IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

Criminal Petition No.4752 of 2009

Between:

Mumai Ramesh

...Petitioner

v.

The State of Telangana,
rep. by its Public Prosecutor
High Court, Hyderabad

And Another

...Respondents

ORDER PRONOUNCED ON: 30.9.2024

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	:	Yes
2.	Whether the copies of judgment may be Marked to Law Reporters/Journals?	:	Yes
3.	Whether His Lordship wishes to see the fair copy of the Judgment?	:	**Yes**

_____

E.V.VENUGOPAL, J

* THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

\+ Criminal Petition No.4752 of 2009

% 30.9.2024

Between:

M.Ramesh

...Petitioner

v.

The State of Telangana,
rep. by its Public Prosecutor
High Court, Hyderabad
And Another

...Respondents

! Counsel for Petitioners : Sri Surender Rao learned senior counsel for Sri V.Ramchender Goud

^ Counsel for the respondent: : Public Prosecutor

Counsel for respondent No.2 : Sri Sumanth Ravuri

<GIST:

> HEAD NOTE:

? Cases referred

[1] (2005) 4 SCC 370
[2] (1998) 2 SCC 493
[3] (2014) 13 SCC 539

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL PETITION No.4752 OF 2009

ORDER:

1 This criminal petition, under Section 482 Cr.P.C, is filed seeking to quash the proceedings against the petitioner herein in Cr.No.51 of 2009 on the file of P.S Basar, Nizamabad District, registered for the offences punishable under Sections 468, 420, 196, 197 and 198 of IPC.

2 Heard Sri Surender Rao, learned senior counsel appearing on behalf of Sri V.Ramchander Goud, learned counsel for the petitioner; Ms.S.Madhavi, learned Assistant Public Prosecutor appearing for the first respondent - State and Sri Sumanth Ravuri, learned counsel for the second respondent and perused the record.

3 The genesis for filing of the present criminal petition is that on a complaint lodged by the second respondent herein – Sri A.Chandra Babu, Junior Civil Judge, Bhainsa, Adilabad (as he then was) alleging that the petitioner had produced forged documents and gave false information in the case filed before him i.e. O.P.No.4

of 2006 with reference to his election as Sarpanch of Basar Gram Panchayat and during the course of arguments the same was noticed by him. Consequent upon the said complaint made to the Superintendent of Police, Adilabad District, the present crime was registered against the petitioner for the offences stated supra. The allegation was that the petitioner had placed forged documents to substantiate his claim that his third daughter was born on 29.4.1995 and to authenticate the same, the petitioner placed reliance on the school records where she was joined first and the sterilization certificate issued by the Government Headquarters Hospital, Nizamabad dated 27.6.1995.

4 The factual matrix was that the petitioner herein and one N.Sudershan Rao contested to the post of Sarpanch, Gram Panchayat, Basar scheduled on 10.8.2006. But, at the time of filing of nominations, the said Sudershan Rao filed objections before the Returning Officer alleging that the petitioner was having a third child who was born on 08.8.1998 which was after the cut off date i.e. 30.5.1995 and therefore he is disqualified to contest in the election

in terms of S.No.19 (3) of A.P. Panchayat Raj Act, 1994. However, the said objections were not considered and the petitioner herein succeeded in the election to the post of Sarpanch, Basar Gram Panchayat with a margin of 1000 votes. Thereafter, the losing candidate Sudershan Rao lodged Election Petition before the Court of Junior Civil Judge, Bhainsa, the second respondent herein, which was numbered as O.P.No.4 of 2006. On contest, the second respondent delivered Order dated 16.6.2009. During the course of trial in the said O.P, the petitioner in the O.P. by name Sudershan Rao filed documentary evidence marked as Exs.P.1 to P.14. So also the petitioner herein who was respondent in the said O.P also filed documents marked as Exs.R.1 to R.10.

5 While delivering the Order in the said O.P. the second respondent herein observed that the petitioner influenced R.W.3 - Dr.S.Rajeshwar Rao who worked in Government Hospital, Mudhole from 01.11.1989 to 31.7.2005 to issue date of birth certificate of his third child, who is not competent authority. So also Ex.R.4 Sterilization certificate on which he is totally depending to prove that

his wife underwent sterilization operation on 27.6.1995 was not signed by P.W.3. P.W.5 gave evidence that she did not sign Ex.R.4 and that the signature which Ex.R.4 bears was not that of P.W.5. Therefore, the second respondent found that Ex.R.4 is a forged document.

