
(2010) 10 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24764 of 2010

Emaar Hills Township Private Limited

APPELLANT

Vs

Government of A.P.

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420
Prevention of Corruption Act, 1988 — Section 11, 12, 13

Citation : (2010) 10 AP CK 0011

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Prakash Reddy, rep. V. Akshaya Babu, for the Appellant; G.P. and V. Ravi Kiran Rao, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner, namely M/s. Emaar Hills Township Private Limited, represented by its authorized representative, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, praying to grant the following relief:

This Hon'ble Court may be pleased to issue an order or direction, more particularly in the nature of writ of certiorari calling for records of the proceedings in C.C. SR No. 1753 of 2010 on the file of Court of Principal Special Judge for S.P.E. and A.C.B Cases, Hyderabad, including the order dated 7th September, 2010 in the said C.C. SR No. 1753 of 2010 and after perusing the same, be pleased to quash the proceedings in C.C. SR No. 1753 of 2010 on the file Court of Principal Special Judge for S.P.E. and A.C.B Cases, Hyderabad, including the order dated 7th September, 2010 in the said C.C. SR No. 1753 of 2010 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

2. The petitioner claims to be a joint venture company registered under the provisions of the Companies Act, 1956 between APIIC and M/s. Emaar Properties PJSC, Dubai. The Government of Andhra Pradesh through its nodal agency, namely APIIC invited Expression of Interest for development of the Integrated Project. The petitioner's bid was selected. Pursuant thereto, the petitioner and APIIC entered into a Memorandum of Understanding and thereafter into a Collaboration Agreement. Subsequently a shareholder agreement and sale deed was entered into for purchase of land in an extent of Acs. 258.36 for Rs. 75.00 lakhs. That in December, 2005, APIIC transferred the land admeasuring Acs. 258.36 in Sy. No. 210(P) and 211(P) of Manikonda village, Rajendranagar, and other survey numbers in Nanakramguda village, Serilingampally Mandal. While the works are in progress, the averments in the affidavit filed in the writ petition discloses that there led to exchange of legal notices between the petitioner and APIIC. That the officials of APIIC hatched a conspiracy, and that respondent No. 2, in collusion and connivance with them, lodged the present private complaint, and Court of Principal Special Judge for S.P.E. and A.C.B Cases, Hyderabad, having taken cognizance of the same, vide order dated 07.09.2010, passed in C.C. SR No. 1753 of 2010, forwarded the same to the Director General, ACB, u/s 156(3) Code of Criminal Procedure for investigation and report. Questioning the said order, and as noted supra, to call for the records relating to the said case in C.C. SR No. 1753 of 2010 and the order passed therein, the petitioner filed the present writ petition.

3. The learned senior counsel appearing on behalf of the petitioner submitted that the petitioner is purchaser of the property in question from APIIC through a joint venture. The petitioner and APIIC entered into a development agreement for developing the land. The private complaint, filed by respondent No. 2, against the petitioner, referred to the police for investigation by Principal Special Judge for S.P.E. and A.C.B Cases, is the result of political and bureaucratic crossfire and tussle. The private complaint lodged by respondent No. 2 on the face of it, does not allege any overt or covert acts, committed by the petitioner, much less commission of cognizable offences, punishable under Sections 406 and 409 I.P.C. He submitted that if there is any breach of the agreement committed by the petitioner in the execution of the agreement, the remedy of APIIC is to approach the competent civil Court. Hence, he prayed that the private complaint lodged by respondent No. 2 against the petitioner, which is numbered as C.C. SR No. 1753 of 2010 and the impugned order dated 07.09.2010, passed therein by Principal Special Judge for S.P.E. and A.C.B Cases, be called for and quash the same.

4. On the other hand, the learned Counsel appearing on behalf of respondent No. 3, namely ACB submitted that the petitioner has an effective alternative remedy u/s 482 Code of Criminal Procedure, and the writ petition under Article 226 of the Constitution of India, is not maintainable. Hence, he prayed that the writ petition be dismissed.

5. Heard the learned Counsel for the petitioner and the learned Standing Counsel

for respondent No. 3-ACB, and perused the private complaint filed by respondent No. 2 against the petitioner and 15 others.

6. The law is well settled that the extraordinary power of the Court under Article 226 of the Constitution of India and the inherent power u/s 482 Code of Criminal Procedure to quash a criminal proceeding, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. 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. That being the power of the Court, it may be noticed in which cases, this Court can or cannot interfere with investigation into the allegations made in an FIR and quash the same.

7. The legal position on this aspect of the matter has been lucidly stated by the apex Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, as follows:

... the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted... Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interest of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed... 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.

8. While observing that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases where the extraordinary power under Article 226 of the Constitution of India and the inherent power u/s 482 Code of Criminal Procedure, can be exercised, the apex Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, however, by way of illustration, categorized certain cases where the extraordinary power under Article 226 or the inherent powers u/s 482 Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, and they are:

(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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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.

(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 u/s 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.

9. The apex Court, recently, in its judgment in *R. Kalyani Vs. Janak C. Mehta and Others*, observed that even if the complaint discloses a civil dispute, the same will not be a ground to stall the criminal proceedings, and held as follows:

High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint, but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and whole untenable complaint.

