

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2033 OF 2017

ORDER:

The present criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') requesting to quash the First Information Report in Crime No.197 of 2016 of Charminar P.S., Hyderabad.

2. The petitioners, who are arraigned as accused Nos.1 & 2, alleged to have committed the offences punishable under Sections 406 & 420 of I.P.C.

3. Heard Sri D. Amarender Reddy, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

4. The submission of the learned counsel for the petitioner is that since the 2nd respondent/*de facto* complainant has initiated criminal action for the offence punishable under Section 138 of Negotiable Instruments Act, in regard which Calendar Case No.22 of 2017 is pending on the file of IX-Special Magistrate, Erramanzil, Hyderabad, and on the very same set of facts from which the cause has been derived in lodging another complaint with the police alleging cheating and misappropriation and, therefore, would amount to double jeopardy and registration of FIR basing on the said complaint is

misconceived and would amount to abuse of the process of law. Hence, to quash the First Information Report.

5. Learned Additional Public Prosecutor for the State of Telangana resists the request. It is his submission that the law is well settled that parallel proceedings can be proceeded with under a special statute and for the offences punishable under the provisions of the Indian Penal Code as they stand on different footing. It is also his submission that double jeopardy at this stage does not arise.

6. Section 300 of the Code lays down an embargo stating that when once a person is convicted or acquitted after trial he cannot be tried for the same offence. In the present case, such a situation does not arise. Both cases are still pending. Therefore, the question of the petitioners being already tried for a particular offence and resulting in either conviction or acquittal is not the situation. Therefore, the principle of double jeopardy does not arise and that submission of the learned counsel for the petitioner for quashing First Information Report is not convincing. Hence, reject the same.

7. Now, turning to the question whether almost basing on the same set of facts different offences can be alleged is concerned, the learned counsel for the petitioners placed reliance on a decision rendered by the Allahabad High Court in **Bhajan Singh v. State of**

U.P.¹. Learned Single Judge placing reliance on the decision of the Hon'ble Supreme Court in **G. Sagar Suri v. State of U.P.**² expressed that where a complaint under Section 138 of Negotiable Instruments Act was already pending criminal proceedings for the offence punishable under Sections 406 and 420 of I.P.C. is a mere misuse of process of law and as such criminal proceedings can be quashed by the High Court under Section 482 of the Code.

8. Of course, the learned Single Judge has observed that while disposing of the application under Section 482 of the Code the revisionists have an opportunity of putting their case, before the learned Magistrate under Section 239 of Cr.P.C. and on that occasion they may bring it to the notice of the Magistrate that the trial for offences under Section 420 of IPC cannot be repeated in both cases and the Magistrate may pass suitable orders at that stage.

9. Yet another decision relied on by the learned counsel for the petitioners is in **G. Sagar Suri** (2 supra) and the observations of the Hon'ble Supreme Court contained in paragraphs 7, 8, 9, 10, 11 and 14 thus:

“7. It was submitted by Mr. Lalit, learned counsel for the second respondent, that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, High Court Cannot exercise its jurisdiction under [Section 482](#) of the Code. In this connection, reference may be made to two decisions of this Court in [Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.](#), [1998] 5 SCC 749 and [Ashok Chaturvedi & Ors. v. Shitul H.](#)

¹ 2013 Law Suit (All) 4120

² (2000) 2 SCC 636

[Chanchani & Anr.](#), [1998] 7 SCC 698, wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under [Section 482](#) of the Code or [Article 227](#) of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction under [Section 482](#) of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under [Section 482](#) of the Code, Jurisdiction- under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

9. [In State of Karnataka v. L. Muniswamy and Others](#), AIR (1977) SC 1489 = [1977] 3 SCR 113, this Court said that in the exercise of the wholesome power under [Section 482](#) of the Code High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed.

10. [In Kurukshatra University and Another v. State of Haryana](#), AIR (1977) SC 2229 = [1977] 4 SCC 451 High Court in exercise of its powers under [Section 482](#) of the Code quashed the First information Report when police had not even commenced investigation into the complaint. This Court said that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice and that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In the case First Information Report was lodged by [Warden, Kurukshatra University](#). Acting on that report the police registered a case under [Sections 443 and 452, IPC](#) against one Vinay Kumar, who filed a petition in the High Court praying that FIR be quashed. High Court without issuing notice to the University quashed the FIR. Not only that High Court directed the State of Haryana to pay a sum of Rs.300 by way of cost to Vinay Kumar. High Court even made observations concerning the University's power to enforce discipline in the Campus. This Court observed that the High Court seemed to fail that outsiders can with impunity flout the University rule that no outsider shall stay in a university hostel. It said that such a view is plainly calculated to subvert discipline in a sphere where it is most needed. This Court said that High Court ought not to have made these observations without, at least, giving a hearing to the University. This Court set aside the judgment of the High Court and allowed investigation to proceed.”

11. [In Chandrapal Singh and Others v. Maharaj Singh and Another](#), AIR (1982) SC 1238, the judgment started as under :-

"A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so, telling that the further discussion may appear to be superfluous.