6 Arriving at such conclusions and findings, the second respondent marked a copy of the Order to the Superintendent of Police, Adilabad to take action against the petitioner herein as per law and against the responsible persons who filed the forged documents and submitted false information to the Court. Basing on the said complaint lodged by the second respondent, Cr.No.51 of 2009 was registered on the file of P.S, Basar, Nizamabad District for the offences punishable under Sections 468, 420, 196, 197 and 198 IPC. As stated supra, seeking to quash the said proceedings, the petitioner filed the present criminal petition.

7 The learned counsel for the petitioner contended that the second respondent bore grudge against the petitioner since he had not made any arrangements when second respondent visited Basara

temple and the Toll gate persons have demanded payment of Toll fee from the second respondent by which act the second respondent felt insulted and when the petitioner was called and questioned about the same, the petitioner informed the second respondent that the said Toll gate will not fall under his jurisdiction and for the mistake committed by the Toll gate persons, the petitioner apologized to the second respondent. Even though the petitioner no way connected with the Toll gate issue, the second respondent called the petitioner to his chambers and said that he would put an end to his political career and would see him behind bars. To gain support to the above argument, the learned counsel for the petitioner further submitted that after pronouncement of the Order, the second respondent conducted a press conference in the Court hall itself and informed to all the persons in the press conference about passing of the judgment and lodging of the present complaint to police and further stating that the petitioner is also involved in another Crime No.84 of 2008, which act itself speaks volumes. He further submitted that questioning the Order dated 16.6.2009 passed by the second respondent, the petitioner

filed W.P.No.12168 of 2009 and this Hon'ble Court was pleased to admit the said writ petition and suspended the operation of the Order dated 16.6.2009 passed in O.P.No.4 of 2006, vide order dated 22.6.2009 and thus the Order and Decree itself are non-existing and hence initiation and continuation of proceedings would be an abuse of process of law that too registration of a crime pursuant to an Order which had been suspended by this Hon'ble Court. He further submitted that since the operation of the Order and decree in the O.P. is suspended on 22.6.2009 itself, registration of crime on 26.6.2009 should not arise at all. It is his predominant contention that absolutely there is no cogent material available on record except the oral evidence of the doctor who disowned the signature on Ex.R.4 in spite of her admission that no two signatures of her will be alike and which fact was established beyond reasonable doubt on the basis of the signatures put by her during her examination as R.W.4 in the O.P. Accordingly he prayed to quash the proceedings against the petitioner in Cr.No.51 of 2009 on the file of P.S Basar, Nizamabad District.

8 On the other hand, Sri Sumanth Ravuri, learned counsel for the second respondent and the learned Assistant Public Prosecutor appearing for the State contended that since the second respondent has categorically found the petitioner adducing false evidence and playing fraud on the Court itself during the course of proceedings, the second respondent had rightly initiated the impugned proceedings. Truth or otherwise will come out only upon conducting a full-fledged investigation. Since this Court granted interim stay of all further proceedings in Cr.No.51 of 2009 on the file of Basar, Adilabad District, including arrest of the petitioner, by order dated 07.7.2009 in Crl.M.P.No.4357 of 2009, the investigation came to be stalled. Hence the learned counsel for the second respondent and the learned Assistant Public Prosecutor prayed to vacate the interim order dated 07.7.2009 and permit the investigating agency to conduct investigation and file appropriate final report before the Court below.

9 Admittedly, aggrieved by the Order dated 16.6.2009 passed in O.P.No.4 of 2006 by the second respondent, the petitioner herein

filed W.P.No.12168 of 2009 before this Hon'ble Court. However, the said writ petition was closed on 03.9.2024 basing on the contentions advanced by the learned counsel for the petitioner as well as the learned Assistant Government Pleader for Panchayat Raj and the learned counsel for the first respondent therein that the tenure of the post of Sarpanch, Gram Panchayath, Basar, which was conducted on 10.8.2016 was completed way back in the year 2011 and therefore the cause in the said writ petition has become infructuous.

10 It is to be noted that challenging the Order dated 16.6.2009 passed in O.P.No.4 of 2006 by the second respondent herein, wherein the second respondent directed the police to initiate criminal proceedings against the petitioner, the petitioner herein preferred the above writ petition i.e. W.P.No.12168 of 2009. However, the said writ petition was closed on 03.9.2024 because during the paucity of time, the tenure for the post of Sarpanch, Gram Panchayat, Basar was completed by 2011 and hence the cause in the said writ petition had become infructuous.

11 Be that as it may, now the point to be determined in this criminal petition is whether the second respondent herein is competent to direct the police to initiate criminal proceedings against the petitioner.

