

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.5039 of 2017**

**ORDER:**

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.27 of 2017 on the file of Special Protection and Enforcement and A.C.B. Judge, Vijayawada Krishna District, for the offences punishable under Sections 420 and 506 of Indian Penal Code (for short "I.P.C.") and under Section 9 of Prevention of Corruption Act, 1988 as the prosecution is illegal, arbitrary and abuse of process of law.

The petitioners are the accused in the above C.C.No.27 of 2017 pending before the A.C.B.Court, Vijayawada registered on the basis of complaint lodged by defacto complainant - P.Suryaprakash Reddy alleging that he developed acquaintance with the petitioner No.1, who in turn induced the complainant to part with amount for securing employment, as he had connections with several IAS and IPS officers working in Central and State Government Services, who are his batch mates during the course of civil services at Delhi, believing the words of the petitioner No.1, complainant along with L.W.2 - M.Kondala Rao and L.W.4 - Y.Venkateswarlu went to the house of the petitioner No.1 and the petitioner No.1 induced them to pay an amount of Rs.14,00,000/- for securing the post of Sub-Inspector, accordingly they paid an amount of Rs.14,00,000/- for securing the post of Sub-Inspector. It is further alleged that he paid an amount of Rs.5,00,000/- in the year 2012 to the petitioner No.1 to recover an amount of Rs.20,00,000/- from President of Trust by name Gonikuntla Vijaya

Prasad by influencing the police. The complainant also disclosed that he paid an amount of Rs.10,00,000/- to the petitioner No.1 in the month of April, 2013 for settlement of two different issues, but the petitioner No.1 neither fulfilled the assurance given by him nor returned the amount, therefore, the complainant was forced to return the amount paid towards securing the job to the person, who paid the said amount, hence he paid the same from his pocket and he demanded the petitioner No.1 to repay the same, who in turn threatened him with dire consequences.

Petitioner No.1 is working as a Professor in Political Science in Sir C.R.Reddy College, Eluru, West Godavari District, which is a private institution and he did research on Indian Police System and was awarded Ph.D. by Andhra University, Waltair. In the year 2013, one Mr.Mallidi Adi Reddy (L.W.5) approached the petitioner No.1 and informed him that he was being harassed and pressurized to effect compromise with his opponent party by Dr.Raghuram Reddy, I.P.S., the then Superintendent of Police, Prakasham District and other police officers subordinate to him in connection with a land dispute, which is the subject matter of the case in Crime No.25 of 2013 of Rural Police Station, Ongole, Prakasham District and sought his help. Petitioner No.1 got a representation prepared and facilitated L.W.5 - Mr.Mallidi Adi Reddy to present the same to the Registrar, I/o. Lokayukta, Hyderabad and Mr.Kaumudi, IPS, the then Additional Director General of Police, Law and Order, A.P., Hyderabad. The representation submitted to the Registrar, I/o. Lokayukta, Hyderabad was numbered as C.No.2306/2013/B1. Mr.Kaumudi forwarded the representation received by him to Sri Ravi Gupta,

I.P.S., the then Inspector General of Police, Guntur for enquiry. Sri Ravi Gupta conducted enquiry and found fault with Mr.Raghuram Reddy, the then Superintendent of Police, Prakasham and issued a pungent memorandum to the latter and that the investigation in the said case in Crime No.25 of 2013 has been taken up by CID, AP, Hyderabad vide C.No.7052/C31/CID/2011, dated 31.08.2013 of Additional DGP, CID, A.P., Hyderabad. Dr.Raghuram Reddy, IPS, the then Superintendent of Police, Prakasam District who had some personal interest in the said case felt crest fallen with the memorandum issued by Sri Ravi Gupta, IPS, the then Inspector General of Police, Guntur and transfer of the said case to CID. Through enquiries, he learnt that the petitioner No.1 is behind L.W.5 - Mallidi Adi Reddy, developed grudge against the petitioner No.1 and waiting for an opportunity to take revenge against him. Subsequently, he was transferred as Superintendent of Police, Kurnool District and served there for brief stint and later he was transferred as Superintendent of Police, West Godavari District, Eluru. Sri Dinesh Reddy, IPS, former Director General of Police, AP, Hyderabad, who was close to the petitioner No.1, later developed grouse due to comments about his political entry, therefore, Sri Dinesh Reddy conspired with Dr.Raghuram Reddy, the then Superintendent of Police, West Godavari district foisted the present case through the complainant herein, who is resident of Ongole. It is further alleged in the present petition that the present case is foisted at the behest of police officer with malafide, fraudulent and dishonest intention to wreck vengeance against him.

