

THE HONOURABLE SRI JUSTICE D.RAMESH

CRIMINAL PETITION NO.7847 OF 2019

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. seeking quashing of FIR in Cr.No.22/2019 dated 15.12.2019 registered on the file of CID Head Quarters PS, Mangalagiri, under Sections 188, 403, 409, 120(B) IPC and AP Economic Development Board Act 2018.

2. Heard Sri Naga Muthu, learned senior counsel appearing on behalf of Sri J.V.Prasad, learned counsel for the petitioners and Sri T.M.K.Chaitanya, Standing Counsel for CID, appearing for the respondent-State.

3. The case of the petitioner is that the petitioner is a Chartered Accountant by qualification till he was selected in Indian Revenue Service in 1991. He was posted as Assistant Commissioner of Income Tax, Bangalore in 1993 and continued till November, 1998. His performance during this tenure was rated as outstanding. Thereafter the petitioner was posted as a Senior Technical Officer, Central Economic Intelligence Bureau, New Delhi from November 1998 to till 30.09.1999. Pursuant thereto, the petitioner was on deputation as Principal Secretary to the Union Minister of State for Agriculture and Union Minister for Rural Development. During the period from September 2003 till January 2012, the petitioner was worked as Additional commissioner of Income Tax in Faridabad, Chandigarh and Hyderabad, thereafter promoted as the Commissioner of Income Tax w.e.f.26.01.2012 and posted in Vijayawada and Guntur, after which he was taken on deputation

as Private Secretary to the Union Minister for Civil Aviation, Government of India between 02.06.2014 till 31.03.2015.

4. In view of the requirements of the State of Andhra Pradesh, the petitioner owing to his outstanding career and large experience was requested by the State of Andhra Pradesh to make available his services on deputation as the Chief Executive Officer (CEO) of the APEDB with the Grade of Special Secretary to the state of Andhra Pradesh. The petitioner having expressed his willingness to serve the state, the State of Andhra Pradesh vide letter dated 05.05.2015 requested the Ministry of Civil Aviation, Government of India to allow him to join the State Government after approval of Competent authority and the same was acceded to. Thereafter, the Government of Andhra Pradesh took cadre clearance from the Ministry of Finance, Government of India to enable the petitioner to work on deputation as special Secretary. Thus, the petitioner was appointed on the aforesaid possession for a period of three years, from 28.08.2015 till September 2018. In view of the remarkable performance of the petitioner as the CEO of the APEDB, the State of AP requested the petitioner to continue on deputation for the further period of 2 years i.e., from 30.08.2018 till 28.08.2020. Every action taken by the APEDB has to be approved by the Board, which also has internal auditors, who are Chartered Accountants of a reputed firm.

5. Further submitted that the vide letter dated 24.05.2019 requested the Government of Andhra Pradesh to relieve him from the Government of Andhra Pradesh so as to enable him to be repatriated back to his present department. The petitioner after the elections in 2019 in the State of Andhra Pradesh and the

consequent formation of the new Government on 30.05.2019 was meted with hostile attitude and as a consequence of it, the petitioner was transferred to the General administration Department without any posting and salary. On 12.12.2019 the petitioner was promoted as the Principal Commissioner of Income Tax vide Order No.253/2019 dated 12.12.2019, within the hours of the issuance of the promotion letter, the petitioner was suspended by the State of Andhra Pradesh on the same date i.e., 12.12.2019 on account of alleged irregularities committed during the period the petitioner was the CEO of the APEDB by referring to a report of the Industries, Infrastructure, Investment and Commerce Department which had nothing to do administratively with APEDB. The aforesaid act of the State Government was malafide and done with the sole intention of ruining the reputation, life and career of the petitioner and to scuttle his future promotion and prospects in career.

6. Aggrieved by the suspension order in G.O.RT.NO.2814 dated 12.12.2019, the petitioner filed an application before the Central Administrative Tribunal, Hyderabad and on 16.12.2019 the Tribunal was pleased to suspend the order of the suspension. Having come to know that the petitioner was approaching the Central Administrative Tribunal against the order in G.O.RT.No.2814, dated 12.12.2019, the State of Andhra Pradesh, with a malafide intention, got filed a complaint on 15.12.2019 and registered the impugned FIR dated 15.12.2019 alleging violation of norms of financial property by the petitioner in dealing with procurement, payment of advances, audit and accounting procedures during the period, the petitioner was working as the

CEO of the APDEB. It is further alleged in the FIR that the petitioner recruited close confidants at very high salaries without following the due procedure and through irregular advertisements causing loss to the Government exchequer.