12 Section 195 Cr.P.C. deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Section 195 (1) (b) (ii) Cr.P.C. reads as under:

13 No Court shall take cognizance of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court.

14 In view of the above provision of law, for taking cognizance of an offence, the document, the foundation of forgery, if produced before the Court or given in evidence, the bar of taking cognizance under Section 195 (1) (b) (ii) Cr.P.C. gets attracted and the criminal court is prohibited from taking cognizance of offence unless a

complaint in writing is filed as per the procedure prescribed under Section 340 Cr.P.C. by or on behalf of the Court.

15 Section 340 Cr.P.C. reads as under:

340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest 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 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.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

16 In **Iqbal Singh Marwah v. Meenakshi Marwah**[1], the Hon'ble Supreme Court while upholding the view taken by it in **Sachida Nand Singh v. State of Bihar**[2] held that Section 195 (1) (b) (ii) Cr.P.C would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in a Court i.e. during the time when the document was in *custodia legis.* The Hon'ble Supreme Court at para Nos.31, 33 and 34 held as follows:

> 31. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an

[1] (2005) 4 SCC 370
[2] (1998) 2 SCC 493

offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

34. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

17 In **Kishorbhai Gandubhai Pethani v. State of Gujarat**[3] the Hon'ble Supreme Court held as under:

25. An enlarged interpretation to Section 195 (1) (b) (ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed

[3] (2014) 13 SCC 539

> indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.
>
> 26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in Clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided...

18 Reverting to the facts of the case on hand, in the instant case, the second respondent did not lodge any complaint against the petitioner alleging that the petitioner committed the offences punishable under Sections 468, 420, 196, 197 and 198 of IPC. There was no written complaint form the second respondent for institution of the crime. The instant case was registered based on the direction of the second respondent who marked a copy to the Superintendent of Police, Adilabad to take action as per law against the responsible persons who filed the forged documents and submitted false information to the court. But that by itself does not constitute a complaint as defined under Section 2 (d) of Cr.P.C. Since Section 340 Cr.P.C. stipulates that the petitioner would thus be protected from prosecution, either at the instance of a private

party or the police until the court, where the document has been filed, itself chooses to file a complaint, the crime registered by the police gets vitiated. Section 195 (1) (b) (ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in the custody of law. It is not the case of the second respondent or any body that Ex.R.4 sterilization certificate was tampered with after it had been produced or filed in the Court. Therefore, the bar created by Section 195 (1) (b) (ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence.

19 In **Iqbal Singh Marwah (1 supra)** the Hon'ble Supreme Court held as follows:

> 6. On a plain reading clause (b) (ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary. The other

> possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, **no complaint by Court would be necessary** and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved. (underlined by me).

20 In the light of the above decision, this Court is of the view that a complaint by the court is not necessary inasmuch as the offences alleged against the petitioner were not committed during the period when the document was in the custody of the court. If the offence as described in clause (b) (ii) of sub-section (1) of Section 195 Cr.P.C is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable. The present proceedings have been initiated basing on the act of simply marking a copy of the Order by the second respondent in the O.P.No.4 of 2006. The complaint of the contesting candidate in the fray was that the petitioner forged certain documents i.e. Ex.R.4. However, as ruled by the Hon'ble Supreme Court in **Iqbal Singh Marwah (1 supra)**

any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice. Therefore, at best the second respondent can give a finding with regard to the alleged documents as forged but he cannot lodge a complaint because clause (b) (ii) of sub-section (1) of Section 195 Cr.P.C.

21 The learned trial Court ought to have taken note of the fact that the petitioner has got every right to resort to legal remedies to challenge the order passed by the trial Court before the appellate courts and hence the order passed by learned trial Court is not final. Therefore coming to the conclusion on its own finding seeking to initiate proceedings under administrative jurisprudence of criminal law by writing a letter / complaint to the concerned police officer shall amount to infringing the right of the petitioner to challenge its own order and hence it is perverse.

22 Section 340 Cr.P.C. postulates that if the Court finds that a particular document in question was forged, then that Court shall

record a finding to that effect and make a complaint thereof in writing and send it to a Magistrate of the first class having jurisdiction.

23 Since none of the above situations arise in the present proceedings and since W.P.No.12168 of 2009 filed against the Order passed in O.P.No.4 of 2006 was dismissed as infructuous, the proceedings in the present criminal petition are liable to be quashed.

24 Accordingly, this criminal petition is allowed, quashing the proceedings in Cr.No.51 of 2009 on the file of P.S Basar, Nizamabad District. Miscellaneous petitions if any shall stand closed.

_____

E.V.VENUGOPAL, J.

Date: 30-09-2024

L.R.Copy be marked

B/o Kvsn