

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15517 OF 2016

ORDER:

This Criminal petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to set aside the order dated 07.09.2016 in CrI.R.P. No.164 of 2016 passed by the Metropolitan Sessions Judge, Hyderabad, whereby the learned Sessions Judge dismissed the revision petition, confirming the order dated 28.03.2016 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.(SR) No.782 of 2016.

The case of the petitioner is that he filed a private complaint before the XIV Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.(SR) No.782 of 2016 for the offences punishable under Sections 465, 468, 471, 420 and 500 of Indian Penal Code, 1860 (for short 'I.P.C.'). The learned Magistrate, after considering the facts and circumstances of the case, dismissed the complaint by an order dated 28.03.2016. Aggrieved thereby, the petitioner preferred the revision before the Metropolitan Sessions Judge, Hyderabad, which ended in dismissal and hence, the criminal petition is filed to set aside the order passed by the learned Sessions Judge on various grounds.

The petitioner is a Structural Engineer carrying on business in designing of building structures. The second respondent is also another Structural Engineer engaged in the same trade. About three years ago, one Mr.N.M. Srinivasa

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Chary, Architect of M/s.G.Pulla Reddy Sweets, utilized the services of the petitioner for providing structural designs and also completed the project for the client with the services availed from the petitioner. While so, in the month of September, 2015 Mr.M.N.Srinivasa Chary again approached the petitioner for another project of the same client. The petitioner issued structural drawings and as per the said structural drawings, M/s.G.Pulla Reddy started construction of the project on land area of 1317 square yards and slab area of 4794 sq.feet. But while the construction work is going on, filling the slab of the ground floor with the concreting material, a part of the centering slipped accidentally and fell down and thereupon the petitioner along with other architects, suggested remedial measures and to restore the fallen area of the first floor slab. With a good intention to be safe, M/s. G.Pulla Reddy approached the second respondent for second opinion, thereupon the second respondent nursed a grudge against the petitioner seized the opportunity to show that the correct drawings provided by the petitioner are not in accordance with the standards and created a false document as if it is a standard opinion and thus the second respondent stated columns and footings are unsafe as per drawings given by the petitioner.

Having come to know about the rumour spread by the second respondent in the market, through one M.N.Sridhar Chary, the petitioner submitted the drawings to Jawaharlal Nehru Technological University College of Engineering and M/s.MUTECH CADD and structural Engineering services for

review and certification of safety as per Indian Standard Design Codes and the said institutes certified that the same was found to be correct and safe. Hence, the petitioner filed a private complaint for the aforementioned offences.

The learned Magistrate, on consideration of material on record with reference to the allegations made in the complaint, disbelieved the case, and concluded that no case is made out by the petitioner for the aforementioned offences and dismissed the complaint at SR stage. Aggrieved thereby, the petitioner preferred revision before the Metropolitan Sessions Judge, Hyderabad.

The learned Metropolitan Sessions Judge, upon hearing both the counsel, came to a conclusion that the petitioner failed to make out a *prima facie* case against the second respondent for the offences aforementioned.

During the course of hearing, learned counsel for the petitioner contended that there is sufficient material to establish, *prima facie*, that the second respondent committed the offences. But the learned Magistrate and the learned Metropolitan Sessions Judge did not consider the material in proper perspective and dismissed the complaint. He has drawn the attention of this court to certain designs prepared by the petitioner and the second respondent to show that the designs prepared by the petitioner are in accordance with the Indian Standard Design Code and thereby he sought to set aside the order passed by the learned Metropolitan Sessions Judge and seeking a direction against the learned Magistrate to take

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cognizance of the complaint and to decide the matter in accordance with law. The specific case of the petitioner is that the accused created false documents and thereby committed the aforementioned offences.

Section 465 of I.P.C. deals with punishment for forgery. The word 'forgery' is defined under Section 463 of I.P.C. It reads as under:

“Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

Therefore, to attract the offence punishable under Section 465 of I.P.C., the petitioner has to show *prima facie* case that the accused created a false document or false electronic record or part of it to cause damage or injury to the public or to any person. But here the second respondent gave his opinion about structural designs prepared by the petitioner that does not amount to an offence punishable under Section 465 of I.P.C. as the intention of the second respondent is not made out and there is no specific allegation in the entire complaint that the accused forged any document or created false electronic record or part of it. In the absence of any such allegation in the complaint and the petition thereto, *prima facie*, the court cannot take cognizance of the offence punishable under Section 465 of I.P.C. against the second respondent.

