

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16662 OF 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.131 of 2015 on the file of II Additional Judicial Magistrate of First Class, Bhimavaram, West Godavari District, registered for the offences punishable under Sections 406, 409, 420 and 477-A read with 34 I.P.C., against the petitioner - accused No.4.

2. Petitioner is accused No.4 in the above Calendar Case and she worked as Front Office Assistant in Sri Ram City Union Finance, Akividu. Her duty is to explain the schemes and help the Manager. The Sri Ram City Union Finance, Akividu, has a Chubb i.e., strong room. The strong room is having three keys. The first and second keys are maintained by the Branch Manager and Accountant, respectively, whereas the third key is maintained by the Front Office Assistant (petitioner herein). If the Chubb is to be opened either to take the gold or to put the gold, the same has to be recorded in the record being maintained in the office and three officers have to sign in the said record. Therefore, the petitioner along with others allegedly misappropriated the amount to a tune of Rs.21,04,965/- and thereby, caused loss to the finance Company.

3. The main contention of the petitioner is that she joined the Company only on 07.07.2012, whereas the offence took place in the

month of December, 2012 and she is no way concerned with the offence, as she did not complete her training period as on the date of occurrence of alleged offence and as such, she cannot be charged for the offences punishable under the above provisions of law.

4. During hearing, learned counsel for the petitioner contended that even if the allegations made in the entire complaint are taken on its face value as true, they would not constitute a *prima facie* offence and now the petitioner is working as Assistant in Passport Office and if proceedings are allowed to go on against the petitioner, she will have to face serious consequences. Learned counsel also drawn the attention of this Court to the suicide note of accused No.2 and the allegations made in the complaint, and contended that the allegations made therein exculpate the petitioner for the offences punishable under Sections 406, 409, 420 and 477-A read with 34 I.P.C. and consequently, she cannot be made liable and therefore, prayed to quash the proceedings against the petitioner.

5. The power under Section 482 Cr.P.C. can be exercised only in exceptional circumstances, more particularly to give effect to the orders passed under the Code, to prevent abuse of process of Court and to meet the ends of justice. Time and again, the Honourable Apex Court in catena of decisions laid down certain guidelines and

in **State of Haryana and others v. Ch. Bhajan lal and others**¹, the

Honourable Apex Court laid down the following seven guidelines:

“1. 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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation 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.

3. 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.

4. Where, the allegations in the F.I.R. 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.

5. 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.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under

¹ AIR 1992 SC 604

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, providing efficacious redress for the grievance of the aggrieved party.

7. 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.”

Similarly, in **R.P. Kapur v. State of Punjab**², the Honourable Apex Court laid down the following guidelines:

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute an offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

² AIR 1960 SC 866

6. In view of the aforesaid guidelines, if the allegations made in the complaint or F.I.R. or charge sheet, on its face value, would constitute an offence against the petitioner, the Court cannot quash the proceedings. Similarly, if any complaint is made with ulterior motive for wreaking vengeance, the Court can exercise its power under Section 482 Cr.P.C. and quash the proceedings.

7. In the present case, it is not the contention of the petitioner that the proceedings were initiated against her with an ulterior motive for wreaking vengeance, but the only contention of the petitioner is that the allegations made in the complaint would not constitute any *prima facie* offence against her, since she did not even complete training period of four months and that she was not in-charge of third key of the Chubb i.e., strong room. The allegations made in the F.I.R., though, not disclose role of the petitioner – accused No.4, during investigation, the officers found the role of petitioner, who was having custody of third key. The F.I.R. is only information to the police about occurrence of cognizable offence and it need not contain all minute details since it is intended to set the criminal law into motion. Therefore, absence of any specific allegations in the complaint against the petitioner is not a ground to quash the proceedings, so also the allegation in the suicide note. But, the allegations made in the charge sheet coupled with the final report of the police, including the statements recorded by the police, would disclose that the petitioner is the custodian of third key and

the Manager and Accountant were the custodians of first and second keys of the Chubb i.e., where the customers used to keep their gold and take back the gold on opening the same with the help of all the three keys with necessary entries in the Registers maintained in the finance organisation. When the articles are found missing, all the three persons, having custody of the three keys, are responsible, since the property was entrusted with the finance company and its officials are the trustees of the properties belonging to the customers. If any misappropriation is done, it is attributable to all the three persons, who were having custody over the property being custodians of three keys by each one. Even the allegations made in the complaint, on its face value, constitute offences punishable under Sections 406, 409, 420 and 477-A read with 34 I.P.C. Therefore, I find no ground to quash the proceedings in C.C.No.131 of 2015 on the file of II Additional Judicial Magistrate of First Class, Bhimavaram, West Godavari District. Consequently, the petition is liable to be dismissed.

8. In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

December 13, 2016.
MD