THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION No.94 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 to A4 seek to quash the proceedings in FIR No.490 of 2014 of Nandigama PS, Krishna District.

2) Brief facts of the case are thus:

a) The 2nd respondent/complainant lodged a complaint before the SHO, Nandigama PS stating that Sirpur Paper Mills Limited, Sirpur Khagaz Nagar has been purchasing Subabul in Krishna District through Agricultural Market Committee (AMC), Nandigama since 2005 and paying the sale proceeds regularly. The said Company recently purchased the Subabul from the farmers of Nandigama notified area and not cleared the sale proceeds and thus cheated the farmers. Therefore, the Secretary, AMC, Nandigama and Marketing Department authorities have made repeated requests to Sirpur Paper Mills Management to clear the pending dues to the farmers but the Paper Mills authorities have not responded and cleared the dues to the farmers.

b) While so, the Vice-President (Personal and Administration) of Sirpur Paper Mills vide his letter dated 08.08.2014 agreed to pay the pending dues in three instalments i.e. Rs.3 crores in the month of August, 2014; Rs.5 crores in the month of September and the balance in the month of October, 2014. In the process, the Collector and District Magistrate, Krishna proposed to convene a meeting at Collector office, Machilipatnam with the Chairman of Sirpur Paper Mills Limited, Departmental officials and representatives of farmers of Subabul from the notified areas of Agricultural Market Committees concerned and on 10.10.2014 but the Chairman of Paper Mills has not attended. Thereafter, the District Collector issued series of notices to the Chairman to attend the meeting but the Chairman did not respond to the said notices.

c) Basing on the said complaint, Nandigama Police registered FIR No.490 of 2014 under Section 409, 420 r/w 34 IPC.

Hence the petition.

3) The contention of the petitioners is that their Company is one of the oldest and reputed one and the present complaint is filed with a *mala fide* intention only to harass and pressurize the petitioners. The allegations in the FIR, even if assumed to be true, at best make out a civil action for which the petitioners cannot be prosecuted in a criminal trial. It is also contended that though the ingredients of Section 409 IPC have no application, the police have charged the petitioners for that offence. It is further contended that complainant has no authority to file the instant complaint. It is also submitted that Company has become sick and made an application before Board for Industrial and Financial Reconstruction (BIFR) and the lenders are not releasing working capital and in these circumstances, the

petitioners are not in a position to pay the dues to the farmers and hence, criminal liability does not attract. The petitioners thus prayed to quash the FIR.

4) Heard arguments of Sri D.Prakash Reddy, learned senior counsel appearing for Sri Avinash Desai, learned counsel for petitioners and learned Public Prosecutor.

5a) Opposing the FIR, learned senior counsel firstly argued that Special Grade Secretary, AMC, Nandigama has no authority to file the instant complainant as there was no privity of contract between him and petitioners.

b) Secondly he argued on the face of the complaint it only shows that petitioner—Company owes money to the farmers towards purchase of Subabul wood during 2014 and except that the complaint averments do not specify any of the ingredients of the offences under Sections 409 and 420 IPC inasmuch as they do not disclose the entrustment of any property by the farmers to the petitioners and petitioners' receiving the property in the capacity of public servant, banker, merchant, factor, broker, attorney or agent to attract the offence under Section 409 IPC and similarly, the compliant allegations also do not disclose fraudulent or dishonest inducement of the petitioners to the farmers to part with any property and their deceptive intention to cheat farmers at the inception of purchase of Subabul wood and thereby, the complaint allegations ex-facie will not disclose any criminal offence much less the offences under Section 409 and 420 IPC. Learned senior counsel pointed that the allegations at best disclose non-payment of a part of the purchase price of Subabul wood which is not in dispute and hence may give rise to civil action. He relied upon the following decisions to buttress his argument that when the complaint allegations miserably failed to project any criminal offence and disclose only breach of some civil contract or obligation, criminal prosecution is unsustainable.

1. ***Alpic Finance Ltd. v. P.Sadasivan***[1]
2. ***Thermax Limited and others v. K.M.Johny and others***[2]

c) Learned senior counsel submitted that the Company went through financial crises since 2012 onwards due to various factors and despite the same it has made part-payments to the farmers till December, 2014 as mentioned in a separate affidavit filed by the Executive Director of the Company and the steps that are going to be adopted to clear dues to the farmers are also mentioned in the said affidavit and in view of Company making clean brest of its case, no criminality can be attributed to it.

d) Finally, he argued that though default was made by the Company, the complainant has not made the Company as accused but arrayed its officers as accused and under criminal law no vicarious liability is recognized and hence on that ground also complaint is not maintainable. He thus prayed to quash the proceedings.