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It is also the case of the petitioner that the second respondent forged documents for the purpose of cheating and thereby committed offence punishable under Section 468 of I.P.C. Section 468 of I.P.C. deals with forgery for the purpose of cheating. According to it, whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Here the second respondent issued his opinion, and that even if the allegations made in the complaint are taken on its face value, the second respondent never intended to cheat the petitioner as defined under Section 415 of I.P.C. Therefore, the allegations made in the complaint on its face value would not attract the offence punishable under Section 468 of I.P.C.

The petitioner also made serious allegations that the designs given by the second respondent using as genuine and forged the document or electronic record as defined under Section 471 of I.P.C. But here the opinion issued by the second respondent cannot be said to be a forged document or electronic record using the same as genuine. Therefore, the allegations made in the complaint would not attract the offence punishable under Section 471 of I.P.C.

The last but one allegation made against the second respondent is that he cheated the petitioner by issuing such opinion. When M/s.G.Pulla Reddy Sweets approached the second respondent for second opinion in view of loss sustained

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during laying of first floor of the building, though rectified, issuing opinion would not amount to cheating and even if the second respondent had any dishonest intention, or induced the said M/s.G.Pulla Reddy Sweets, it is the aggrieved person, but not the petitioner to approach the Court.

The word 'cheating' is defined under Section 415 of I.P.C. and according to it, 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"

Here the second respondent issued his opinion regarding structural designs to M/s.G.Pulla Reddy sweets and issuing such an opinion would not amount to fraudulent inducement of any person to part with any property or, to any person expressing opinion would not amount to cheat or inducing the delivery of property. Even otherwise if the second respondent cheated or induced M/s.G.Pulla Reddy Sweets by issuing opinion for the structural designs. The said M/s.G.Pulla Reddy Sweets is the aggrieved person, but not the petitioner. Therefore, the petitioner is not an aggrieved person and he is not entitled for the alleged inducement of M/s.G.Pulla Reddy by issuing opinion for about structural designs.

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Finally the petitioner made serious allegation that the second respondent issued opinion with false allegations defaming him in the market and thereby caused incalculable damage to the reputation to the petitioner.

The word 'defamation' is defined under Section 499 of I.P.C. According to it, whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Here the second respondent allegedly issued his opinion about the structural designs and it is not in the nature of opinion. Merely because, he issued opinion contrary to the opinion already issued by the petitioner for structural designs to construct building by M/s.G.Pulla Reddy Sweets does not amount to defamation. Therefore, such an act would not constitute an offence punishable under Section 500 of I.P.C., even if the allegations made in the complaint are taken on its face value. In such circumstances, the order passed by the learned Magistrate, confirmed by the learned Sessions Judge in CrI.R.C.No.164 of 2016 dated 07.09.2016 cannot be found fault.

Though the jurisdiction of this court under Section 482 of Cr.P.C. is inherent, it has to be exercised sparingly only to give effect to any order under the code of criminal procedure, to

prevent abuse of process of any court and to secure the ends of justice.

In ***State of Haryana vs. Bhajan Lal***¹ the Apex Court laid down the following 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 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 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.

(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 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 malafide 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.”

¹ (1992 Supp (1) SCC 335

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The present case on hand would not attract any of the guidelines laid down by the Apex court warranting interference of this court exercising jurisdiction under section 482 of Cr.P.C.

In **MADHAVRAO JIWAJI RAO SCINDIA & ANR. VS. SAMBHAJIRAO CHANDROJIRAO ANGRE & ORS.**² the Apex Court laid down the well-settled legal position 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.

But here the second opinion given by the second respondent is contrary to the opinion given by the petitioner would not constitute an offence since it is in the nature of opinion. Therefore, I find no ground warranting interference of this Court and hence this Court cannot exercise its inherent power to set aside the order dated 07.09.2016 passed by the Metropolitan Sessions Judge, Hyderabad, in CrI.R.P. No.164 of 2016 confirming the order dated 28.03.2016 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.(SR) No.782 of 2016. Therefore, the criminal petition is liable to be dismissed.

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

Date: 03.11.2016
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² AIR 1988 SC 709