HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CRIMINAL REVISION CASE No.1787 of 2014

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ORDER:

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Aggrieved by an order dated 16.04.2014 passed in Crl.M.P.No.3115 of 2013 in C.C.No.711 of 2013 on the file of the XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, the petitioner/accused preferred the present Criminal Revision Case under Sections 397 and 401 Cr.P.C., wherein the discharge application filed by the petitioner was dismissed.

Originally a private complaint was filed under Section 200 Cr.P.C. for the offences punishable under Sections 416, 420, 463, 464, 465, 468 and 471 read with 34 IPC. The said complaint was referred to the police under Section 156 (3) Cr.P.C. The police after investigation filed a charge sheet for an offence punishable under Section 420 IPC.

The gist of the allegations in the charge sheet is as under:

The accused joined in the complainant's company as an Office Assistant and was elevated to the post of Assistant Marketing Manager. In the month of February, 2008 the complainant company got four mobile numbers including No.09701234824 under CUG plan and the said mobile number was issued to the petitioner. Subsequently, the petitioner resigned from service on 04.06.2012. The petitioner received terminal benefits on 29.06.2012 and surrendered the SIM to the company. Before surrendering the SIM card, the accused requested the Managing Director of company to give the SIM as a complimentary for his long service in the company. However, Managing Director suspected the credibility and refused to give that SIM to the petitioner. Thereafter, the company did not provide any SIM to any other employees.

However, the SIM allotted to LW.2, who was transferred to Marketing Department, was not operating properly. When he contacted Bharati Airtel authorities, he was informed that some one obtained duplicate SIM. A complaint came to be lodged on 04.10.2012 to block the duplicate SIM. After enquiry the Bharati Airtel authorities informed that the petitioner applied for issuance of duplicate SIM on 22.09.2012 and the same was granted to him on that day. All the documents which were filed along with the application for issuance of duplicate SIM were furnished to the company. Immediately thereafter, the complainant blocked the SIM and obtained another SIM which is being used since 11.10.2010.

The averments in the report disclose that after obtaining duplicate SIM, the petitioner contacted the customers of the complainant company by canvassing that M/s. Kakati Karshak Industries Private Limited which has been floated by him and M/s. Kakati Hitech Private Limited the company in which the petitioner was working are one and the same and accordingly secured orders for his company. Hence, a charge sheet came to be filed alleging that the petitioner used the letter head of the complainant company, obtained duplicate SIM from LW.3 knowing that the original SIM is still in existence, made false declarations before the Bharati Airtel authorities and thereby cheated the complainant company. The said charge sheet was taken on file as C.C.No.711 of 2013 for an offence punishable under Section 420 IPC.

Learned counsel for the petitioner mainly submits that even accepting the allegations in the charge sheet to be true no offence under Section 420 IPC is made out. According to him, the allegations made in the report are all false and invented for the purpose of this case. He further submits that there is no material to show that a duplicate SIM was obtained by the petitioner and that he has used the same for causing wrongful loss to the complainant company.

Learned counsel for the second respondent-informant submits that though a charge sheet was filed for an offence punishable under Section 420 IPC, the learned Magistrate framed charges for other offences also as such the question of entertaining a revision for discharge when charges are already framed does not arise. Even otherwise, he further submits that the allegations made in the charge sheet do make out a case against the petitioner for an offence punishable under Section 420 IPC and also for the offences under

Sections 419, 465 and 471 IPC.

A perusal of the material on record would show that the police after investigation filed a charge sheet for an offence punishable under Section 420 IPC. Initially the Court took cognizance of the same for the said offence and issued summons to the accused. After appearance, the accused made an application for discharge for the charge levelled against him. On 16.04.2014 the learned Magistrate rejected the application for discharge. Challenging the same, the petitioner preferred the present revision before this Court. On 16.09.2014 while admitting the revision this Court passed the following order:

> "Admit. Notice. There shall be interim stay of trial in C.C.No.711 of 2013 on the file of the XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, till 08.10.2014. However, in the meantime, examination of accused under Section 240 Cr.P.C. by framing of charges shall go on. Petitioner is at liberty, if aggrieved there from also to file additional material to consider as part of the revision."

Subsequent to the order passed by this Court, the trial Court examined the petitioner/accused under Section 239 Cr.P.C. on 08.10.2014 and framed charges for the offences punishable under Sections 419, 420, 465 and 471 IPC.

The counsel for the second respondent submits that since the charges are already framed, nothing survives in the present revision which has been filed against an order refusing to discharge the petitioner. The contention of the learned counsel for the second respondent cannot be brushed aside though the petitioner opposed the same, contending that the same came to be framed pursuant to an order passed by this Court while staying the case. It may be true that the charges were framed after an order was passed by this Court, but at the same time it is to be noted that the charges are framed not only for an offence punishable under Section 420 IPC but also for other penal offences namely 419, 465 and 471 IPC.

Section 419 IPC reads as under:

> 419: Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420 IPC reads as under:

> 420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 465 IPC reads as under:

> 465. /a>Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 471 IPC reads as under:

> 471. Using as genuine a forged 1[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].

The material on record clearly discloses that the petitioner resigned from the complainant company on 04.06.2012 and the Marketing Manager resigned on 29.09.2012. Both of them started a new company by name Kakati Hightech Private Limited on 25.09.2012. The accused is alleged to have applied a duplicate SIM for mobile No. 09701234824 on 22.09.2012 by submitting the documents showing as if he is still an employee of the company and that the company floated by him and Marketing Manager and the complainant's company are one and the same. He is alleged to have obtained orders from the customers of the informant company causing loss to the informant. The record also discloses that the petitioner applied for duplicate SIM on the letter head of the complainant company with the seal and signature though he has nothing to do with the informant company. Having regard to the said allegations wherein the petitioner caused wrongful loss to the informant by his deceitful acts the ingredients constituting offences punishable under Sections 419, 420, 465 and 471 IPC are *prima facie* made out. Hence, I see no reason to interfere with the findings arrived at by the trial Court.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending in this revision shall stands closed.

JUSTICE C. PRAVEEN KUMAR

16.04.2015

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