This Court said :-

"We see some force in the submission but it is equally true that charged and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the civil proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under [Section 482 Cr. P.C.](#)"

14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director of Ganga Automobile Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under [Section 138](#) of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under [Section 138](#) is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under [Sections 406/420 IPC](#) and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do."

10. Per contra, learned Additional Public Prosecutor places reliance in **Sangeetaben Mahendrabhai Patel v. State of Gujarat**³. Hon'ble Supreme Court while answering the question whether doctrine of double jeopardy was attracted in that case, followed the law declared by earlier Constitutional Bench of the Hon'ble Supreme Court. Having referred to the decision rendered by a Constitutional Bench and earlier decisions in **Maqbool Hussain v. State of Bombay**⁴, **S.A. Venkataraman v. Union of India**⁵, **Omprakash Gupta v. State of U.P.**⁶ and **State of Madhya Pradesh v. Veereshwar Rao**

³ 2012 (2) ALT (Cri) 479

⁴ AIR 1953 SC 325

⁵ AIR 1954 SC 375

⁶ AIR 1957 SC 458

Agnihotri⁷, Leo Roy Frey v. Superintendent, District Jail, Amritsar⁸, The State of Bombay v. S.L. Apte⁹, Roshan Lal v. State of Punjab¹⁰, Bhagwan Swarup Lal Bishan Lal v. The State of Maharashtra¹¹, The State of A.P. v. Kokkiligadda Meeraiah¹², The Assistant Collector of the Customs, Bombay v. L.R. Melwani¹³, V.K. Agarwal v. Vasantraj Bhagwanji Bhatia¹⁴, M/s. P.V. Mohammad Barmay Sons v. Director of Enforcement¹⁵, A.A. Mulla v. State of Maharashtra¹⁶, Union of India v. Sunil Kumar Sarkar¹⁷, Union of India v. P.D. Yadav¹⁸, State of Rajasthan v. Hat Singh¹⁹, State of Haryana v. Balwant Singh²⁰, Hira Lal Hari Lal Bhagwati v. C.B.I., New Delhi²¹, referred to ruling in Radheshyam Kejriwal v. State of West Bengal²² and culled out the ratio from the aforesaid decisions, particularly stated thus:

“The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

⁷ AIR 1957 SC 592

⁸ AIR 1958 SC 119

⁹ AIR 1961 SC 578

¹⁰ AIR 1965 SC 1413

¹¹ AIR 1965 SC 682

¹² AIR 1970 SC 771

¹³ AIR 1970 SC 962

¹⁴ AIR 1988 SC 1106

¹⁵ AIR 1993 SC 1188

¹⁶ AIR 1997 SC 1441

¹⁷ AIR 2001 SC 1092

¹⁸ (2002) 1 SCC 405

¹⁹ AIR 2003 SC 791

²⁰ AIR 2003 SC 1253

²¹ AIR 2003 SC 2545

²² (2011) 3 SCC 581

- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of [Article 20\(2\)](#) of the Constitution or [Section 300](#) of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.” The ratio of the aforesaid judgment is not applicable in this case for the reason that proceedings under [Section 138](#) of N.I. Act are still sub judice as the appeal is pending and the matter has not attained finality.

11. Further, the Hon’ble Supreme Court in paragraphs-26 & 27

held thus:

“26. Learned counsel for the appellant has further placed reliance on the judgment in [G. Sagar Suri & Anr. v. State of U.P. & Ors.](#), (2000) 2 SCC 636, wherein during the pendency of the proceedings under [Section 138](#) N.I. Act, prosecution under [Sections 406/420](#) IPC had been launched. This Court quashed the criminal proceedings under [Sections 406/420](#) IPC, observing that it would amount to abuse of process of law. In fact, the issue as to whether the ingredients of both the offences were same, had neither been raised nor decided. Therefore, the ratio of that judgment does not have application on the facts of this case.

Same remained the position so far as the judgment in [Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr.](#), (2011) 2 SCC 703, is concerned. It has been held therein that once the conviction under [Section 138](#) of N.I. Act has been recorded, the question of trying a same person under [Section 420](#) IPC or any other provision of IPC or any other statute is not permissible being hit by [Article 20\(2\)](#) of the Constitution and [Section 300\(1\)](#) Cr.P.C.

27. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of [Section 138](#) N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under [Sections 406/420](#) read with [Section 114](#) IPC. In the prosecution under [Section 138](#) N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under [Section 420](#) IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the

person who draws the cheque. Such a requirement is not there in the offences under [IPC](#). In the case under [N.I. Act](#), if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under [IPC](#). The case under [N.I. Act](#) can only be initiated by filing a complaint. However, in a case under the [IPC](#) such a condition is not necessary.”

12. When the law declared by the Hon’ble Supreme Court in **Sangeetaben Mahendrabhai Patel** (3 supra) is applied to the fact situation occurring in the instant case, certainly, submission of the learned counsel for the petitioners has to be viewed as without any merit and, therefore, the present Criminal Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

Dt. 24.03.2017
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A. SHANKAR NARAYANA, J