7. The petitioner further stated that the aforesaid actions are an outcome of vengeful attitude of the State of Andhra Pradesh and that the petitioner happened to be the supervisory officer of the Assessing Officer in the case of Jagathi Publications, owned and controlled by the present Chief Minister of the State of Andhra Pradesh, considering the escapement of income, and large scale evasion of Tax through bogus share premium, Assessing Officer made the additions and disallowances in terms of law under the Income Tax Act in the hands of Jagathi Publications. The said order was also upheld by the CIT (A). Thus, passing of an order against Jagathi Publications was taken personally and since June 2019, the State Government has left no stone unturned to wreck vengeance against the petitioner.

8. Further it is contended that the APEDB was not run by one CEO but by a Board consisting of 21 members with the Hon'ble Chief Minister as the Chairman and several other Cabinet Ministers, Chief Secretary and Special Chief Secretaries to the Government of Andhra Pradesh along with the CEO. The decisions of the APEDB were taken by the Board collectively with the approval of the Members of the Board. In view of the same, making allegation solely against the petitioner and one other person in the impugned FIR smacks of malafide and arbitrary exercise of discretion by the State of Andhra Pradesh.

9. That the procurement in the APEDB was made through a transparent mechanism having a three quotation system wherein the procurements were made through the lowest bidder considering its capacity and capabilities. Whenever, the value of procurement was high, the tendering procedure was followed through newspaper advertisements and also where the Government vendors were available and they agreed to the payment terms and other conditions, procurements were made through such vendors.

10. With regard to the payment of advances, such advances were made in the normal business practice where the Board gets the advantage of rolling credit, in case, the vendor is a regular supplier and bills are huge where reconciliation will take considerable time. Furthermore, the advances are also released by the APEDB whenever there was foreign travel pertaining to the Hon'ble Chief Minister and/or the delegation of Ministers and their officers and supporting team participating in foreign events. There was no irregularity in the payment of advances during the period when the petitioner was CEO of APDEB. However, all the decisions were the collective decisions of the Board and as per norms.

11. Further it is submitted by the petitioner that as far as advertisements are concerned the same were released through accredited advertising agencies recognized by I&PR. The rates for advertisements are released by I & PR regularly and no organization can pay over and above these rates. Thus the allegation of irregular expenditure does not hold any ground and is made solely with the intention to harass the petitioner. Furthermore, the allegation that high salaries were paid to close

confidants is preposterous in as much as the recruitment was made through transparent process by the Board and the salaries were paid in terms of the rules.

12. Based on the above averments, the learned senior counsel, Sri Naga Muthu made the following submissions:

The offence of Section 403 IPC does not attract as the basic ingredients, i.e., dishonest misappropriation of property and misappropriation of such property to his own use by the accused and dishonest intention on the part of the accused. None of the ingredients are attracted in the facts of the present case against the petitioner and no mention in the FIR as to which property and in what manner that was dishonestly misappropriated. In support of his contention the petitioner relied on the following judgment:

Indian Oil Corporation v. NEPC India Ltd & Ors¹- Basic ingredients to attract the offence under 403 IPC

13. The allegation under Section 409 IPC does not attract as the FIR fails to disclose as to what property was entrusted with the petitioner by the complainant and for the benefit of whom. To support his contention, the petitioner relied on the citation *in Robert John D'souza & Ors. V. Stephen V.Gomes & Anr²*, wherein the term *entrustment has been explained by the Hon'ble Supreme Court.*

14. The Offences under Sections **188** and **120B IPC** are also not attracted as there is no allegation with regard to the petitioner entering into a criminal conspiracy with the other accused to

¹ (2006) 6 SCC 736

² . (2015) 9 SCC 96

commit an offence and also there is no allegation of disobedience to an order promulgated by public servant in the present case.

