
(2007) 04 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2007 of 2007

P. Yagnanarayana

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 109, 120B, 21, 420, 468
Stamp Act, 1899 — Section 48, 69, 70

Citation : (2007) 2 ALD(Cri) 251 : (2007) 2 ALT(Cri) 474 : (2007) CriLJ 3551

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : I.V.N. Raju, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—The petitioner is A.6 in C.C. No. 103 of 2005 on the file of II Additional Judicial Magistrate of First Class, Eluru, West Godavari District, filed for the offences punishable under Sections 420, 468 and 477A read with Sections 109 and 120B of the Indian Penal Code and Section 69 of the Indian Stamp Act.

2. The petitioner worked as Sub-Registrar at Baimavaram during the year 1995. The Government of Andhra Pradesh re-fixed the market value of the lands with effect from 1-4-1995. The documents that were executed prior to 31-3-1995 could be presented for registration before the Sub-Registrar within four months from the date of execution. The application of existing market value was allowed and benefits were given to the individuals. 31-3-1995 is the cut-off date to avail the benefits of old market value, which could be doubted if purchase of the stamps were from 1-4-1995 onwards. Guidelines were issued from time to time by the authorities of Registration and Stamps Department regarding the crucial period for verification of stamps. Despite the instructions, the petitioner along with other accused i.e. stamp vendors, Sub-registrars and document writers

conspired together to gain monetary benefit, out of the enhancement of market value of the properties and in pursuance of their conspiracy, accused stamp vendors have indulged in selling the stamps with ante-dates with connivance of Sub-Registrars and document writers. The petitioner and other sub-registrars, whose duty is to verify and scrutinize the genuineness of stamps, the date of entry of the sales register, the date of purchase of stamps from the sub-treasury office and the dates of sales to the parties concerned, failed to discharge their legitimate duties and actively connived with the concerned stamp vendors and document writers with an intention to effect wrongful gain to themselves registered the documents during the period from 1-4-1995 onwards by abusing their official position as public servants to obtain pecuniary advantage to themselves, it resulted in wrongful gain to themselves and huge loss of revenue to the Government and thereby cheated the public and the Government.

3. The learned Counsel for the petitioner submits that as the petitioner is a public servant and as he failed to discharge the official duties properly by scrutinizing the documents whether they were purchased prior to 1-4-1995, a sanction from the Government is required as contemplated under Sections 197 of Cr. P.C. and 70 of Stamps Act. Since no sanction order was obtained from the Government to prosecute the petitioner, the proceedings against him are liable to be quashed.

4. In support of his contention, the learned Counsel for the petitioner relied on a judgment in *Rakesh Kumar Mishra Vs. The State of Bihar and Others*, wherein the Supreme Court while considering the scope of Section 197 of Cr. P.C. held that the protection given u/s 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and no Court shall take cognizance of the offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties except with the previous sanction. In the case of *Sankaran Moitra Vs. Sadhna Das and Another*, also, similar view was expressed by the Supreme Court. Therefore, the learned Counsel for the petitioner relying on the said decisions requested to quash the proceedings against the petitioner.

5. For proper adjudication, it is appropriate to extract Section 197 of Cr. P.C. and Section 70 of the Indian Stamp Act, which read as under:

197. Prosecution of Judges and public servants: (i) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or a with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union of the Central Government;

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a state of State Government.

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Central Government.

70. Institution and conduct of prosecutions.- (1) No prosecution in respect of any offence punishable under this Act or any act hereby repealed, shall be instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially, authorizes in that behalf.

(2) The Chief Controlling Revenue-Authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by Section 48.

6. From the above provisions, it is clear that whenever the public servant commits an offence in the discharge of his official duties, the sanction of the Government is required to prosecute such person.

7. In the present case, the allegation against the petitioner is that while acting or purporting to act in the discharge of the official duties, he failed to properly scrutinize the stamp papers to find out whether they were ante-dated to avoid stamp duty required to be paid on account of enhancement of the land value with effect from 1 -4-1995.

8. The scrutiny of stamp papers is one of the official duties of the petitioner. Failure to do proper scrutiny of the papers, amounts to failure to discharge of the official duties. The prosecution agency ought to have applied to the Government regarding sanction to prosecute the petitioner and others, as the petitioner is a public servant within the meaning of Section 21 of IPC. Since no sanction order was obtained from the Government to prosecute the petitioner, the prosecution against him is liable to be quashed.

9. In the result, the Criminal Petition is allowed and the proceedings against the

petitioner/A.6 in C.C. No. 103 of 2005 on the file of II Additional Judicial Magistrate of First Class, Eluru, are hereby quashed.