10. The apex Court further held that it was not open for the Court to make an enquiry as to whether the allegations in the FIR are true or not, as follows:

As the entire matter stands only at the stage of the registration of the case and the investigation has not at all proceeded with on account of the order of stay granted by the High Court, it is not necessary for the Court at this stage to embark upon an enquiry whether the allegations in the first information report are reliable or not and thereupon to render a finding whether any of the allegations is proved. There are matters which can be examined only by the concerned court after the entire materials are placed before it on a thorough investigation. Court is not called upon to examine the truth or otherwise of each of the instances of the alleged corruption indicted in complaint in snippet form and thereafter string them together and express any opinion either way, since in our view such opinion may affect the case of either party or cripple the course of investigation.

11. The apex Court in *Harmanpreet Singh Ahluwalia v. State of Punjab* (2009) 6 Scale 85 observed that the complaint has to be read as a whole and if the allegations in the complaint and the statement made on oath disclose commission of an offence, then the Court should not interfere with the investigation, and held as follows:

It would not be proper for the High Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called

for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

12 In *Parkash Singh Badal and Another Vs. State of Punjab and Others*, the apex Court had an occasion to consider the question whether investigation into a complaint by the police when the complaint is said to have been lodged by a political opponent? The apex Court having considered the said question, held as follows:

So far as the allegation that a political opponent had lodged the complaint is concerned, that itself is not sufficient for the court to interfere. When the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.

13. The above being the law governing the power of the Court to quash an FIR in exercise of its extraordinary power under Article 226 of the Constitution of India and the inherent power u/s 482 Code of Criminal Procedure, it may be noticed whether the Principal Special Judge for S.P.E. and A.C.B. Cases, was unjustified in taking cognizance of the complaint lodged by respondent No. 2 and referring the same for investigation to respondent No. 3-police and report, and whether the petitioner has made out any case for interference and quashing of the FIR by this Court, in exercise of its extraordinary power under Article 226 of the Constitution of India.

14. Respondent No. 2 is a practicing Advocate. He filed the private complaint against sixteen persons, including the petitioner. The petitioner is arrayed as accused No. 6 in the complaint. According to respondent No. 2, namely the complainant, APIIC, which is supposed to make industrial layouts for promoting industries, in total disregard of its fundamental objects, entered into collaboration agreement with M/s. Emaar Properties, PJSC, Dubai, and executed a sale deed alienating an extent of Acs. 258.00 for Rs. 75.00 crores, in favour of joint venture floated by APIIC and M/s. Emaar Properties, PJSC, Dubai, known as M/s. EmAar Hills Township Pvt. Ltd. (the petitioner herein). That accused No. 3, who was the Chairman of APIIC at the relevant period of time, entered into conspiracy with other accused and promoters of M/s. Emaar Properties, M/s. Emaar, MGF Land Pvt. Ltd. and the petitioner herein, and nominated accused Nos. 1 and 2 on the Board of Directors so that the fraud and misrepresentation does not come to the notice of the Government. Later M/s. Emaar Properties, by valuing the land at Rs. 22.00 crores per acre, mortgaged an extent of Acs. 14.1 with M/s. AXIS Bank and taken loan of Rs. 150.00 crores and that the value of Acs. 258.00 of land comes to Rs. 5,676.00 crores, and that not even a single pie was paid by them to the Government. Respondent No. 2 further in his complaint inter alia alleged that accused Nos. 1 to 3 received huge kickbacks for allotment of lands to accused Nos. 4 to 6, including the petitioner, who in collusion and connivance with accused Nos. 1 to 3 have conspired to grab government properties and make wrongful gain for themselves and cause wrongful loss to the Government and that accused Nos. 1 to 3 in collusion with accused Nos. 4 to 6, including the petitioner, with a mala fide and fraudulent intention, for their corrupt practices and monetary benefits, illegally caused huge loss to the government exchequer and thereby they deceived the public at large.

15. Considering the allegations made by respondent No. 2 in the complaint in their totality, and the sworn statement given by him before the Court, the Principal Special Judge for S.P.E. and A.C.B. Cases, felt that the complaint, prima facie, disclosed commission of cognizable offences punishable u/s 406, 409 and 420 r/w. 120B I.P.C., and Sections 11, 12 and 13 of the Prevention of Corruption Act, by the accused, and feeling so, took cognizance of the same and referred the same to respondent No. 3 for investigation and to file report.

16. When a private complaint is filed, the Judge/Magistrate, before whom such complaint is filed, merely looks into the totality of the allegations made in the complaint, and if upon looking into the totality of the allegations made in the complaint, feels that the complaint prima facie, discloses commission of offences punishable under any criminal law by the accused named therein, he merely refers the complaint to the police for investigation and report. The private complaint filed by respondent No. 2, is at the stage of investigation by respondent No. 3-police. Even before investigation is done by the police, it is not proper for the Court to make a roving enquiry into the veracity of the allegations based on the material placed, and testify whether the allegations made by the complainant in the complaint against the accused are true or not, for such a

course is impermissible in law.

