

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 2073 of 2010

ORDER :

1) This Criminal Petition is filed by accused Nos.1 and 2 under Section 482 Cr.P.C. seeking quashing of proceedings in C.C.No.27 of 2007 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad. A charge sheet came to be filed against the petitioners in Crime No.44 of 2005 of Trimulgherry Police Station, Secunderabad, for the offences punishable under Sections 420 and 506 IPC.

2) The gist of the averments in the charge sheet would show that the informant is known to accused Nos.1 and 2. Taking advantage of acquaintance, accused Nos.1 and 2 approached the informant on 05.03.2004 and requested him to advance a loan amount of Rs.9,00,000/- for the development of their business and also assured that they will repay the said amount within a month. Believing the same, the informant advanced an amount of Rs.7,20,000/-, to which accused Nos.1 and 2 executed an undertaking letter on 25.03.2004 assuring that the said loan amount will be cleared by the end of 2004. When the informant approached the accused for repayment of the said loan amount they are evading the same on one pretext or the other. On 25.06.2004 the informant addressed a letter to the accused to clear the said loan amount. The accused are alleged to have threatened the informant with dire consequences and also disputed the transaction itself. Basing on the above allegations a charge sheet came to be filed.

3) In spite of service of notice, none appeared on behalf of the second respondent-complainant. Hence, heard learned counsel appearing for the petitioners and Public Prosecutor appearing for the first respondent-State.

4) Learned counsel for the petitioners mainly submits that even accepting the allegations in the charge sheet to be true no offence is made out against the petitioners. According to him, the matter is purely civil in nature and the remedy for the informant would be by way of filing either a suit for recovery of the amount.

5) The learned Public Prosecutor opposed the application.

6) The jurisdiction which this Court exercises under Article 226 of the Constitution of India, or under Section 482 Cr.P.C, to quash a complaint, even before completion of investigation, is limited. The law laid down, in *State of Haryana v. Ch. Bhajan Lal*¹, which has been followed in several other judgments of the Supreme Court, is that interference is permissible in cases (a) where the allegations made in the FIR 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; (b) where the allegations in the FIR 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; (c) where the uncontroverted allegations made in the FIR or the complaint, and the evidence collected in support of the same, do

¹ AIR 1992 SC 604

not disclose the commission of any offence and make out a case against the accused; (d) 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; and (e) where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with the ulterior motive for wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge. The Supreme Court further held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases; the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint; the extraordinary or inherent powers do not confer arbitrary jurisdiction on the Court to act according to its whim or caprice; and even if a complaint has been laid only on account of personal animosity that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected.

7) In *INDIAN OIL CORPN. V. NEPC INDIA LTD*² the Apex Court observed as under:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

² (2006) 6 SCC 736

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not”

8) A perusal of the material placed on record would show that the accused approached the informant requesting for advancing loan amount of Rs.9,00,000/- agreeing to repay the same within one month. Believing the said representation made, the complainant arranged an amount of Rs.7,20,000/- . The matter relates to failure on the part of the accused to repay the hand loan taken. Both the parties are known to each other. The averments in the charge sheet nowhere indicates that there was any dishonest intention to cheat from inception. It appears to be a case of civil in nature.

9) In the facts and circumstances of the case, I am of the considered view that it is impermissible for the 1st respondent/ *de facto* complainant to institute criminal proceedings against the accused in a case of this nature and unless this Court, in exercise of its power, quashes the criminal proceedings, it would result in miscarriage of justice.

10) For the foregoing reasons, the entire proceedings in C.C.No.27 of 2007 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad, are hereby quashed.

11) Accordingly, the Criminal Petition is allowed. As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

30.09.2016
gkv

