IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL PETITION NO. 736 OF 2011

Between:

Mirza Mohammed Ali Baig, and another

.. Petitioners

and

State of Andhra Pradesh
Rep. by the Station House Officer
Police Station Saifabad
Through the Office of the Public Prosecutor
A.P. High Court, Hyderabad,
and another

.. Respondents

DATE OF ORDER PRONOUNCED: 17.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL PETITION NO. 736 OF 2011

Order:

This Criminal Petition is filed by the petitioners/A1 and A2, under Section 482 Cr.P.C, seeking to quash the proceedings in Crime No.232 of 2007 on the file of Saifabad Police Station, Hyderabad, registered for the offences punishable under Sections 420 and 120B IPC and Section 156 Cr.P.C.

2. The second respondent filed a private complaint on the file of Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad, for the alleged offences punishable under Section 420 read with 120B IPC and the same has been referred to the police and accordingly, the FIR was registered. Immediately the petitioners, who are shown as A1 and A2, have filed the present petition.

3. The case, in brief, is that the first petitioner/A1 was admittedly the agent of second respondent-*de facto* complainant for the purpose of securing business in the name of insurance agency. The second petitioner/A2 is said to be his mother. The agency commenced on 11.07.2001 and at that time it was agreed that A1 is entitled to 40% commission out of the business done by him. Subsequently, on 23.08.2004 the company is said to have taken a decision whereby the commission was revised from 40% to 20%, which has resulted in the A1 to feel and offend since the commission, which is agreed to 40%, cannot be reduced to 20% arbitrarily. Therefore, A1 said to have been made a representation to the Hon'ble Prime Minister of India, and thereby the *de facto* complainant on 12.04.2006 issued a letter to A1 terminating his agency. Thereafter the second respondent is also said to have filed a suit in O.S. No.2245/2006 on the file of III Junior Civil Judge, City Civil Court, Hyderabad, and obtained interim injunction, which was, however, subsequently vacated. In the said suit, the second respondent-*de facto* complainant sought for an ad-interim injunction restraining A1 from divulging such information pertaining to the second respondent to the public so as to cause damage to second respondent.

4. The learned counsel for the petitioners vehemently submits that a reading of the complaint, *prima facie,* do not reveal any offence much less an offence punishable under Section 420 r/w 120B IPC. The learned counsel has also relied upon a decision of the Supreme Court in **State of Haryana and others v. Bhajan Lal and others**[1] and invites the attention of the Court to paragraph No.102 wherein seven parameters are laid down for applying the provisions of Section 420 IPC hereunder:

> "**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.
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> (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 malafide 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."

The emphasis is laid down by the learned counsel on clauses 1 and 7 mentioned above.

5. For the purpose of quashing the complaint, what is required to be seen is whether a bare perusal of the contents of the complaint, *prima facie,* reveal any offence or whether the same do not reveal any kind of ingredients of offence and the roving enquiry is required as contemplated when the matter is yet to be investigated. It is not as that investigation has been completed and the charge sheet has been filed; or for that matter the statements of any of the witnesses have been recorded. If that be the case, the Court would be justified by looking into the material to justify whether there is a *prima facie* case or whether the petitioner/accused on any Crime/FIR registered has rushed to the Court and obtained Court orders. Therefore, what is left open to the Court for consideration is only the complaint filed by second respondent and paragraph Nos.21 to 23 of the complaint are relevant. A reading of the same clearly shows that after the agency of A1 is terminated, he is still displaying the Board at his office showing that he is the agent of second respondent company as he is the insurance consultant of second respondent. At this stage it is not proper to determine as to who are persons with whom A1 is dealing. All these things would come out in the light of investigation. In the facts and circumstances of the case, I see absolutely no ground to quash the proceedings in the subject crime and hence, the petition is liable to be dismissed.

6. In the result, the Criminal Petition is dismissed.

As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Petition shall stand closed.

M.S.K. JAISWAL, J

Date: 17.07.2015
MVA

HON'BLE SRI JUSTICE M.S.K. JAISWAL

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CRIMINAL PETITION NO. 736 OF 2011

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MVA

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[1] 1992 Supp (1) SCC 335