

**\* THE HONOURABLE SRI JUSTICE B. SIVA SANKARA RAO**

-

**+ CRL.P.No.3910 of 2015**

-

% Dated 04.06.2015

# Narla Syam Kishore Mouli

.... Petitioner/accused

VERSUS

\$ The State of A.P., rep. by Public Prosecutor and another.

... Respondents

! Counsel for Petitioner: Sri C.Masthan Naidu

^ Counsel for Respondents: The Public Prosecutor.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2010) 10 SCC 673

2. (2014) 7 SCC 215

3. (2010) 10 SCC 361

4. (1970) 2 SCC 740

5. (2003) 5 SCC 257

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No.3910 of 2015**

-

**ORDER :**

This criminal petition is filed under Section 482 Cr.P.C. by the petitioner/accused seeking to quash the proceedings in C.C.No.131 of 2011 on the file of the Chief Metropolitan Magistrate, Vijayawada, Krishna District, registered for the offences punishable under Sections 406, 420 and 506 IPC.

2. Heard, the learned counsel for the petitioner/accused and the 1<sup>st</sup> respondent-State represented by the learned Public Prosecutor, before hearing for admission and before ordering notice to the 2<sup>nd</sup> respondent-de facto complainant and perused the material on record.

3. The petitioner is the sole accused on the complaint of the de facto complainant that was referred to police for investigation under Section 156(3) Cr.P.C. and in turn the police registered the crime and investigated and filed final report in the form of charge sheet and that was taken cognizance under Section 190 Cr.P.C. by the learned Magistrate by allotting case number as C.C.No.131 of 2011, which is on the file of the Chief Metropolitan Magistrate, Vijayawada.

4. The petitioner now seeks to quash the said charge sheet accusation that was taken cognizance against him for the offences punishable under Sections 420, 406 and 506 IPC.

5. The factual matrix of the case shows from the private complaint that was registered as F.I.R. in Crime No.513 of 2009, dated 29.07.2009, as well as the contents of the charge sheet that the accused pretending that the car bearing No.AP 09 AY 3030 belong to him, which is in the name of his close relative, has to be offered to sell for Rs.7,50,000/- and collected an advance of Rs.6,00,000/- in the presence K.Chandra Sekhar and A.Sankarrao of Kaleswarao Market, Vijaywada, on 06.11.2008, and given delivery of the car along with papers. However, by pretending that the insurance policy is lapsed and is to be renewed at Rajahmundry, taken back the car and documents and later failed to give the documents as well as the car

and when the de facto complainant asked, the accused threatened him with dire consequences, which necessitated him to maintain the complaint. Needless to say, after the case was taken cognizance and the accused appeared before the trial Court and after hearing of the prosecution and the accused, as contemplated by Section 239 Cr.P.C., charges framed under Section 240 Cr.P.C. by the learned Magistrate and these facts are not in dispute. It is also further not in dispute that the trial has already commenced and de facto complainant was examined as PW.1 and documents are exhibited on his side including Ex.P.3-cheque, said to have been issued by the de facto complainant for Rs.6,00,000/- on 06.11.2008 at the time of purchasing the car.

6. It is the sum and substance of the contention of the learned counsel for the petitioner there from that there is no element of cheating or misappropriation or breach of trust or any so-called threat and the prosecution is nothing but an abuse of process of law and the petitioner approached this Court knocking the door for termination of proceedings under Section 482 Cr.P.C.

7. The learned Public Prosecutor opposed the application saying that the present application is nothing but an abuse of process of law to entertain or to admit.

8. Learned counsel for the petitioner placed reliance upon three expressions of the Apex Court on the scope of Section 482 Cr.P.C. as well as Section 420 IPC. The Apex Court in **Manoj Mahavir Prasad Khaitan v. Ram Gopal Poddar and another**, particularly at para 12 observed that *“we reiterate that when the criminal court looks into the complaint, it has to do so with an open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers*

*thereunder to pass any order in the interests of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its power under Section 482 Cr.P.C.”*

9. It is there from the contention of the learned counsel for the petitioner that if the factual matrix supra is to be appreciated with open mind by the Court. The learned counsel also placed reliance of the decision of Hon'ble Supreme Court in **Rishpal Singh v. State of Uttar Pradesh and another**, where it is observed in para 17, *It is no doubt true that the courts have to be very careful while exercising the power under Section 482 Cr.P.C. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold.*

10. There from it is observed on facts, all the accusation no where sustainable but for his dereliction of duty for a civil remedy in quashing the proceedings. The third expression of the Supreme Court in **V.P. Shrivastava v. Indian Explosives Limited and others**, wherein catena of expressions referred and, more particularly, at para 23 it is observed, *“the ingredients required to constitute an offence of cheating have been succinctly laid down in **Ram Jas v. State of U.P.** that to attract the offence under Section 415 Cr.P.C. of cheating defend therein (i) there must be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should have induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induces to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property”*

11. It is also drawn the attention of the Court at para 25 referred to the expression of the Apex Court in **Hira Lal Hari Lal Bhagwati v. CBI** observed there from that *“to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into agreement cannot be presumed merely from his failure to keep the promise subsequently”*.

12. From the above settled propositions, now coming to the factual matrix, here much water flown under the bridge, on the conduct of the complainant herein. From the expressions placed reliance, the Court has to read the intentions of the accused whether exists or not from inception of entering of the contract any element of cheating. Once such is the case, undisputedly when the car does not belong to him his offering the car itself shows some ill intention in his mind that too by taking Rs.6,00,000/- and Ex.P.3- cheque said to have been issued. Once that intention from the inception is make out from the accusation, it is premature to decide the case when the trial is in progress. Thus, this Court cannot venture to put it fingers to quash the proceedings, much less to admit the proceedings to give life to the litigation and by stalling the trial in progress.

13. Accordingly, the criminal petition is dismissed. Need less to say, this order will not influence the mind of the trial Court while deciding the case on own merits from the evidence available on record.

14. Miscellaneous petitions pending, if any, shall stand closed.

---

**Dr. B. SIVA SANKARA RAO, J**

4<sup>th</sup> June 2015.

L.R. Copy to marked – Yes.

mar

