

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17250 of 2016

ORDER:

This petition under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is filed by the petitioner/accused No.1 to quash the proceedings in C.C.No.348 of 2010 on the file of Judicial Magistrate of First Class at Gajwel for the offence punishable under Section 420 IPC.

2. The second respondent lodged a complaint before police on 20.12.2009 alleging that one Nathala Anji Reddy has introduced a person as a Jama Masjid President namely Mohd. Shafiuddin, S/o.Mohd.Yousuf and promised to give 100 yards of land in Survey No.439 behind Venkateswara Talkies in the limits of Toopran village and asked to give Rs.30,000/-; that accordingly the complainant and nine others gave Rs.30,000/- each under a rental agreement on bond paper was executed; and that thereafter within ten days they will show the place, but failed to show any land thereby committed an offence of cheating. Basing on the said complaint, the police registered a case in Crime No.250 of 2009 for the offence punishable under Section 420 IPC. On the strength of the same, the police registered a Crime and issued FIR against the petitioner for the offence punishable under Section 420 IPC. After due investigation, the police filed charge sheet

before the court for the same offence and the same was numbered as C.C.No.348 of 2010.

2. The main contention of the counsel for the petitioner is that the police did not investigate the offence but they reproduced the entire allegations made in the complaint and that the dispute is purely of civil nature and the same cannot be allowed to be converted into criminal. Therefore, there is absolutely no material ground to proceed against the petitioner for the said offence.

3. During hearing the learned counsel for the petitioner would contend that the allegations made in the charge sheet regarding payment of Rs.30,000/- by the complainant and others is false and in the absence of any material the proceedings cannot be continued against the petitioner and apart from that it is purely a civil dispute and drawn the attention of this court to the undated rental agreement signed by D.Satyalakshmi and Mohd. Shafiuddin, President of Jamia Masjid as lessor and lessee respectively. The court cannot proceed against the petitioner for the said offence exercising inherent power under Section 482 Cr.P.C., the proceedings have to be quashed, drawn the attention of this court reported in ***Mohammed Ibrahim and others vs. State of Bihar***¹.

4. The Public Prosecutor for the State of Telangana would contend that the charge sheet was filed in the year 2010 and at this stage the

¹ (2009)8 SCC 751

proceedings cannot be quashed since there is a specific allegation in the charge sheet on its face value if taken in its entirety would constitute *prima facie* an offence punishable under Section 420 IPC.

5. The contention of the petitioner before this court is that the allegations made in the charge sheet would not constitute an offence. In paragraph No.1 of the charge sheet there is a specific allegation that the petitioner being the President of Jamia Masjid made a representation to lease out 100 yards to each of seven persons including the second respondent herein and received Rs.30,000/- from each person but failed to show any site to lease out to them. Therefore, they were made to part with huge amount on the false promise made and fraudulently induced them to part with money by the petitioner and it would attract the offence punishable under Section 420 IPC.

6. Section 415 of IPC defines the word “cheating” 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”.

7. The essential ingredients to constitute the offence of cheating are:

“(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

8. In the present facts of the case, the petitioner promised to provide 100 yards of land to each of the persons referred to in the charge sheet on lease and on such promise they were made to part with huge amount of Rs.30,000/- by each but on verification no land was available and was shown by the petitioner to the persons referred above including the second respondent and on the other hand executed an undated and unregistered rental agreement. Merely because a rental deed was executed, it would not amount to civil litigation purely. Petitioner made the second respondent and others to part with such huge amount making false representation which would attract the offence punishable under Section 420 IPC and proof of those allegations is a matter of evidence during trial and at this stage this Court cannot go into the truth or otherwise of the allegations made in the complaint.

9. Undisputedly, the jurisdiction of this court is limited and this court can exercise inherent power under Section 482 of Cr.P.C. only to give effect to the orders under this code, to prevent abuse of process of the court, to secure the ends of justice and should not be exercised to

stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage while exercising jurisdiction under Section 482 Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only *prima facie* be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on record but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused etc., as held by the Apex Court in [*STATE OF ORISSA V. SAROJ KUMAR SAHOO*](#)².

10. In the present case, the allegations made in the charge sheet on its face value accepting in its entirety would constitute *prima facie* an offence against the petitioner under Section 420 IPC. In such a case, this Court cannot exercise inherent jurisdiction to quash the proceedings. It is contended by the learned counsel for the petitioner

² (2005) 13 SCC 540

that it is nothing but a conversion of civil dispute into criminal dispute and drawn the attention of this court to ***Mohammed Ibrahim's*** case (supra), wherein this Court specifically held in paragraph 8 as follows:

“8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even they also amount to civil disputes. (See *G.Sagar Suri v. State of U.P.*)³ and *Indian Oil Corpn. V. NEPC India Ltd*⁴.)

11. The person aggrieved by any act or omission of a person may proceed either in civil law or criminal since both remedies are parallel not inclusive and then an act or omission amounts to breach of trust the party can sue for breach of trust on civil side and at the same time if it is predominantly criminal nature, the aggrieved party can proceed under criminal law. Thus, two remedies run parallelly. In ***Indian Oil Corporation v. NEPC and others***⁵ the apex court came across the similar situation and laid down the guidelines, wherein it was observed that the criminal litigation cannot be converted into civil litigation, however, when there is a criminality, this court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings before it. Therefore, by following the principles laid down in the above judgment, it is difficult for me to appreciate the facts at this stage regarding civil dispute and to quash the criminal proceedings.

³ (2000) 2 SCC 636

⁴ (2006) 6 SCC 736

⁵ 2003 41 SCL 493 Mad

12. I find no substance in the argument advanced by the counsel for the petitioner that the proceedings are liable to be quashed on account of the alleged conversion of the dispute from civil to criminal though the allegation in the charge sheet is predominantly of criminal nature. Consequently, I find no ground to quash the proceedings in C.C.No.348 of 2010.

13. At this stage, the counsel for the petitioner made a request to dispense with the appearance of the petitioner before the trial court. This court cannot exercise such power. However, the petitioner is at liberty to file an application under Section 205 Cr.P.C. or under Rule 37 of the Criminal Rules of Practice after due service of notice on the second respondent. On filing such application, the learned Magistrate is directed to decide the same on the same day uninfluenced by any of the observations made herein above.

The Criminal Petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SATYANARAYANA MURTHY

December 29, 2016
LMV