
(2006) 03 AP CK 0041

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 1094 of 2005

T. Kumar Babu

APPELLANT

Vs

Gireesh Sanghi and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 357, 39
Penal Code, 1860 (IPC) — Section 121, 122, 123, 124, 125

Citation : (2006) 1 ALD(Cri) 967 : (2006) 2 ALT(Cri) 156 : (2006) 2 APLJ 61 :
(2006) CriLJ 2839 : (2006) 3 RCR(Criminal) 334

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy for Respondent Nos. 1 to 3 and Public
Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—The petitioner is a practicing Advocate, who filed a private complaint be-fore the X Additional Chief Metropolitan Magistrate, Secunderabad, complaining the offences punishable under Sections 409 and 420 of the Indian Penal Code, 1860 (for short "IPC") against the respondents 1 to 3 herein. However, the Court below, by its order dated 6-6-2005, refused to take cognizance of the said complaint and accordingly rejected the same. Hence, this revision by the complainant.

2. Originally, this matter was taken up for hearing on 18-7-2005 and subsequently, it was adjourned on number of occasions. On notice, the respondents have put in their appearance.

3. The petitioner strenuously contended before this Court that the respondents 1 to 3 herein are billionaires and duping people by resorting to various methods and one such method is by collecting funds for Gujarat victims and the said amounts were misappropriated, attracting the definition of Section 406, IPC and thereby, committed the offences punishable under Sections 409 and 420, IPC.

Even according to the petitioner, he does not have any personal knowledge about the same, but on Information from media, he came to know of this and as a law abiding citizen, he thought It fit to bring it to the notice of the Court and filed the present complaint. But, the Court below, without any appreciation, rejected the complaint.

4. On the contrary, learned Senior Counsel, Sri C. Padmanabha Reddy, appearing for the respondents, opposed the said submissions and stated that the present complaint is a classic example as to how frivolous litigation can be made and if this sort of litigation is encouraged, it is just like opening flood gates and this sort of litigation should be curbed at the threshold.

5. In the light of the said submissions, it made necessary for this Court to look into the complaint filed by the petitioner herein and except it, and it is as under:

1. The complainant is an advocate practicing in Hyderabad. The accused Nos. 1 to 3 are running the Vartha Telugu National Daily and also doing other businesses.

2. While so, the complainant came to know though Andhra Jyothi Telugu News-Paper, vide dates : 30-3-2005 to 2-4-2005 that accused Nos. 1 to 3 have easily cheated the Co-investors in public issues and also the innocent public in the name of Teak plantations. Besides this the accused No. 2 to 3 have exploited the lorry owners and enthusiastic business people in the name of High Way Automation System (HAS), and also in the name of jobs they have looted the unemployed, and also they resorted to misuse of funds that they have collected from the public for the purpose of helping the people who got affected by the national calamities.

3. The accused Nos. 1 to 3 converted the grabbed lands into colonies. Though they announced estimated cost of High Way Automation System (HAS) as Rs. 200 crores, virtually they have not even spent Rs. 25 lakhs and thereby earned crores of rupees illegally that is to say not less than Rs. 10 crores.

4. In Sanghi Teak plantation project accused Nos. 1 to 3 have hardly invested Rs. 4.5 crores but they have collected a sum of Rs. 50 Crores from the investors. By the year 2012, they are supposed to pay the promised amounts to all the investors. But all of a sudden they changed their version and asked the investors either to return their bonds at the cost of original amount or to wait up to the year 2042 for the repayment of promised amount. In this way by cheating the investors the accused have earned crores of rupees illegally.

5. In the year, 2001 the accused have collected funds from the people for the purpose of helping the victims of earthquake in Gujarat, but even after lapse of four years they are not explaining how they used the funds i.e., more than Rs. 67 lakhs which were collected by them. It is also learnt that the above said amount is misused by the accused. By collecting funds for public purpose the accused assumed the position of a public servant as they have been entrusted

with public property (funds) and committed criminal breach of trust in respect of the funds that they have collected and thereby they are punishable u/s 409 of IPC. As they have cheated the co-investors and the unemployed they are punishable u/s 420 of IPC. The documents that are filed along with the complaint may be read as part and parcel of this complaint.

6. It is submitted that a legal notice dated 2-5-2005 was issued to the accused Nos. 1 to 3 by the complainant questioning the crimes committed by the accused and asked the accused to give reply if any. But the accused Nos. 1 to 3 have not given any reply. Silence on the part of the accused Nos. 1 to 3 in these circumstances by itself is a telling circumstance which would weight against them in consideration of the present case.

7. As per Section 39 of Cr. P.C. the complaint is bound to give information to the Magistrate regarding the above said offences.