15. Further learned senior counsel contended that APEDB is run by a Board consisting of 21 members with the Hon'ble Chief Minister as the Chairman and other members, where CEO is one of them. The decisions were taken by the board collectively after the approval of the members of the board. Hence making allegation solely against the petitioner and one other person in the impugned FIR smacks malafide and arbitrary exercise of discretion by the State of Andhra Pradesh.

16. During the course of proceedings, on 19.12.2019 this court passed interim direction in I.A.No.02 of 2019, granting liberty to the police to continue with their investigation and the petitioner shall also cooperate with the investigation. Further the respondent-police are also directed not to take any coercive action whatsoever against the petitioner, including his arrest.

17. The 2nd respondent has filed counter and vacate stay petition stating that in obedience to the guidelines laid down by the Hon'ble Apex Court ***in Lalita Kumar Vs. Govt. Of U.P., the SHO***, the CID Police Station registered the complaint dated 15.12.2019 filed by Smt.Potluri Tulasi Rani, Special Grade Deputy Collector, APEDB, Vijayawada as a case in Crime No.22 of 2019. During the course of investigation many witnesses were examined and collected important document, account books, ledgers, vouchers computer hardware, emails etc., from various places and persons in this case.

18. Further it is submitted that the respondent has followed every legal procedural and substantive requirement relevant to the investigation and carried out the same in an impartial manner. The petitioner, as noticed by this Court in its order dated 19.12.2019 cited the case of **Lalitha Kumari Vs. State of Uttara Pradesh and Ors.**³ to make the argument that a preliminary enquiry was necessary for the registration of an FIR against the petitioner. However, as it was noted by the Supreme Court in the State of Telangana Vs. Sri Managipet @ Managipet Sargveshwar Reddy (2109) 19 SC 87, the **Laitha Kumari's** case does not make it mandatory to conduct a preliminary investigation before registering an FIR, Rather, it says that on receipt of information pertaining to the commission of a cognizable offence if a prima facie case pertaining to a cognizable offence is made out, the police is required to set the investigating machinery in action by filing an FIR. The purpose of the preliminary enquiry is to make out whether a prima facie case is made out with respect to the information received by the police when it is necessary. In this case the prima facie case could be made out on the basis of the information received by the respondent without the need for a preliminary enquiry.

19. The aforementioned position of law is made clear in the following excerpt from **The State of Telangana V Sri Managipet @ Managipet Sarveshwar Reddy**⁴ which refers

³ (2014) 2 SCC 1

⁴ (2010) 19 SCC 87

to the judgment by the constitutional bench in *Lalitha Kumari's* case cited supra and held as follows:-

“28. In *Lalitha Kumari*, the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that *prima facie*, the allegations levelled against the accused in the complaint are credible. It was thus held as under:-

“73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence.

The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.”

29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. This court held as under:

“111. In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: a) Matrimonial disputes/ family disputes b) Commercial offences c) Medical negligence cases) Corruption cases.”

30. *It must be pointed that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases etc. The judgment of this court in Lalita Kumari does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.”*

20. It is further contended that the respondent has not erred by not conducting the preliminary enquiry, but has rather acted in accordance with the law by registering the FIR on receipt of information that made out a prima facie case for various serious offences.

21. Further contended that the petitioner argued that Section 403 IPC, which the petitioner is accused of violating is only applicable to “immovable property”. However, a simple reading of the section shows that it is emphatically not the case.

Section 403 IPC deals with *Dishonest misappropriation of property:*

—Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

22. Thus, it is submitted that Section 403 is in fact applicable to the facts made out pertaining to the acts of misappropriation of public funds sought to be proved against the petitioner.

23. Replying to the contention of the petitioner that referring to the Charge of Section 409 IPC in the FIR, the petitioner argued before this Court that no property was entrusted to him for there to have been breach of trust or criminal misappropriation, the respondent submits that the petitioner was in his position as a public servant in the form of being the CEO of the Andhra Pradesh

Economic Development Board, given dominion over the funds and budget of the department, which he dishonestly misappropriated, converted to his own use and disposed of in ways other than the mode prescribed by law. Thus, it is submitted that contrary to the allegations of the petitioner, the application of Sections 406 and 409 are well-founded.