6) Per contra, severely opposing the petition, learned Public prosecutor firstly argued that the Company has been purchasing Subabul wood from farmers through AMC, Nandigama and the

complainant who is the Special Grade Secretary of AMC, Nandigama who acts as facilitator on behalf of farmers and Company in purchase transactions, has *locus standi* to lodge complaint on behalf of farmers. Further, the AMC has also a stake in the purchases because it has to receive the market cess. Moreover, machinery of criminal law can be set in motion by any person and the theory of *locus standi* is confined to only limited cases covered under Sections 195 to 199 Cr.P.C. but not to the present complaint.

b) Secondly, defending the levelling of offences under Sections 409 and 420 IPC against the accused officials, learned Public Prosecutor vehemently argued that in a complaint there need not be any vivid reproduction of legal ingredients of offence alleged but suffice to make factual foundation to attract the concerned offence and in the instant case, the complainant just did the same by mentioning that accused company purchased Subabul wood from farmers of Nandigama notified area but not cleared the sale proceeds and thus cheated the farmers. Vivifying the act of cheating, learned Public Prosecutor submitted, the complainant clearly mentioned that A4 in his letter dated 08.08.2014 has committed on behalf of Company to pay the pending dues in three instalments i.e. Rs.3 crores in August, 2014, Rs.5 crores in September, 2014 and the balance in October, 2014 but they neither paid the amount as promised nor attended the meetings conducted by the Collector, Krishna District which attitude manifests the deceptive mentality of the accused. He further submitted that even on the own admission made in the affidavit of Executive Director, the Company suffered huge losses to a tune of Rs.97.1 crores during 2012-2013 and that being so, obviously the Company was not in a position to clear dues pending by then, but it has purchased between 08.04.2014 and 25.07.2014 Subabul worth Rs.9,56,09,094/- from about 281 farmers of Nandigama notified area knowing fully well that the Company cannot repay their dues within a reasonable time frame and this act itself demonstrates the fraudulent and dishonest intention of the Company to defraud and cause wrongful loss to the farmers and therefore, the accused are liable for the offences levelled against them. He submitted that since the complaint and other associated facts *prima facie* divulge criminal offences, quash petition is not maintainable. He submitted that merely because the default committed by the accused also attract civil action, that by itself the criminal complaint cannot be quashed when the acts of the accused also disclose criminal offence. On this aspect he relied upon the decision of the Apex Court reported in ***Indian Oil Corporation v. NEPC India Ltd. and others***[3]. He also relied upon the following decision to canvass the point that legitimate prosecution shall not be stifled under the inherent powers under Sections 482 Cr.P.C.

N.Soundaram v. P.K.Pounraj and another[4]

He thus prayed to dismiss the petition.

7) In the light of above rival arguments, the point for

determination is:

"Whether there are merits in this petition to allow?"

8) **POINT**: It is a petition to quash the FIR. In the case of ***Indian Oil Corporation*** (3 supra) the Apex Court by codifying its earlier principles in several decisions on the aspect as to when to exercise jurisdiction under Section 482 Cr.P.C. to quash the complaint and criminal proceedings, laid down the following principles.

> *"(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.*
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> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.*
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> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with maladies/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
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> *(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*
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> *(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
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> *(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or*

breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not".

On the touchstone of above principles it is to be seen whether the complaint allegations disclose a criminal offence or whether they make out purely a civil wrong.

a) The complaint lodged by Special Grade Secretary, AMC, Nandigama unfolds the facts that M/s. Sirpur Paper Mills, Sirpur Kagaznagar has been purchasing Subabul wood in Krishna District since 2005 through AMC, Nandigama and paying the sale proceeds regularly. But however, the said Company of-late has not cleared the sale proceeds to the Subabul farmers of Nandigama notified area and thus cheated the farmers. The complaint allegations further read the Secretary and other Marketing Department authorities have made repeated requests to the Company authorities to clear the pending dues but of no use. Though A4 being the vice-President in his letter dated 08.08.2014 promised to pay pending dues in three instalments i.e. Rs.3 crores in August, 2014; Rs.5 crores in September, 2014 and the balance in October, 2014 but did not keep his promise. The complaint allegations further narrate that farmers made representation to the District Collector, Krishna District, Machilipatnam and the Collector proposed to convene meeting on 10.02.2014 in his office with the Chairman of Sirpur Paper Mills and other Department officials and representatives of farmers but Chairman did not attend the meeting. Subsequently also the Collector issued several notices to the Chairman to appear before him on 01.11.2014, 03.11.2014, 10.11.2014 but the Chairman did not attend the meeting. According to learned Public Prosecutor, the element of cheating can be culled out not only from the act of default in paying the dues and in Chairman and other officers not attending several meetings conducted by the Collector but also from other relevant facts. He argued that admittedly the Company was running in rough weathers since 2012-2013 and suffering losses to a tune of Rs.97.1 crores and in spite of knowing the fact that it cannot be in a position to clear the debts due to the farmers, still suppressing the said fact, the Company was purchasing Subabul wood and during the relevant period i.e. between April, 2014 and July, 2014 it purchased Subabul wood worth Rs.9,56,09,094/- and did not pay the amounts to the poor farmers who invested their hard earned money to grow Subabul trees and left with empty hands now. He argued that it was not a case of Company purchasing wood with a *bona fide* intention to repay the sale price and later sustaining financial crunch but on the other hand, in spite of suffering huge loss running in crores, the Company has been nonchalantly purchasing crores worth of Subabul wood and paying a pittance to farmers when they agitate and not even caring for the successive notices issued by a responsible officer of not less than the District Collector. This attitude of petitioners/accused cannot but be described as a fraudulent and dishonest inducement to the farmers to part with their wood on the promise of paying amount and later deferring their liability.