8. As the office of accused Nos. 1 to 3 is situated within the jurisdiction of this Honourable Court, this Honourable Court has got jurisdiction to entertain this complaint.

Therefore, the complainant prays that this Honourable Court may be pleased to take the complaint on record, issue summons to the accused Nos. 1 to 3 or endorse the complaint to Gandhi Nagar PS u/s 156(3) of Cr. P.C. and punish the accused under Sections 409 and 420 of IPC, and also under appropriate sections of law.

It is further prayed that this Honourable Court may be pleased to order to pay compensation u/s 357 of Cr. P.C. a sum of Rs. 60 Crores to the victims in the hands of the accused Nos. 1 to 3 and also order to pay compensation of Rs. 67 lakhs (i.e. the funds collected from the public for the purpose of helping the victims of earthquake) to the Prime Ministers relief fund and such other order or orders in the interest of justice.

6. Section 39 of the Code of Criminal Procedure, 1973 (for brevity "Cr. P.C.") deals with certain offences in which the public can give information and it reads thus:

Section 39 : Public to give information of certain offences : (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following Sections of the Indian Penal Code (45 of 1860), namely:

(i) Sections 121 - 126, both inclusive, and Section 130 (that is to say, offences against the State specified in Chapter VI of said Code);

(ii) Sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) Sections 161 to 165-A, both Inclusive (that is to say, offences relating to illegal gratification);

- (iv) Sections 272 - 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.)
- (v) Sections 302, 303 and 304 (that is to say, offences affecting life);
- (vi) Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
- (vii) Sections 392 - 399, both inclusive and Section 402 (that is to say, offences of robbery and dacoity);
- (viii) Section 409, (that is to say, offence relating to criminal breach of trust by public servant, etc.);
- (ix) Sections 431 - 439 both inclusive (that is to say, offences of mischief against property);
- (x) Sections 449 and 450 (that is to say offence of house trespass);
- (xi) Sections 456 - 460, both inclusive (that is to say offences of lurking house-trespass); and
- (xii) Sections 489-A to 489-E , both inclusive (that is to say, offences relating to currency notes and bank notes)

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware; forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purpose of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India.

7. Now, it is necessary for this Court to look into the allegations made in the complaint and the provisions of Section 39, Cr. P.C. From a perusal of the complaint as excerpted above, it is clear that the petitioner has not stated anything as to how it attracts the provisions of Section 420, I.P.C., and even if it is accepted that it makes out an offence punishable u/s 420, I.P.C., Section 39, Cr. P.C., does not provide any authority to the petitioner-complainant to give information in regard to the offence u/s 420 of IPC of certain offences any information by any person, and hence, the Court below is justified in rejecting the complaint insofar as the offence punishable u/s 420, I.P.C. is concerned.

8. No doubt, Sub-section (viii) of Section 39 deals with the giving of information in regard to offence u/s 409, I.P.C. On knowing of happening of such offence, the public can definitely make a complaint to the Court concerned. Section 409, I.P.C. is defined as under:

409. Criminal breach of trust by public servant, or by banker, merchant or agent: Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a

banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

9. From the above, it is clear that when once an accusation is made bringing it to light that there is criminal breach of trust by any of those persons mentioned u/s 409, I.P.C., definitely the said information can be brought to light by any person. But, from a perusal of the complaint which is extracted above, the petitioner has not made out any case as to how the accusation attracts the provisions of Section 409, I.P.C. or the relationship between the accused and the persons from whom the accused alleged to have collected or intended to collect funds for Gujarat victims. In the absence of any allegation that the accused/respondents 1 to 3 were acting as the persons mentioned u/s 409, I.P.C., it is not possible to accept the same as it is. Hence, the Court has no hesitation to hold that the said allegations made in the complaint also do not attract the provisions of Section 409, I.P.C.

10. It is well recognised principle of criminal Jurisprudence that any one can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence.

11. No doubt, the petitioner herein cannot be said to have no locus standi. As a law abiding citizen, he has every right to bring to the notice of the Court when certain offences are committed. In fact, this is one of such things and I appreciate the conduct of the petitioner in lodging the complaint. But, the complaint filed by the petitioner is not well founded. He should have come forward with cogent and clinching evidence if really he is interested in bringing out unearthing the fraud. But, as discussed above, the complaint is as vague as anything and does not satisfy the requirements of criminal jurisprudence. As rightly contended by the learned senior counsel Sri C. Padmanabha Reddy, under the guise of this, there is a possibility (which cannot be ruled out) of giving scope for frivolous litigation and thus opening of flood gates and hence, it is for the Courts to have thorough legal scrutiny before entertaining the complaints and there cannot be any straight-Jacket formula in entertaining the complaints. Therefore, this Court sees no merit in the revision and the same is liable to be dismissed.

12. Accordingly, the criminal revision case is dismissed.