24. Further it is submitted in their counter that despite this Court's order that the petitioner was to cooperate with the investigation, which the Court had granted the petitioner liberty to continue, the petitioner has repeatedly and consistently failed to cooperate with the investigation. Hence, an order under Section 41-A Cr.P.C. was issued to the petitioner on 11.09.2020 to compel his presence before the Investigating Officer in order to proceed with the investigation, whereas the petitioner complied the same nominally, in such a manner he could have been said to have appeared before the Investigating Officer as he was legally bound to do, but in a way that allowed him to evade meaningfully contributing to the investigation of the case against him, the subject matter of which is highly voluminous. He appeared before the Investigating Officer only for few hours, after which he left the state citing that he had already book a flight ticket due to prior commitments. Subsequent notice under section 41-A Cr.P.C. was issued to the petitioner on 06.02.2021, but he refused to comply claiming that he was pre-occupied with work commitments, thus the petitioner has abused the interim order granted to him by this court. Further submitted that the respondent has acted with

“undue haste” in investigating the case and prays to vacate the interim order.

25. During course of proceedings, the respondent-CID filed additional counter affidavit, stating that the petitioner moved this petition seeking to quash the FIR, wherein this court granted interim order, directing the Investigation agency not to take coercive steps against the petitioner in respect of his arrest and liberty is granted to the police to continue with their investigation and the petitioner shall also cooperate with the investigation. Whereas the petitioner failed to oblige the order of this Court, by not cooperating the investigation in all aspects with his arrogance and without respect towards law even though repeated notices under section 41-A Cr.P.C. issued against him. Further contended that during the course of investigation, on 02.03.2021 Sri M.Venakteswsra Rao, Special Consultant, APEDB formerly worked as Special Deputy Collector (Retd.) presented a report along with the report of the Sri Gollanapalli Devi Prasad, Consultant APEDB about finding of 20 booklets parcel in cloth bag, and on its opening they found that those books seems to be party propaganda material for a political party and also found one invoice copy of a letter addressed to the then CEO i.e., the petitioner/accused-1 and according to the available records of evidence, it was established that, during the tenure of the petitioner as CEO, APEDB an amount of Rs.1.78 Crores were paid to the New Indian Express Group, New Delhi, in order to publish adds in Sunday Standards New Delhi and also issued proceedings with his signatures. In this work endorsement/bid, several letter correspondences have been occurred, in which, one advertising agency namely Eventxpress

addressed a letter to Mr.J.Krishna Kishore, Chief Executive Officer, Economic Development Board, Government of Andhra Pradesh, Vijayawada- 520002 on 20.02.2019. In the said letter under heading of advertising Logistic: Annexure 1 *“As a complimentary to the above we shall be giving you 50,000/- copies of 50-pages book in Telugu only, Will be printed under your supervision in Hyderabad. Editorial, other information and pictures of the books will be provided by you. Books will be delivered to you and the printer will distribute the books as per your requirements and instructions at his own cost. Please note that we have already designed edited and written 52 pages of book earlier to be printed in English. In view of the New Proposal suggested by you we shall not be printing English version of the book.”* It clearly establishes that, in view of ensuring general election in the month of April/May 2019 the petitioner/accused 1 in order to gain the confidence of political bosses, benefited a political party and thus he pleased the then Chief Minister of the state and by flouting all the procedures and rules for his whims and fancies Sri Jasthi Krishna Kishore being the CEO, APEDB, by doing so to consolidate his position in the organization as unquestionable Chief, entered into a malicious quid-pro-quo agreement with M/s.Even Express Management Services Pvt. Ltd. Without following financial rules.

