HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15070 of 2016

ORDER :

This criminal petition is filed by the petitioners/A.1 to A.3 under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.777 of 2016 pending on the file of the I-Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Sections 420 and 506 read with 34 IPC.

2. The case of the prosecution from the beginning is that the 2nd respondent/de facto complainant filed a complaint before the I-Additional Chief Metropolitan Magistrate, Hyderabad, and the same was referred to police exercising the powers under Section 156(3) of Cr.P.C. and after investigation filed a charge sheet before the Magistrate and it is registered as C.C.No.777 of 2016. It is the specific case from the beginning that the 2nd respondent is carrying on real estate business since 1990, while so, in the year 2013 the 2nd respondent was issued general power of attorney (GPA) for an extent of Ac.4.75 cents in Sy.No.371/1 of Madhurawada at Visakhapatnam. Accordingly, it is the claim of the 2nd respondent that A.1 along with A.2 and A.3 introduced him and made a promise that they would influence the officials of Collector's Office to issue No Objection Certificate (NOC) and demanded for payment of Rs.10,00,000/- and further directed to deposit the same into the account of A.2 and A.3. Accordingly, the 2nd respondent deposited Rs.5,00,000/- with the bank

account of A.2 on 17.10.2013 and an amount of Rs.5,00,000/- with the bank account of A.3 on 07.10.2003 through Real Time Gross Settlement (RTGS). Thus, A.1 to A.3 allegedly collected Rs.10,00,000/- only to influence the officials of Collector's Office for issuance of NOC.

3. The present petition is filed on various grounds to quash the proceedings in C.C.No.777 of 2016. The first ground is that the allegation made in the charge sheet would not disclose commission of any offence, much less for the offences punishable under Sections 420 and 506 read with 34 IPC. The second ground is that the trial Court issued summons without considering the falsity and frivolous nature of the complaint intended to hound the petitioners and the third ground is that the investigation did not disclose the commission of any offence and filing of final report is not based on any material and that it is purely a case of civil nature. Therefore, civil proceedings cannot be converted into criminal proceedings and in such case the Court can exercise the jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

4. The learned counsel for the petitioners while reiterating the contentions raised in the petition, drawn attention of this Court to the definition of cheating under Section 415 IPC adverting to Section 420 IPC and contended that there is no inducement to pay the amount and the allegation made in the charge sheet would not constitute an offence even if those allegations are taken as true and in such case this

Court can exercise the power under Section 482 Cr.P.C. and prayed to quash the proceedings in C.C.No.777 of 2016.

5. Whereas, the learned Public Prosecutor for the State of Telangana would contend that the police after due investigation filed charge sheet before the Court on reference of private complaint under Section 156(3) Cr.P.C. and the material on record prima facie shows that the petitioners committed the offence punishable under Sections 420 and 506 read with 34 IPC, if proved, and finally prayed to dismiss the petition.

6. It is the case of the 2nd respondent that he is carrying on real estate business and obtained GPA for an extent of Ac.4.75 cents in Sy.No.371/1 of Madhurawada at Visakhapatnam and A.1 to A.3 promised to influence the officials in Collectors Office to issue NOC on payment of Rs.10,00,000/- to them and accordingly he deposited Rs.5,00,000/- to the credit of A.2 with HDFC Bank bearing Account No.05451930005003 through RTGS on 17.10.2013 and an amount of Rs.5,00,000/- to the credit of A.3 account with Indian Overseas Bank bearing Account No.238501000000362 on 07.10.2013 through RTGS. After receiving the said amount, A.1 to A.3 did not keep up their promise and when the 2nd respondent allegedly approached A.1 for refund of the amount on 10.01.2016, A.1 to A.3 scolded the 2nd respondent/de facto complainant in vulgar language and beat the 2nd respondent while threatening with dire consequences and warned him by phone as they will see the end of the 2nd respondent.