Petitioners herein denied the alleged collection from the

complainant at any time and the allegations made in the complaint on their face value would not constitute the offence and the allegations made in the complaint are absurd for the reason that the results for the Post of Sub-Inspector were declared on 13.09.2011, hence the question of payment of Rs.14,00,000/- to the petitioner No.1 in the month of August, 2012 does not arise. This itself shows the falsity in the case of the prosecution, therefore, the proceedings are liable to be quashed.

The main contention before this Court is that if the allegation made in the charge sheet taken on its face value, the said allegation does not disclose any offence much less the offence punishable under Section 420 and 506 of I.P.C. and under Section 9 of Prevention of Corruption Act.

It is also contended that to constitute the offence punishable under Section 420 of I.P.C., there should be an allegation that the victim was induced with a dishonest intention to deceive or deliver any property to any person and the same should be at the inception. In the absence of such allegation, the prosecution cannot be proceeded against the petitioners herein. The charge sheet does not disclose any allegation to constitute offence punishable under Section 9 of Prevention of Corruption Act, apart from that either of the authorities, who investigated the crime are incompetent to investigate the crime and prayed to quash the proceedings against the petitioners for the offence punishable under Sections 420 and 506 of I.P.C. and under Section 9 of Prevention of Corruption Act.

Respondent No.1 filed counter denying the material

allegations reiterating the allegations made in the charge sheet while explaining the reasons for entrusting the matter to various authorities for investigation.

Complaint was received against the petitioner No.1 from the defacto complainant and his relatives, friends, who approached the petitioners/accused Nos.1 and 2 and paid an amount of Rs.14,00,000/- for securing the post of Sub-Inspector to his relative and the complainant also paid Rs.5,00,000/- to the petitioner NO.1 for favouring him to get back the amount of Rs.20,00,000/- invested by him in a trust. The complainant also complained that his relatives/friends also paid Rs.10,00,000/- twice for getting their works done. But the petitioners did not comply with their promise, which was made to the complainant and others.

During investigation, searches were conducted in the houses of petitioners and also in the house of associate of petitioner No.1 by name Pilly Happy Justin. During the searches, as many as 163 documents and hard discs/CD/DVDs/CPU, which would speak about the acquaintance of the petitioner No.1 with various police officers and other Government Servants were found and seized. Investigating Officer examined 9 witnesses and recorded their detailed statements, arrested the petitioner No.1 on 23.10.2014 and remanded to judicial custody while the petitioner No.2 was served with notice under Section 41-A Cr.P.c. and released later.

Initially crime was registered by Law and Order Police Station, Eluru II Town Police Station, later it was transferred to Crime Investigation Department (CID) on 03.11.2014 and the

investigation was entrusted to the Inspector of Police, CID, later to D.S.P., C.I.D. Kurnool. He collected documentary evidence besides recording statements of 39 witnesses and their statements clearly disclosed the commission of offence by the petitioners. Therefore, the investigating agency concluded that the material collected during investigation disclosed commission of offence and filed charge sheet before the Special Court for ACB Cases, Vijayawada.

It is further contended in the counter that the criminal petition is not maintainable as the petitioners are having alternative remedy and without exhausting the alternative remedy, the petition is not maintainable.

The respondent No.1 denied the allegation that charge sheet against the petitioners was filed with malafide intention at the behest of police officers and the disputes between Dr.Raghuram Reddy and the petitioner No.1 are no way concerned with the present case and that the alleged grouse developed by Dr.Raghuram Reddy, IPS and developing grouse against the petitioner by Sri Dinesh Reddy and the Dr.Raghuram Reddy conspired with Sri Dinesh Reddy are false and no way concerned with the present case.