17. Though the petitioner contends that the complaint filed by respondent No. 2 does not prima facie, disclose commission of any cognizable offence, the fact remains, it is a matter of investigation by the police. Investigation of a complaint, being in the exclusive domain of the police, they should be given a free hand to investigate into the complaint, when it prima facie discloses commission of a cognizable offence punishable under the criminal law.

18. Though the petitioner contends that they have purchased the land in question through joint venture and entered into agreement for development, and for any breach thereof, APIIC has to approach the civil court, the fact remains, complainant in the instant case is not APIIC. The complaint alleges that the officials of APIIC are also involved in the commission of the offence. That the officials of APIIC in connivance with the developers, including the petitioner, are involved in the commission of the crime. When APIIC is not the complainant, and the allegation of respondent No. 2 in his complaint is that its officials in connivance with the developers, including the petitioner, are said to have acted in violation of the agreement, to make wrongful gain for themselves and cause wrongful loss to the State exchequer, it would be untenable for the petitioner to contend that for any breach of the agreement, remedy of civil suit has to be availed.

19. Be that as it is, even if it is assumed that the present complaint filed by respondent No. 2 discloses civil dispute, between the contracting parties, but when it is brought to the notice of the Court by way of the present complaint alleging that in the handling of public property/money under the agreement, large scale irregularities have been committed by the parties to the agreement, and that crores of public money has been siphoned off by private parties, who are parties to the agreement, in connivance with officials of a government undertaking i.e. APIIC which is a contracting party to the agreement, then it is the bounden duty of the Court, to examine the allegations. Since the allegations made in the complaint, read in their totality, prima facie disclosed commission of cognizable offence by the accused named therein which are punishable under criminal law, the Principal Special Judge for S.P.E. and A.C.B. Cases, took cognizance of the same and referred the same to respondent No. 3-police for investigation and report, and no exception can be taken thereto, particularly when the law is well settled that disclosure of a dispute in the complaint, which may be civil in nature to some extent, by itself cannot be a ground for this Court, to interfere or scuttle the investigation into allegations which attract penal provisions.

20. Even otherwise, it is the specific case of the petitioner that filing of complaint by respondent No. 2 against them and others is part of a major and deep rooted conspiracy and that the complaint filed by respondent No. 2, is a product of business, political and bureaucratic crossfire and tussle, and that it has been filed at the instance of some senior officials of APIIC. Though the petitioner raised

such a contention, the fact remains, respondent No. 2 is a practicing Advocate. It is not the case of the petitioner that respondent No. 2 is a businessman, politician or a bureaucrat, so as to justify, that he has filed the present complaint to wreck personal vengeance or personal scores or gain business and political mileage. It is also not the case of the petitioner that respondent No. 2 is affiliated to a particular political party or is inimical to any of the accused named in the complaint or is part of a group or political party that is engaged in executing an agenda to stall/hamper the developmental activities/works being undertaken which were conceived and sanctioned during the regimes of the previous Hon"ble Chief Ministers of the State, namely late Sri. Dr. Y.S. Rajasekhara Reddy and Sri. N. Chandrababu Naidu. The affidavit filed by the petitioner in support of the writ petition, does not disclose as to which political party or which politician has conspired and who has instigated or is behind respondent No. 2 in filing the complaint. In the absence of any such details, it cannot be said that the present complaint filed by respondent No. 2 is at the instance of a rival political party. Even assuming the complainant is a political opponent that by itself cannot be a ground to stall the investigation of the allegations made in the complaint, which prima facie, disclose commission of cognizable offences punishable under the criminal law. The purpose of investigation is to find out whether there is any substance in the allegation made in the complaint.

21. Further, though petitioner states that at the instance of APIIC, respondent No. 2 filed the present complaint, the fact remains, the petitioner has not made APIIC a party-respondent to the writ petition. The petitioner has also not mentioned the names of the officials of APIIC, at whose instance, respondent No. 2 is alleged to have filed the present complaint. Whether filing of complaint by respondent No. 2 is part of major deep rooted conspiracy or is the result of political and bureaucratic cross-fire and tussle or is at the instance of the officials of APIIC, can be known only if a thorough investigation is done by respondent No. 3-police, and even before the police investigates into the complaint and collects material, it cannot be said whether or not the petitioner is involved in the commission of the offences.

22. The complaint is merely at the stage of investigation. Once the investigation is over, if the complaint and the material collected does not disclose commission of any offence as such, then it would result in filing of final report. However, even before investigation is taken up or completed, it would not be proper for this Court, to interfere with the matter, and interfere with the investigation or scuttle the investigation process.

23. In view of the above, and in the facts and circumstances, it cannot be said that the Principal Special Judge of S.P.E. and A.C.B. Cases, was not justified in taking cognizance of the complaint filed by respondent No. 2 and referring the same to respondent No. 3-police for investigation and report, and the petitioner having failed to point out that the complaint filed by respondent No. 2, does not

disclose any cognizable offence, no relief as prayed for by the petitioner, much less to quash the criminal proceedings in question can be granted.

24. There is no merit in the writ petition, and the same is accordingly dismissed.