26. It is further submitted that basing on the strength of evidence, as the provisions of Act is attracting, the investigation agency has submitted a proposal to the Government of A.P. to accord permission under Section 17 (b) of IPC (Amendment) Act 2018 to investigate the case including the provisions of Corruption Act, as there is prima facie of evidence for the offence under section

13(1) (a) Prevention of Corruption (Amendment) Act, 2018 made out against the petitioner/accused-1. On 04.03.2021 vide memo No.106487/SC/D/2020 of Government of Andhra Pradesh, Genl.(A) Department, the Government had accorded permission to proceed for the offences under Prevention of Corruption (Amendment) Act- 2018 against the petitioner/accused. Since a case has already been registered in Cr.No.22/2019 in CID Police Station, A.P., Mangalagiri about the misappropriation of the petitioner/accused, ADGP, CID, AP, Mangalagiri had issued instructions to the Investigation officer to add the provisions of the Prevention of Corruption Act and to continue investigation. Accordingly, Section 13(1) of Prevention of Corruption Act was added in this case in additional to the previous sections of law, hence, now the FIR in Cr.No.22/2019 is under section 403, 409 read with 120-B IPC and Section 13(1) (a) of Prevention of Corruption (Amendment) Act, 2018 of C.I.D. Police Station, A.P., Mangalagiri.

27. Further it is contended in the counter that during the course of investigation, the original proceedings for the payment made to the New Indian Express Group through Evntxpress Management Services Pvt., Ltd. And Sunday Standards along with the notice file were collected from APEDB and after scrutiny of those documentary evidence and also as per the evidence of the oral witnesses, it is clearly established that the petitioner/accused-1 along with Sri B.Srinivasa Rao (A2) abused his official position for undue advantage/favour from the then Govt./Hon'ble Chief Minister and thereby got printed 50,000 books each book containing 52 pages in Telugu with the photo of Sri Nara Chandra

Babu Naidu with political names as “Eduruleni Nayakudu, Thiruguleni Party” Telugu Desam Party symbol and etc., inside the cover of the book written as “special thanks to J. Krishna Kishore I.R.S., CEO., APEDB published by Indian Express, AVP, Marketing, Eventxpress, the NEW Indian Express Group, New Delhi printed by Rigel Business Insight, through a local printing press namely Rigel Business Insights, Patamata. The payments to the said printer was paid by the Eventxpress Management Services Pvt., Ltd. and to causing wrongful loss to the Government exchequer with an intention for wrongful gain for benefiting to their associates with a fraudulent intention and committed misappropriation in a manner of quid-pro-quo.

28. Further it is submitted that the letter from Smt. Leena Jhalani on behalf of APV Marketing dated 20.02.2019 addressed to the petitioner/accused-1 stating “the books will be printed under your supervision in Hyderabad. Editorial, other information and pictures of the books will be provided by you.” It clearly establishes about the personal interest, involvement of the petitioner to get those books. Furthermore, several number of advertisements were given by the petitioner as CEO, APEDB and nearly Rs.3 Crores were spent for advertisements. A payment of Rs.1.78 core were paid to the New Indian Express Group, New Delhi through Eventxpress management Services Pvt. Ltd., for the “power jacket” advertisement in Sunday Standards, New Delhi 90% of the invoice was paid as an advance amount. It is further submitted that except to the above mentioned advertisement agency, no advance payment was made to any other Advertisement agency in previous incident. It clearly shows about the vested

interest of the petitioner, obviously with malafide intention and in execution of criminal conspiracy the petitioner/accused misused his official capacity and channelled the Government money (public money) in a legal projecting as official work which involved conspiracy as a consequent the Government funds were diverted for unofficial/personal work. Hence, the petitioner/accused had committed the offence under Section 409 IPC and 13(1) (a) Prevention of Corruption (Amendment) Act, 2018.

29. Further it is submitted in their counter that the petitioner being IRS officer may cause hurdle to the investigating agency to get replies early in transparent way and the punishment for the offence under Section 409 IPC is more than 7 years, as such the guidelines issued by the Hon'ble Apex Court in *Armesh Kumar's* case for following the procedure under section 41-A Cr.P.C. may not be applicable in this case, hence, the custody/arrest of the petitioner is essential to prevent him from committing further offence, tampering of evidence, scaring of witness and falsification of records/documents, thereby prayed to vacate the direction/order in I.A.No.2 of 2020 in CrI.P.No.7847 of 2019 and to dismiss the present petition.