It is also contended that there is a minor mistake in mentioning the date about the payment of Rs.14,00,000/- in the statement of complainant recorded under Section 161 of Cr.P.C. and in fact the amount was paid before the declaration of results as per the allegations made in the charge sheet. The mistake in referring the date is not sufficient to quash the proceedings against the petitioners for various offences and prayed to dismiss the

petition.

During hearing, Sri K.Chidambaram, learned counsel for the petitioners mainly contended that when the Law and Order, II Town Police Station registered crime against the petitioners under Sections 420 and 506 of I.P.C., question of entrusting the matter to C.I.D. without any basis is illegal. The alleged transfer of case diary to Inspector of Police, CID by memo dated 03.11.2014 and later entrusted to D.S.P., Kurnool without any proceedings is illegal and he is incompetent to investigate the case. He also pointed out certain allegations regarding payment of Rs.14,00,000/- and contended that when the results were declared on 23.09.2011, payment of amount in the month of August, 2012 is absurdity, and based on such allegations the petitioner No.1 cannot be proceeded with for such serious offences being highly placed Professor, maintaining good status in the City of Eluru and that if the allegations made in the charge sheet are accepted, they would not constitute any offence punishable under Sections 420 and 506 of I.P.C. under Section 9 of Prevention of Corruption Act and prayed to quash the proceedings.

He further contended that there must be an allegation in the charge sheet that the petitioner No.1 had intention to deceive the complainant at the inception and in the absence of such intention to deceive the complainant at the inception, the allegations made in the charge sheet would not constitute the offence punishable under Section 420 and 506 of I.P.C. and under Section 9 of Prevention of Corruption Act, he placed reliance on the judgment of Supreme Court rendered in “**International Advanced Research Centre for Powder Metallurgy and New Materials**

**(ARCI) v. Nimra Cerglass Technics Private Limited<sup>1</sup>**". On the strength of the principle laid down in the above said judgment, learned counsel for the petitioners, requested this Court to quash the proceedings for the offences punishable under Sections 420 and 506 of I.P.C. under Section 9 of Prevention of Corruption Act.

Learned Public Prosecutor for the State of Andhra Pradesh would contend that when the petitioners filed the present petition to quash the proceedings in C.C.No.27 of 2017, they have to produce the entire record before the Court and based on the allegations made in the charge sheet, the Court cannot be quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

It is further contended that initially crime was registered with the II Town Police Station, Law and Order, Eluru, later it was transferred to CID appointing one Dhanunjayudu, Inspector of Police, CID by proceedings dated 03.11.2014, who took up investigation, but on promotion as the said Inspector of Police was promoted as DSP, he was repatriated to his Parent Department on 17.03.2015 before completion of investigation, again the Superintendent of Police, C.I.D, Visakhapatnam issued proceedings dated 18.03.2015 entrusting further investigation to L.Arjun, DSP, CID, Rajahmundry, who did not conduct any investigation and he was repatriated to his parent department, again a memo was issued on 29.12.2015 appointing K.V.Raghava Reddy, DSP, CID, Kurnool to conduct investigation and file charge sheet or final report. Accordingly, he conducted investigation and recorded statements of witnesses again, by following standing

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<sup>1</sup> (2016) 1 SCC 348

orders in A.P. Police Manual vide Standing Order No.477. Learned Public Prosecutor for the State of Andhra Pradesh further contended that when the investigation was entrusted to new officer, he can examine the witnesses again and if any new material is disclosed, he is bound to reduce the same into writing as held by the Apex Court in “**Uday Chakraborty v. State of West Bengal**”<sup>2</sup>. Therefore, there is nothing wrong in recording statements by Sri Raghava Reddy, DSP, CID, Kurnool and filing charge sheet in view of the law declared by the Apex Court in “**Uday Chakraborty v. State of West Bengal**” (referred supra).

