

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16058 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings against the petitioner/ A.2 in C.C.No.109 of 2016 pending on the file of VIII Additional Chief Metropolitan Magistrate, Hyderabad, for the offence punishable under Sections 420, 468, 471 and 109 of Indian Penal Code, 1860 (for short, 'I.P.C.')

The facts necessary for deciding the criminal petition, in brief, are that A.1 joined as Chainman in QQQSUDA, and thereafter he was promoted as Tracer from Chainman, and Draughtsman Grade-III. Later produced a Diploma Certificate in Civil Engineering in the month of December 2006/January 2007 vide Registration No.99786-DC-25 from Vinayaka Mission Research Foundation, Salem, Tamilnadu, and requested to promote for the post of Assistant Engineer. On which, the Officials of QQSUDA sent a Photostat copy of Diploma certificate to the Vinayaka Mission Research Foundation, Salem. In turn authorities of VMU, Salem certified that this Certificate was not issued by them and it is fake one.

A specific allegation is made against the present petitioner/ A.2 is as follows:

"the then Superintendent A.2 Afzal Baig after detection of the fake certificate of A.1 not initiated any action against the A.1 as he abetted the A.1 to submit the fake certificates to get promotion."

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At the end of charge sheet, investigating agency made a specific allegation that A.1 and A.3 have committed an offence punishable under Sections 420, 468 and 471 IPC and A.2 has committed an offence punishable under Section 109 IPC. Taking into consideration of these two sentences, it is contended by the learned counsel for the petitioner that the petitioner did not initiate any proceedings against A.1 and even otherwise, failure to initiate action against A.1 does not amount to an offence punishable under any of the provisions referred to supra.

At best, the allegation is that the petitioner abetted A.1 to get fake certificate and his failure to initiate action against A.1 is not a ground to quash the proceedings. Section 109 IPC is not substantive offence to punish the petitioner under the IPC.

According to Section 109 IPC, whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Here the petitioner allegedly abetted A.1 to submit fake certificate, which attracts a substantive offence under Section 420 IPC. Therefore, A.2 is also liable for the same offence committed by A.1, being an abettor. Mere making an allegation that an offence punishable under Section 109 IPC itself is not a ground to quash the proceedings, and the allegation made in the charge sheet on its face value, if taken into consideration, would constitute an offence punishable under Section 420 read with

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Section 109 IPC. Hence, I find no ground to quash the proceedings under Section 482 Cr.P.C. However, after appearance of the petitioner and other accused, the court may frame appropriate charge against the petitioner taking into consideration of the purport of Section 109 IPC.

In the result, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

Date: 17.11.2016
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M. SATYANARAYANA MURTHY, J