30. Learned Senior counsel, Sri Naga Mutthu, appearing on behalf of the petitioners has mainly focused on his arguments that as per the Andhra Pradesh Economic Development Board Act, 2018, the petitioner is only a Chief Executive Officer of the board and member convener. As per Section 3 of the said Act, under clause (1) , the Government may, by notification constitute a Board to be called as A.P. Economic Development Board; according to

Section 5 of the Act, the board consists of Chief Minister of the State as Chairman, Minister of Finance and Planning as Vice Chairman and Minister for Industries, Minister for Municipal Administration, Minister for Health, Medical Development, Minister for Roads and buildings, Minister for Panchayat Raj and Rural Development, Minister for Water Resources Management, Minister for Information Technology, and Communication Department, Chief Secretary to Government, Special Chief Secretary/Principal Secretary and Secretary for Planning Department, Special Chief Secretary/Principal Secretary or Secretary to Government, Finance Department, Special Chief Secretary/Principal Secretary/Secretary to Government, Industries Department, Special Chief Secretary/Principal Secretary/Secretary to Government, Municipal Administration Urban Development Department, Special Chief Secretary/Principal Secretary/Secretary to Government, Roads and Buildings Department, Special Chief Secretary/Principal Secretary/Secretary to Government, Panchyat urban and Rural Development, Special Chief Secretary/Principal Secretary/Secretary to Government, Water Resources Management Department, and Principal Secretary to Government, Information Technology, Electronics and Communication, Secretary to Government, Law Department, Chief Executive Officer of the Board, as Member Convener.

31. According to Section 11 of the Act, the cost towards functioning of the Board, Advisory Council and Committees, appointed by the Board, shall be approved by the Board and shall be borne from the internal funds and from the funds allocated to the Board by the Government of Andhra Pradesh.

32. As per Section 13 of the Act, all the orders and decisions of the board shall be authenticated by the signature of the Chief Executive Officer and all the other deeds, documents and instruments, executed or issued shall be authenticated by the signature of the such officer of the Board.

33. Section 19 deals with the functions of the Chief Executive Officer subject to the orders of the Board and finally, according to Section 23, the Board shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such form as may be prescribed in the regulations.

34. As per the above said provisions of the Act, no independent powers are given to the Chief Executive Officer [CEO], consequent to the said Act, the Government of A.P. through G.O.Ms.No.87, dated 17.03.2016 has constituted/established the Andhra Pradesh Economic Development Board.

35. Even according to the said G.O., the Government body is empowered to take various decisions, concerned policy issues and strategic decisions relating to the functioning of the Board and the CEO may constitute various departments comprising of officials including members from time to time to carry out various functions of the board.

36. Learned senior counsel has specifically emphasised his contention that according to the provisions of the Act and the constitution of the Board, it is very clear that the CEO is only a co-ordinator and he has no independent powers, more so he has no independent financial power, unless and until it is approved by the Board.

37. As per Section 19 of the Act, it relates to the functioning of the Chief Executive Officer, for better appreciation, Section 19 of the Act, is extracted as follows:

19. Functions of the Chief Executive Officer, -

The Chief Executive Officer, subject to the orders of the Board, shall be responsible for:

- (a) Supervision and direction of staff of the Board;*
- (b) Undertaking research to determine the industry competitiveness of State and propose strategies to enhance the State as an investment destination;*
- (c) proposing for the Board's approval, operating and marketing plans for investment promotion and facilitation;*
- (d) performing the duties of the Secretary to the Board, including preparation of minutes of decisions of the Board;*
- (e) performing such other functions and duties as may be determined by the Board;*
- (f) performing all other incidental and ancillary functions as directed by the Government and/or the Board or the Chairman of the Board.*

38. As per Section 19(d) and (f) it clarifies the performing of the duties of the Secretary to the Board and all instantly and accelerate functions should be as directed by the Government/Board or the chairman of the board. Hence, the allegations made in either in the complaint or in the FIR are baseless. According to the said provisions, the petitioner has performed his occupation, only as per the advice of the Board, hence, the petitioner has not taken any decision independently.

39. Further the learned senior counsel emphasised his arguments that none of the allegations of the FIR would attract the ingredients of the Sections mentioned in the FIR. The instant Crime is registered under Sections 188, 403, 409, 120 IPC and the

A. P. Economic Development Board Act, 2018. The allegations made in the FIR is that they recruited close confidants at a very high salary, without following due process, thereby committed criminal breach of trust. Further irregularly released advertisements directly, instead of going through I & PR Department, thereby violating the G.O.No.22 of 2019 and caused loss to the government exchequer.

