

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16295 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed to quash the proceedings in C.C.No.65 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, registered for the offences punishable under Sections 420 and 409 IPC, against the petitioner/accused.

2. The specific allegation in the charge sheet filed by Sub-Inspector of Police, Suryaraopet Police Station, Vijayawada City, is extracted as under:

“Accordingly, L.W.1 and the accused settled their dispute before L.Ws.5 and 6-elders as a result of which the accused returned two machines”.

Thus, it is evident from the allegations in the charge sheet that the petitioner received four machines, out of which, pin machine and Suguna motor were returned to the second respondent/de-facto complainant since the settlement was not reduced into writing. On the other hand, the contention of petitioner is that he purchased these two machines for valuable consideration. But, he did not produce any receipt evidencing the said purchase. Therefore, it clearly amounts to admission of ownership of second respondent with regard to said machines. The alleged purchase of two machines by petitioner can be proved only during trial, but not at this stage.

3. Since the allegations made in the charge sheet would constitute the offences punishable under Sections 420 and 409 IPC,

this Court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings. In view guideline No.1 laid down by the Apex Court in **State of Haryana v. Bhajanlal**¹, this Court cannot decide the factual aspects or disputed questions of fact before trial whether petitioner be acquitted or convicted, while exercising jurisdiction under Section 482 Cr.P.C. Therefore, confining to the allegations made in the charge sheet, it is difficult to exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

4. Hence, the Criminal Petition is liable to be dismissed. However, learned counsel for petitioner requested this Court to dispense with the presence of petitioner before the trial Court, but the Magistrate has to exercise jurisdiction and pass such order. Therefore, the petitioner is directed to file application before the trial Court under Section 205 Cr.P.C. or under Rule 37 of Criminal Rules of Practice, after due notice to the concerned parties, and on filing such application, the trial Court is directed to decide the application on the same day.

5. With the above direction, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

25th November, 2016

sj

¹ 1992(1) SCC 335