b) On a careful scrutiny of the record, this Court finds force in the submission of learned Public Prosecutor. Since inception it is not the case of the petitioners that Company does not owe any amount to the farmers but their submission is that due to financial difficulties there occurred delay in making payments to the farmers. Since the petitioners admitted their liability, during the enquiry stage on the request of the prosecution, this Court directed petitioners to file an affidavit showing the measures that they are going to adopt to discharge their dues to the farmers. Accordingly, the Executive Director of Sirpur Paper Mills Limited filed a detailed affidavit dated 03.02.2015. In his affidavit he narrated the past glory of his Company and various factors that contributed for financial crunch suffered by it since 2012-2013 onwards and despite the same how the Company made payments to the farmers till December, 2014 from time to time and the measures that they are being adopted to bailout from the present adverse situation i.e. their filing an application before the BIFR under Section 16 of Sick Industrial Companies (Special Provisions) Act, 1985 and finally and most importantly, the measures that they are going to adopt to clear the dues to the farmers. Though this affidavit was filed to explain the measures that are adopted to clear the debts and it has no bearing on the present quash petition, still some of the facts narrated therein are relevant for disposal of quash petition. In para-7 of the affidavit the Executive Director mentioned that Company went through financial crunch in the year 2012 due to various factors that are narrated in his affidavit and the Company suffered loss to a tune of Rs.97.1 crores. It is in this context, the argument of learned Public Prosecutor assumes importance. His argument as already narrated supra is that despite Company suffering huge losses running in crores, without disclosing this fact to the farmers association and AMC and without notifying them that the Company would be in a position to pay off the dues only after a stipulated period, it coolly went on purchasing the wood as if it would clear the dues without any hassle. Even between April and July, 2014 the Company purchased about 9 crores worth of wood from the farmers which *prima facie* amounts to deception. I find force in the submission. In the normal circumstances, the Company is not required to divulge its financial status to third parties. However, when it was suffering losses running in crores and when it was not in a position to pay the purchase price to the poor farmers within a reasonable period, the prudence and diligence required atleast to communicate to the farmers association and AMC that the Company would be in a position to pay the dues only after a certain period against the purchases. This should have put the Company on an honest stead. But the petitioners who are the helm of affairs of the Company did not do this. Hence, it is not a case of mere failure to pay the dues to attract civil action alone but also *prima facie* a case of dishonest inducement of the poor farmers to part with their wood under a promise to pay the sale price within a reasonable period and later betraying them. It is no doubt in his affidavit the Executive Director has stated that despite their financial difficulties the Company paid an amount of Rs.32.24 crores during 2012-2013 to Nandigama farmers and during 2014 also the Company paid certain amounts as mentioned in Annexure-A2. Even if this fact is taken into consideration, the closing outstanding due for each month from April to December, 2014 shows huge amount after deducting paltry payments made by the Company. It is not the issue whether the Company was making some payments, but the issue was whether the farmers were put to prior knowledge that their dues cannot be paid until after a certain period. Hence, *prima facie* offence under Section 420 IPC is maintainable. However, the offence under Section 409 IPC is not maintainable since the ingredients of the said offence are not even remotely satisfied in the present set of facts. The decisions relied upon by the petitioners in ***Alpic Finance Ltd.*** and ***Thermax Limited*** (1 and 2 supra) have no application in the instant case since there is a *prima facie* material for the criminal charge.

c) The next contention of the petitioners is that complaint is not maintainable as the Special Grade Secretary, AMC has no *locus standi* to file compliant. I am afraid, this argument is not tenable because purchase transactions between Company and farmers are being taken place through AMC, Nandigama and it acts as a facilitator and further, AMC gets market cess on the purchases made by the Company. Therefore the complaint is maintainable by the Secretary. The further contention is that complaint is not maintainable without arraying the Company as accused since no vicarious liability can be imputed against the petitioners. This argument also does not have much force since petitioners being the representatives of the Company are in-charge of and responsible for the conduct of the business of the Company. The Collector issued notice to Chairman (A1) to attend the meetings but he failed to attend. A4 in his letter dated 08.08.2014 agreed to clear the dues in three instalments but did not keep up the promise. So, the compliant is maintainable against the petitioners.

9) Thus, on a conspectus of the case, there is *prima facie* material for the offence under Section 420 IPC but not for the offence under Section 409 IPC.

10) In the result, this Criminal Petition is dismissed and Nandigama Police are directed to complete the investigation in Cr.No.490 of 2014 within a period of three (3) months from the date of receipt of this order and file a report according to law. However, the police are directed not to arrest the petitioners/accused during the course of investigation.

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

U. DURGA PRASAD RAO, J

Date: 09.07.2015

Note: L.R. copy to be marked Yes / No

Murthy

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[1] (2001) 3 SCC 513

[2] (2011) 13 SCC 412

[3] (2006) 6 SCC 736

[4] (2015) 1 SCC (Crl.) 169