40. On perusal of FIR, the allegations made against the accused, would not attract the offences Sections 409, 403 IPC or section 188 of IPC. Hence, the very allegations of the FIR would not attract the ingredients mentioned in the above said offences.

41. Section 409 of IPC deals with the *punishment for criminal breach of trust by public servant or 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 1[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.

42. In the instant case, the petitioner is no way concerned and he is not the independent person to deal with the property of the board. Section 188 IPC deals with the disobedience, to order duly promulgated by the public servant. No such allegations are made out against the petitioner in the FIR.

43. Section 403 IPC deals with punishment for dishonest misappropriation of property, if any person dishonestly misappropriates or converts to his own use any movable property, shall

be punished with imprisonment of either description for a term which may extend to two years. It is not the case of the petitioner that either in the complaint or in the FIR there are no such allegations that the petitioner has misappropriated amounts for his own.

44. On perusal of the complaint as well as the FIR which was registered against the petitioner, none of the ingredients would attract for registration of such crime against the petitioner. To support his contention learned counsel relied on the judgment reported in **Indian oil corporation v. NEPC India Ltd & Ors**⁵, the basic ingredients to attract the offence under 403 IPC.

45. Further relied on the judgment in **Robert John D'souza & Ors. V. Stephen V.Gomes & Anr**⁶, where the term entrustment has been explained by the Hon'ble Supreme Court and submitted that entire FIR allegations does not disclose as to what property was entrusted with the petitioner by the complainant and for benefit of whom.

46. Further learned senior counsel has submitted that the present FIR has registered against the petitioner without following the guidelines prescribed by the Hon'ble Apex Court in **Lalithakumari's case** cited supra.

47. According to the said guidelines, when the allegations are made, it is the primary duty of the investigation officers to conduct preliminary investigation before registering the crime. But in the instant case, without following the said principle, based on the complaint dated 15.12.2019 by Smt.Potluri Tulasi Rani, Special Grade Deputy Collector, APEDB, Vijayawada, on the same day itself, it was registered by the CID, which is contrary to the

⁵ (2006) 6 SCC 736
2 (2015) 9 SCC 96

observations laid down by the Hon'ble Apex Court in the above said judgment.

48. Lastly, learned senior counsel emphasized that the registration of the crime against the petitioner itself is dishonest *malafide* intention.

49. To support his contention learned senior counsel has drawn to the court's attention about the preliminary complaint made by the one Vadapally Srinatha Rao, to the Ajay Kallam, I.A.S., Principal Advisor to Hon'ble Chief Minister, Government of Andhra Pradesh, vide letter dated 21.07.2019. the contents of the said letter clearly discloses that the petitioner, while working as Commissioner of Income Tax, is a close friend of Mr.Lakshmi Narayana, formerly J. D., CBI, who investigated the false cases foisted against the present Chief Minister. Thus, when there is specific averment made in the letter, just because of that he is close friend of Ex-Joint Director of CBI, the petitioner was dragged into the present complaint with false and baseless allegations. That too, basing upon the letter addressed to the Principal advisor to the Chief Minister, immediately acting on the same, and have registered a false case against the petitioner.

50. Even according to the complaint made by the Smt. Potluri Tulasi Rani, dated 15.12.2019, clearly stated that on an administrative enquiry report, certain irregularities found against J.Krishna Kishore, IRS the then CEO, APEDB. In the said report, they have clearly mentioned that on enquiry, they found irregularities. At the most, based on the said irregularities, if at all they can proceed against the petitioner on a departmental enquiry,

no such irregularities would attract to register a crime against the petitioner.

51. Learned senior counsel has further submitted that the very registration of a crime basing on a letter, addressed by a party worker of a particular political party, saying that because the petitioner is a friend of Sri Lakshmi Narayana, former J.D., CBI, who investigated the cases against the present Chief Minister, clearly discloses that it is made with a malafide intention. So also nowhere in the counter, or in the enquiry conducted by the department on administrative side and in the investigation does not answer with regard to the contentions made in the original letter/complaint.