Learned Public Prosecutor for the State of Andhra Pradesh further contended that basing on the material collected during investigation more particularly various documents collected during searches, charge sheet was filed against the petitioners, when alternative remedy of discharge is available, the petitioners are not entitled to file a petition under Section 482 of Cr.P.C. Since the remedy of quashment under Section 482 of Cr.P.C. is discretionary power, such power can be exercised only in rarest of rare cases as held by the Apex Court in “**State of H.P. v. Pirthi Chand**”<sup>3</sup>. Therefore, viewed from any angle, petitioners committed offence punishable under Sections 420 and 506 of I.P.C. or under Section 9 of Prevention of Corruption Act. That apart, the mistake crept in the charge sheet regarding date of payment is not a ground to quash the proceedings at this stage and prayed to dismiss the petition drawing the attention of this Court to paragraph No.2 at page No.9 of the charge sheet, where a specific allegation is made that on 15.09.2011, L.W.1 – P.Surya Prakash Reddy along with

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<sup>2</sup> (2010) 7 SCC 518

<sup>3</sup> (1996)2 SCC 37

L.W.2 – M.Kondala Rao @ Kondala Reddy, L.W.3 – Y.Yedukondalu and L.W.13 – Y.Rama Koti Reddy visited the house of the accused at Eluru and gave Rs.14,00,000/- to the accused No.2 – Venkata Ratnam, who in turn gave that amount to accused No.1 – Ghose Mohiddin in the presence of L.W.2 – M.Kondala Rao @ Kondala Reddy, L.W.3 – Y.Yedukondalu and L.W.13 – Y.Rama Koti Reddy. When the SI Civil Post results were declared on 23.09.2011, L.W.4 – Y.Venkateswarlu, brother of L.W.3 – Y.Yedukondalu was not selected. Therefore, the alleged payment of Rs.14,00,000/- is prior to declaration of results but not after declaration of results as contended by the petitioner. He also contended that during investigation, police seized copies of several request representations given to Government and non Government employees, copies of criminal case FIR's, CD files, one original registered sale deed dated 09.12.1996, original registered sale deed in the name of his wife Akhtar Begum, dated 01.11.2014, copy of GPA, copy of sale deed dated 12.09.1958, copy of sale deed dated 07.10.1994, copy of letter addressed by the accused to DGP with a request to close P.R., inspection notes of DIG, bank account pass book in the name of the accused, copies of representations of private persons to DGP and other documents from the house of petitioner No.1. Investigating Officer also seized two Hard Discs and one Apple Company I-pod from the house of petitioner No.1. Thus, there is voluminous evidence collected by the investigating agency during investigation, which establishes *prima facie* that the petitioners committed the offences. Therefore, the petition is liable to be dismissed as there is sufficient material on record to proceed against the petitioner and that apart the power under Section 482

of Cr.P.C. can not be exercised in such serious offences and prayed to dismiss the petition.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is:

***Whether the allegations made in the charge sheet are sufficient to proceed against the petitioners, if not whether the proceedings in C.C.No.27 of 2017 on the file of Special Protection and Enforcement and A.C.B. Judge, Vijayawada, are liable to be quashed.?***

**P O I N T:**

Before deciding the rival contentions raised by the learned counsel for the petitioners and Public Prosecutor before this Court, I would like to discuss about the scope of Section 482 of Cr.P.C.

Section 482 of Cr.P.C. deals with inherent powers of High Court, it reads as follows:

**482. Saving of inherent power of High Court-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

In “***R.P. Kapur v. State of Punjab***”<sup>4</sup>, the Apex Court laid down the following principles:

- (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;

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<sup>4</sup> AIR 1960 SC 866

(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 the 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.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar<sup>5</sup>”***

In ***“State of Haryana v. Bhajan Lal<sup>6</sup>”*** the Apex Court considered in detail the powers of High Court under Section 482

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<sup>5</sup> AIR 1990 SC 494

<sup>6</sup> 1992 Supp (1) SCC 335

and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 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.

In “***M/s. Medchl Chemicals and Pharma Private Limited v. M/s. Biological E. Limited***<sup>7</sup>” the Apex Court held that the power under Section 482 Cr.P.C. is to be exercised with care and sparingly, High Court has only to see whether allegations in complaint make out prima facie case. It has no power to examine truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint.