7. The main contention of the petitioners is that the allegations made in the charge sheet would not attract the offences under Sections 420 and 506 read with 34 IPC i.e., cheating and dishonestly inducing delivery of property. Section 415 IPC defined the word 'cheating' and it is as follows:

> **415. Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

8. Here, the petitioners promised to influence the officials in the Collector's Office for issuance of NOC for an extent of Ac.4.75 cents allegedly acquired by the 2nd respondent/de facto complainant, who engaged in real estate business, and in pursuance of the directions made by A.1 to A.3, the 2nd respondent deposited Rs.5,00,000/- to the credit of A.2 and Rs.5,00,000/- to the credit of A.3 by RTGS transfer. In the entire petition, the petitioners did not raise any contentions that the amount was received for any other purposes other than mentioned in the complaint. However, making such promise to influence the officials in the Collectors Office for issuance of NOC and collecting huge amount of Rs.10,00,000/- would directly attract the offence punishable under Section 420 IPC since it is a fraudulent dishonest inducement by the petitioners to part with huge amount of Rs.10,00,000/-, which was deposited to the credit of account of A.2

and A.3 by RTGA transfer. Making such promise to influence the officials for issuance of NOC and collecting the amount is directly attracts the definition under Section 415 Cr.P.C., which is punishable under Section 420 IPC. Therefore, I find prima facie allegation in the charge sheet, which constitutes an offence punishable under Section 420 IPC against A.1 to A.3, if proved.

9. The other contention of the petitioners/A.1 to A.3 is that the remedy available to the 2nd respondent is to file a suit to recover the amount by approaching a civil Court. No doubt, a civil remedy is available. But, when the petitioners induced the 2nd respondent or to part with such huge amount on the false promise made by A.1 to A.3 to influence the officials in the Collector's Office for issue of NOC would directly attracts Section 415 IPC and punishment under Section 420 IPC prima facie. Therefore, mere availability of civil remedy of recovery itself is not a ground to file an application.

10. The other contention of the petitioners is that civil proceedings cannot be converted into criminal proceedings. As discussed above, there are clear allegations in the charge sheet that the petitioners made fraudulent inducement to the 2nd respondent to part with huge amount, which amounts to cheating within the definition of Section 415 IPC.

11. The power of this Court under Section 482 Cr.P.C. is limited and such power has to be exercised in exceptional circumstances, particularly when the facts on the face of the record if taken into consideration would not constitute an offence or where the de facto

complainant filed a complaint as an abuse of process of law. But, in other circumstances normally this Court would not exercise inherent power under Section 482 Cr.P.C. to interfere with the proceedings. In **State of Haryana v. Bhajan Lal[1],** the Apex Court explained the limits of jurisdiction under Section 482 Cr.P.C. and laid down the guidelines either to exercise the power or not to exercise the power under Section 482 Cr.P.C., they are as follows:

> (a) 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;
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> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation 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;
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> (c) 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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> d) 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;
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> (e) 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;
>
> (f) 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,

[1] 1992 Supp (1) SCC 335

> providing efficacious redress for the grievance of the aggrieved party;
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> (g) where a criminal proceeding is manifestly attended with mala fide 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.

12. If the above guidelines laid down by the Apex Court are applied to the present case, the contention of the petitioners appears to attract clause (a), but the allegation made in the charge sheet in their entirety constitute an offence punishable under Section 420 IPC.

13. In **Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre**[2], the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

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[2] AIR 1988 SC 709

14. Thus, the law declared by the Apex Court is clear that this Court can exercise jurisdiction under Section 482 Cr.P.C. only in exceptional circumstances, but not in a routine manner, more particularly the allegations made in the charge sheet or F.I.R., if taken as it is, on the face of the record would not constitute an offence then the Court can quash the proceedings. But, in the present case the allegations made in the charge sheet would prima facie constitute an offence, if proved, and the availability of civil remedy is not a ground to quash the proceedings. However, the learned Magistrate is directed to decide the case pending before it uninfluenced by any of the observations made hereinabove. Hence, I find no grounds to quash the proceedings in C.C.No.777 of 2016 on the file of the I-Additional Chief Metropolitan Magistrate, Hyderabad.

15. Accordingly, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

25th October 2016

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