

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

Criminal Petition No.1270 of 2010

ORDER:

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This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners, who are accused 1 to 4 in C.C.No.1287 of 2009, seeking to quash proceedings in the said case on the file of X Additional Chief Metropolitan Magistrate, Secunderabad, initiated against them for the offences punishable under Section 420 IPC and Section 24 of the Emigration Act, 1983.

The petitioners herein are accused 1 to 4 in C.C.No.1287 of 2009. It is alleged that A-1 and A-2 being Proprietor and Managing Director of Jerry Varghese Consultancy, which is a recruiting agency, carrying out their consultancy having opened a branch at Secunderabad for the purpose of sending candidates abroad for employment. A-3 and A-4 are employees of the said consultancy. The 2nd respondent herein, who is *de facto* complainant, approached the petitioners' consultancy on 14-11-2007 for employment abroad and he was selected as Foreman by M/s. Nagarjuna Construction Company for Oman. The 2nd respondent was asked to keep his passport bearing No.F4256543 with recruiting agency in the process of obtaining VISA till he obtains the same and accordingly, he deposited his passport with the petitioners' company. Thereafter, due to some personal problems, the 2nd respondent has not intended to go abroad and when he asked the petitioners' company to return his passport, they refused to return the same, stating that unless he pays an amount of Rs.80,000/-, his passport will not be returned. Thereafter, the 2nd respondent made a complaint to Tukaramgate

Police Station, which was registered as Crime No.160 of 2008 for the offences punishable under Section 420 and Section 24 of the Emigration Act, 1983. After completion of investigation, the police filed charge sheet being numbered as C.C.No.1287 of 2009, which is challenged herein.

Heard the learned counsel for the petitioners and the learned counsel representing the learned Public Prosecutor.

On perusal of the material on record, it appears that earlier when the crime was registered, the petitioners filed Criminal Petition No.7163 of 2008 seeking to quash proceedings in Crime No.160 of 2008 and this Court disposed of the said petition on 10-11-2008 holding that the petitioners shall not be arrested till filing of charge sheet and further investigation and consequential steps shall go on. It also directed that passports, if any, seized or deposited, shall be returned to respective persons.

Learned counsel for the petitioners vehemently contended that by no stretch of imagination the petitioners can be said to have committed any offences much less the alleged offences. According to him, the petitioners' company is a licenced recruiting agency for sending candidates abroad and that the company was given Power of Attorney by M/s. Nagarjuna Construction Company International L.L.C. concerning recruitment, selection of employees, completion of immigration, and obtaining all necessary required documents in connection with recruitment of persons for service and pursuant thereto, the petitioners' company gave an advertisement for recruitment of employees at Oman and after conducting interviews, the petitioners' company selected 31 candidates out of which the 2nd respondent was one of them. He

further contended that the documents in relation to visa for the 2nd respondent were processed and ultimately visa was issued in his favour, which is valid till 12-07-2008. However, the 2nd respondent informed on 18-08-2008 that due to his family problems he was not intended to go abroad and requested for return of his passport. It is further contended that as per the terms of the agreement between the consultancy agency and the candidate that if any person does not intend to join in the employment after the process is completed, such person is required to pay expenses incurred by the agency towards conducting of interview, advertisement, expenses for visa and other incidental expenses, and hence, the 2nd respondent was asked to pay an amount of Rs.80,000/- to defray such expenses, but the 2nd respondent, instead of paying such amount, made a complaint to the police against the petitioners and taking advantage of his father being an Inspector of Police, the 2nd respondent influenced the police to register the case and accordingly, the crime was registered.

Learned counsel for the 2nd respondent, on the other hand, submits that the police after completion of investigation filed the charge sheet on *prima facie* being satisfied with the allegations levelled against the petitioners about their involvement in the acts of cheating and other related acts. Since there was material about involvement of the petitioners in the alleged acts, the question of quashing the proceedings does not arise.

Having perused the material on record and the submissions made by the learned counsel on both sides, in view of the fact that the charge sheet has already been filed against the

petitioners, quashing of proceedings in C.C.No.1287 of 2009 cannot be entertained at this stage in the absence of any valid and justifiable reasons. However, since it is stated that petitioners 1 and 2 herein are residing at different countries and petitioners 3 and 4 herein were the employees of petitioners 1 and 2, it can safely be held that ends of justice would be met, if the petitioners are directed to approach the trial Court and make appropriate application under Section 239 Cr.P.C. seeking their discharge, within one month from today and on filing of such application, the concerned Magistrate shall consider the same and pass appropriate orders in accordance with law uninfluenced by any of the observations made herein. Till such orders are passed, the presence of petitioners 1, 2 and 4/A-1, A-2 and A-4 shall not be insisted except on the dates when their presence is required by the Court. However, the 3rd petitioner/A-3 shall appear before the Court and represent them.

With the above directions, the Criminal Petition is, accordingly, disposed of. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M.S.K. JAISWAL, J

Date: 10-02-2016

Note: Issue C.C. tomorrow.

B.O./Ksn