In view of the law declared by the Apex Court in various judgments referred supra, the Court can exercise its power in rarest of rare cases, and it cannot be used to stifle the legitimate prosecution, the only requirement is verification of the allegations

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<sup>7</sup> AIR 2000 SC 1869

made in the charge sheet to find out whether the allegations on their face value would constitute offence punishable under the penal provisions of any Act.

Learned Public Prosecutor for the State of Andhra Pradesh contended that the test to be applied by the Court is “whether uncontroverted allegations made in the complaint would establish any offence” and placed reliance on “**State of H.P. v. Pirthi Chand**” (referred supra), wherein the Apex Court held that the power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge-Sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the

charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

Thus, in view of the law declared by the Apex Court in “**State of H.P. v. Pirthi Chand**” (referred supra) unless the Court come to a conclusion that the averments in the charge sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the proceedings.

As discussed above, the prime duty of the Court is to verify the allegations made in the charge sheet and the statements of witnesses recorded by the investigating agency during investigation. The statements produced before this Court recorded under Section 161 of Cr.P.C. more particularly statement of complainant/L.W.1 could show that the petitioner No.1 received Rs.14,00,000/- promising to secure employment as Sub-Inspector of Police. However, there is a minor mistake in the statement of complainant recorded by the investigating agency with regard to date of payment. Taking advantage of such sentence in the statement of defacto complainant that he paid amount in the month of August, 2012 though results were declared prior to the alleged payment, learned counsel for the petitioner contended that

it is absurd on the face of the record. But the material could disclose that the petitioner No.1 allegedly received Rs.14,00,000/- even prior to declaration of results of recruitment of Sub-Inspector of Police by the State Police Recruitment Board. Therefore, such minor discrepancy in the statement of defacto complainant recorded by the police is insufficient since the statement recorded under Section 161 Cr.P.C. is not a substantive piece of evidence, it can be used only for contradicting the evidence under Indian Evidence Act.

Initially crime was registered with the II Town Police Station, Law and Order, Eluru, later it was transferred to CID appointing one Dhanunjayudu, Inspector of Police, CID by proceedings dated 03.11.2014, who took up investigation, but as the said Inspector of Police was promoted as DSP, he was repatriated to his Parent Department on 17.03.2015 before completion of investigation, again the Superintendent of Police, C.I.D., Visakhapatnam issued proceedings dated 18.03.2015 entrusting the further investigation to L.Arjun, DSP, CID, Rajahmundry, who did not conduct any investigation and he was repatriated to his parent department, again a memo was issued on 29.12.2015 appointing K.V.Raghava Reddy, DSP, CID, Kurnool to conduct investigation and file charge sheet or final report. Accordingly, he conducted investigation and recorded statements of witnesses again by following standing orders in A.P. Police Manual vide Standing Order No.477. In this regard, learned counsel for the petitioners contended that the question of recording statements again and again by the investigating agency is impermissible under law.

But the learned Public Prosecutor drew the attention of the Court to A.P.Police Manual, Part – I, Volume – II.

Order No.477 (8-B, C, D, and E) is as follows:

“B. When a case is transferred from one investigating officer to another, the officer taking over the investigation shall take charge of the diary, noting therein the date of assuming charge of the investigation of the case.

C. The question, whether it is necessary to re-examine the witnesses already examined and record their statements when a subsequent investigation is taken up by another officer, is often raised. Ordinarily, such further investigation is taken up in the following instances:

- When a case was first investigated by a Head Constable or a Sub-Inspector and is later taken up by his superior officer, i.e., the Sub-Inspector or the Inspector;

- When local Police or Traffic Police or Railway Police takes over the investigation from one another on point of jurisdiction;

- When a case is reinvestigated by the Crime Investigation Department.

