and A.2 to A.4 have committed illegality. As such, the matter requires investigation to ascertain the truth or otherwise of the said allegations. He would further submit that there is no merit in the contention of the petitioner that there are no allegations against him with regard to the commission of the offence. Therefore, he would pray to dismiss the petition.

6. Having perused the relevant facts and contentions raised by the learned counsels for both the petitioner and the respondents, in my considered opinion, the foremost issue which requires determination in the instant case is:

Whether the allegations made against the petitioner/A.1 would attract the accusation against him and whether there are any merits in the criminal petition to allow?

POINT:

7. In **Parbatbhai Aahir and others Vs. State of Gujarat and another**¹, the Hon'ble Apex Court held as follows:

16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under

¹ (2017) 9 SCC 641

Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

16.10. *There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

8. In view of the principles laid down in the above judgment, this Court is of the view that the petitioner/A.1 and A.2 to A.4 involved in economic offence and caused huge loss to the Exchequer. Therefore, in view of the facts, allowing the Police investigation to continue would not amount to an abuse of process of the Court.

9. In **Dineshbhai Chandubhai Patel Vs. State of Gujarat and others**², the Hon’ble Apex Court held as follows:

“25. *The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.*

26. *This Court in State of W.B. v. Swapan Kumar Guha [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for three-Judge Bench laid down the following principle: (SCC pp. 576-77 & 598, paras 21 & 66)*

“21. ... the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie,

² (2018) 3 SCC 104

that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. ... The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

27. *Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.*

28. *In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realising that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.*

29. *The High Court, in our view, failed to see the extent of its jurisdiction, which it possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.*

At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice

versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. *In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.*

32. *The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part led us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.*

34. *On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and FIR, do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons and, therefore, the High Court instead of dismissing the application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.*

37. *In the light of the foregoing discussion, it is now necessary that the matter, which is the subject-matter of the FIR in question, needs to be investigated in detail by the investigating authorities in accordance with the procedure prescribed in the Code.*

42. *Since the FIR is pending for quite some time, we direct the investigating authorities to complete the investigation of the case without any bias and prejudices strictly in accordance with law and proceed ahead expeditiously.”*

10. In the light of the above decision, in this case misappropriation of huge amount involved, this Court would not be interfered with the investigation as disputed questions of fact are involved, which this Court would not go into and that the case be left to be investigated into by the Police and it is the duty of the Investigating Officer to probe the crime and the High Court is not to act as an Investigating Officer since the matter

involved in economic offences with huge financial loss to the Exchequer.

11. Further, in **State of Haryana & Others Vs. Ch.Bhajanlal and Others**³, the Hon'ble Apex Court held that in exercise of extraordinary power conferred under Article 226 of Constitution of India or the inherent powers under Section 482 Cr.P.C, the following categories of cases are given by way of illustration, wherein, such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise clearly defined and sufficiently channelized and inflexible guide, myriad kinds of cases wherein, such power should be exercised.

The relevant guidelines read as under:

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

³ AIR 1992 SC 604

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

12. In the light of the above judgments, this Court has to consider whether the complaint discloses *prima facie*, offences that were alleged against the petitioner/A.1 and the correctness or otherwise of said allegations have to be investigated by the investigation agency. It is not open to the Court to stifle proceedings by entering into merits of the contentions made on behalf of the petitioner/A.1 and the criminal proceedings cannot be quashed at this stage since the ingredients of the offence

alleged against the petitioner/A.1 are *prima facie* made out. As such, the matter requires investigation to ascertain the truth or otherwise of the said allegations.

13. In the present case, the petitioner/A.1 and A.2 to A.4 are the public servants and they have not discharged their duties by following the guidelines in G.O.Ms.No.124, Finance (IF) Department, dated 23.04.2009 directing the Panchayat Authorities etc., to remit the amount in Treasury or PD Account. The petitioner/A.1 opened an account in bank other than the Treasury Account and made transactions of Panchayat. It is a clear case of misconduct committed by the petitioner/A.1 with the connivance of other accused (A.2 to A.4) and misappropriated the funds as stated in the complaint and caused loss to the Exchequer. There are absolutely no valid legal grounds emanating from the record warranting interference of this Court under Section 482 Cr.P.C to quash the proceedings against the petitioner/A.1 and that the question of abuse of process of the Court in initiating criminal proceedings against the petitioner/A.1, does not arise.

14. Considering the above judgments, this Court is of the view that there are specific allegations against the petitioner/A.1, which have to be investigated. Further, the F.I.R is not an encyclopedia and need not be contained all the facts and hence,

it cannot be quashed at its threshold. This Court finds that the F.I.R discloses *prima facie* commission of the cognizable offence and as such, this Court cannot interfere with the investigation. The investigation machinery has to step into investigation and unearth the crime in accordance with the procedures prescribed in the Code.

15. In view of the foregoing discussion, I find no merit in the contentions of the learned counsel for the petitioner/A.1. Consequently, the Criminal Petition is liable to be dismissed.

16. Resultantly, the Criminal Petition is dismissed. The Station House Officer, Jangareddygudem Police Station, West Godavari District, is directed to complete the investigation in connection with Crime No.124 to 2013 and file a final report before the concerned Court, in accordance with law, as expeditiously as possible, preferably within a period of three months from today.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

11.09.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.7598 OF 2013

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