52. Replying to the same, learned Standing Counsel appearing on behalf of the respondents has brought to the notice of the Court, that before filing/registration of the crime against the petitioner, the department has conducted an enquiry and submitted a report along with the preliminary enquiry, based on which, the complainant has made complaint on 15.12.2019 along with the report. Based on the said report, the respondent-CID registered a crime against the petitioner and others, under Sections 188, 403, 409, 120 B IPC. He also mainly relied on the allegations made in the report. Though it is mentioned as irregularities by the complainant, but the allegations in the report are very serious, which attracts the ingredients of the Section 409 IPC as well as 403 of IPC. He further contended that the criminal law can be set into motion by any person, here though the complaint is made by a whistle blower, based on the enquiry conducted and report

submitted by the department, the complainant has filed the present complaint.

53. Learned counsel further submitted that the preliminary enquiry cannot be made mandatory in all the cases of alleged corruption and to support his contention relied on the observations made by the Apex Court in **Lalitha Kumari's** case.

54. According to him, preliminary enquiry is not mandatory when the information received discloses the commission of a cognizable offence; even when it is conducted, the scope of preliminary enquiry is not to ascertain the veracity of information, but only whether to find out the commission of a cognizable offence or not.

55. Further he contended that conducting preliminary enquiry, depends upon the facts and circumstances of each case. In the instant case, based on the complaint of a third party, department has conducted thorough enquiry and based on the report submitted by department, present FIR is registered.

56. No doubt though the senior counsel mainly emphasised his argument on the Act and the power of the petitioners under the Act, the same was not denied by the respondent, and no material was placed before this Court that the petitioner has acted contrary to the advice of the board or without permission of the board.

57. Considering the submissions made by both the counsel, though there are specific grounds raised by the senior counsel that the allegations made in the FIR would not attract the ingredients of Sections 403, 409 and 188 of IPC, on perusal of the complaint as well as the allegations made therein, it clearly discloses that said

allegations would not attract the ingredients of the above said sections.

58. On perusal of the contents of the FIR and considering the principles laid down by the Hon'ble Apex court, in ***State of Haryana v. Bhajan Lal***⁷, while examining under what circumstances and in which category of cases relating to criminal proceedings can be quashed either in exercise of extraordinary powers vested in the High Court under Articles 226 of the Constitution of India or in exercise of inherent powers of the High Court under Section 482 of the Code of Criminal Procedure and after referring to plethora of case laws have illustratively indicated the categories of cases where such power could be exercised by the High Court. It was held:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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 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.

⁷ 1992 Supp (1) SCC 335

- (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.”

59. In the light of the above judgment, in the instant case, on perusal of the ingredients of the complaint and the allegations made therein, clearly comes under the purview of principle No.1, since the face value of the allegations made in the first information report or the complaint are baseless.

60. According to principle No.3, it is clear that where the allegations made in the FIR or complaint, and the evidence collected in support of the same, do not disclose the commission of offence, and make out the case against the accused, it is liable to be quashed. In the instant case, though they have made allegations against the petitioner, there are no material to show that the petitioner himself has done the acts. And finally as per Principle No7, where the criminal proceedings is manifestly attended with mala fide and/or where the proceedings 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, where this court can exercise the power under Section 482 Cr.P.C..

61. In the instant case, the very basis of initiation of proceedings, basing on a letter of the whistle blower, alleging that the petitioner is friend of Sri Lakshmi Narayana, former J.D., CBI, who has investigated the cases against the present Chief Minister, which clearly discloses that the present crime is registered for extraneous reasons. No doubt, initially the petitioner was suspended but the same was interdicted by the Central Administrative Tribunal, Hyderabad, and the present crime is registered against the petitioner with an afterthought only.

62. Taking the above facts and circumstances of the case into consideration as well as the observations made by the Hon'ble Apex Court in the above referred judgments, FIR in Cr.No.22 of 2019 dated 15.12.2019 registered against the petitioner, on the file of CID Head Quarters Police Station, Mangalagiri is hereby quashed.

63 Accordingly, the Criminal Petition is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

JUSTICE D. RAMESH

Date: 13.07.2022

Pnr