D. In such cases, it is incumbent on the succeeding investigating officer to verify the investigation made by the previous I.O. and to re-examine all the important witnesses already examined, to ascertain the facts and circumstances of the case. But, as regards the recording of their statements, law does not require the investigating officer to reduce such statements into writing. The Andhra Pradesh High Court has observed that, “Courts will not expect a Police Officer to stultify his investigation for the purpose of making such a record”. It is, therefore, enough if the second investigating officer, in case he is the superior to the first investigating officer, re-examines witnesses with reference to their previous statements already on record and certifies to their correctness. If any additional facts are spoken to by any witness, the second investigating officer will have to record those facts and note such other facts as may be necessary in clarification of the facts and omissions in the statement already recorded. However, in a case where the statement recorded by the first investigating officer is devoid of essential details or has omissions or defects, it is advisable for the second investigating officer to record the statement once again in detail. In such case both the statements will remain on record and supplied to the accused.

E. In a case taken up by the CID, the I.O. of the CID is expected to verify and re-investigate the entire case and not merely to continue the investigation already done by the local Police Officer. To that end, it is necessary that he should not only re-examine the witnesses but also record their statements in full. The fact that the recording of such statements may lead to possibility of contradictions and deviations in the statements of witnesses and may cause inconvenience to the police in furnishing copies to the accused cannot be valid and lawful ground for evading it.”

In view of the above standing order of A.P. Police Manual, investigating officer has to record the statements of various witnesses. But the statements recorded by the investigating officers would form part of case diary and those statements have to

be supplied to the accused so as to enable them to confront those statements to the witnesses and take advantage of any contradictions in the statements recorded by the police during investigation. Learned Public Prosecutor for the State of Andhra Pradesh contended that recording of statements by different officers during investigation after verification of statements recorded by earlier officer is valid. In support of his contention, learned Public Prosecutor has placed reliance on “**Uday Chakraborty v. State of West Bengal**” (referred supra), wherein the Apex Court held that the statements under Section 161 of Cr.P.C. recorded during the investigation are not substantive piece of evidence but can be used primarily for a very limited purpose that is for confronting the witnesses. If some earlier statements were recorded under Section 161 Cr.P.C. then they must be on the police file and would continue to be part of police file. However, if they have been filed on judicial record they would always be available to the accused and as such no prejudice is caused to anyone. Secondly, when the case was transferred to CID for investigation, it obviously meant that in the normal course, the authorities were not satisfied with the conduct of the investigation by previous investigating officer and considered it appropriate to transfer the investigation to a specialized branch i.e. CID. Once, the direction was given to investigating officer to conduct the investigation afresh and in accordance with law, and there is no error of jurisdiction or otherwise committed by investigating officer in examining the witnesses afresh and filing the charge sheet under Section 173 of Cr.P.C. stating that the accused had committed the offence and were liable to face trial.

Principle laid down in “**Uday Chakraborty v. State of West Bengal**” (referred supra) is squarely applies to the present facts of the case and by applying the principles laid down in the judgment referred supra, the contention of the learned counsel for the petitioners cannot be sustained and on that ground this Court cannot quash the proceedings.

Sri K.Chidambaram, learned counsel for the petitioners, contended that recording of such statements more than once vitiates the entire proceedings and placed reliance on the judgment of Karnataka High Court (Kalaburagi Bench) rendered in “Irfan v. State of Karnataka<sup>8</sup>” wherein the Single Judge of the Karnataka High Court held that it would be necessary and incumbent upon State to specify in the Police Manual itself as to purpose and intent of sub-sections (1A) and (1B) of Section 172 of Cr.P.C., namely, statement of witnesses recorded during the course of investigation under Section 161 shall be inserted in the Case Diary and such Case Diary should be in volume and it should be paginated. Till such steps are taken by the State prescribing the manner and method in which Case Diaries are to be maintained, rigour of Section (1B) of Section 172 of Cr.P.C. would be lost when the language of Section 172 is clear, explicit and unambiguous, every Investigating Officer is required to maintain the Case Diary in volume with pagination as prescribed thereunder. The proper maintenance of a Case Diary under Section 172 is intended to safeguard not only the accused, but to insulate the investigating agency itself from unjustified attacks. Failure on the part of the investigating officer not observing the mandate of Section 172

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<sup>8</sup> ILR 2016 KAR 3537

Cr.P.C. would amount to serious lapse and it results in diminishing the value and credibility of such investigation that may be undertaken. The entries in a Case Diary should be made at its appropriate place indicating the correct date on which it was actually made. The investigating officer cannot make late entries in the Diary by way of interpolation. That apart, Diary so maintained by Investigating Officer has to be mandatorily paginated. The entries in a Police Case Diary should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity.

But the principle laid down in the above judgment is of no assistance to the petitioners to support their contention. Moreover, when the judgment of the Apex Court is supporting the case of the prosecution, the Judgment of Single Judge of Karnataka High Court cannot be relied upon since it is not binding precedent on this court. Therefore, the principle laid down in the above judgment of Karnataka High Court needs no further consideration.

Learned counsel for the petitioners contended that one of the offences alleged by the prosecution is punishable under Section 420 of I.P.C. To constitute offence punishable under Section 420 of I.P.C. the accused must have dishonest intention at the inception and in the absence of such allegation, the prosecution against the petitioners cannot be continued and liable to be quashed, to support his contention he placed reliance on “**International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) v. Nimra Cerglass Technics Private Limited**” (referred supra), wherein the Apex Court held that in order to bring a case

for offence of cheating, it is not merely sufficient to prove that a false representation was made, but, it is further necessary to prove that the representation was false to the knowledge of accused and was made in order to deceive complainant. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. Therefore, the principle laid down in the above judgment is that to establish the guilt of the accused, the accused must have dishonest intention at the inception, basing on the said principle learned counsel for the petitioners contended that there is nothing to indicate that the petitioners had any intention to deceive the complainant at the inception.

Here, in the present case, the petitioner is working as a Professor in Political Science in Sir C.R.Reddy College, Eluru, West Godavari District, which is a private institution and he did research on Indian Police System and was awarded Ph.D. by Andhra University, Waltair and he is aware of the Indian Police System, despite it he allegedly developed contacts with I.A.S. officers and I.P.S. officers and made promise to the complainant to secure employment as Sub-Inspector of Police to him and allegedly received Rs.14,00,000/- at one time and later different amounts, the petitioner being a highly educated person, who had knowledge about the police system in India and the process of recruitment, is not supposed to collect any amount promising to provide employment to the complainant as Sub-Inspector of Police, that

itself indicates that he had dishonest intention at the inception to deceive the defacto complainant.

Therefore, the question of dishonest intention at the inception on the part of the petitioners cannot be decided at this stage, but it can be inferred from the evidence collected during investigation *prima facie*, and a finding can be recorded after trial.

Section 420 of I.P.C. deals with punishment for the offence of 'cheating'.

Cheating is defined under Section 415 of I.P.C and it is 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".

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.

In **V.Y.Jose v. State of Gujarat**<sup>9</sup> the Apex Court laid down following ingredients to constitute cheating.

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

- (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
- (2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.”

Here in this case, the material collected *prima facie* show that the petitioners committed an offence punishable under Sections 420 and 506 of I.P.C. and under Section 9 of Prevention of Corruption Act.

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<sup>9</sup> (2009) 3 SCC 78

On close analysis of entire material available on record, the allegations made in the charge sheet and the material produced along with the charge sheet filed under Section 173 of Cr.P.C. would *prima facie* show that the petitioners committed offence punishable under Sections 420 and 506 of I.P.C. and under Section 9 of Prevention of Corruption Act and the power under Section 482 of Cr.P.C. to quash the proceedings cannot be exercised since the present case is not a rarest of rare case to exercise such power as held by the Apex Court in “**State of H.P. v. Pirthi Chand**” (referred supra) and the principles laid down in various judgments referred supra.

In view of my foregoing discussion, I find no ground to quash the proceedings in the present case as the same is devoid of merits. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

03.11.2017  
Ksp

Sri.K.Chidambaram, learned counsel for the petitioners, after pronouncing the order, requested this Court to grant leave to file discharge petition before the Court below.

In fact, no leave is necessary. However, liberty is given to the petitioners to file discharge petition before the Court below.

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**JUSTICE M. SATYANARAYANA MURTHY**

03.11.2017  
Jsk

