HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2703 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 proceedings in Calendar Case No.1970 of 2015 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad.

2. The petitioners are arraigned as accused Nos.1 and 2 in the aforesaid Calendar Case. They alleged to have committed the offences punishable under Sections 420 and 406 read with 34 of Indian Penal Code, 1860 (for short 'IPC').

3. Heard Sri J. Prabhakar, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

4. Certain relevant facts for disposal of the present petition are: respondent No.1 - *de facto* complainant had paid a sum of Rs.4,53,000/- to M/s. Jhabakh Auto Private Limited located in Begumbpet, Hyderabad, towards purchase of a second hand Car bearing registration No.AP 09BE 1352 (Skoda Octiva rider) and they tried to cheat him by selling a hypothecated car and defective car. The Managing Director - Mr. Yashwanth Jhabakh and other Director - Mr. Parsva Kumar Jhabakh of the said Auto Company, though, on receipt of a legal notice, dated 09.08.2013, by their C.E.O. - Mr.

Pradeep Gandhi, agreed to refund the money within fifteen days from 10.08.2013, did not refund the same and, thus, lodged a complaint, basing on which, the Station House Officer, Begumpet Police Station, Hyderabad, registered a case in Crime No.360 of 2013 on 13.09.2013 against the petitioners for the aforesaid offences, and on completion of investigation, laid charge sheet on 14.10.2015, and the learned Magistrate has taken cognizance of offences punishable under Sections 420 and 406 read with 34 IPC against the petitioners.

5. The learned counsel for the petitioners made two main submissions. The first submission is that the vehicle was not under hypothecation when it was sold to the *de facto* complainant and, therefore, the offence of cheating does not arise. Second, that the petitioners have deposited a sum of Rs.4,50,000/- in the account of the *de facto* complainant through RTGS on 07.04.2014. An incidental submission is that the *de facto* complainant took delivery of the car on 09.01.2013 from the original owner even prior to completion of formalities and used the car up to 24.01.2013 and brought back to them stating that the car requires repairs. The learned counsel, therefore, would submit that it cannot be said that the petitioners intentionally sold a defective car and sought to quash the proceedings in the aforesaid Calendar Case.

6. The learned Additional Public Prosecutor would submit that in a quash petition this Court cannot go into the merits of the case which revolve around the disputed facts and, therefore, sought to reject the request.

7. The learned counsel has drawn the attention to the statement of account standing in the name of M/s. Mahavir Auto Diagnostics Private Limited maintained in HDFC Bank for the period from 01.04.2014 to 31.05.2014, and the entry, dated 07.04.2014. According to the learned counsel, that a sum of Rs.4,50,000/- was transferred to the account of the *de facto* complainant through RTGS. Basing on the said statement of account, it is according to him, that the car was not under hypothecation and that there was any amount due. One thing is clear from the said entry, that the amount was transferred only on 07.04.2014. But, it is not clear whether M/s. Mahavir Auto Diagnostics Private Limited and the petitioners are one and the same or whether they have any dealing with the said company, since the petitioners in paragraph No.4 of the petition stated that the *de facto* complainant approached M/s. Jhabakh Auto Private Limited for purchase of car in the name of his wife Smt. Sunitha and the original owner was Smt. Gaddam Varsha. The contents contained in paragraph No.3 of the petition would show the change of ownership of the vehicle from one to another. That is to say, originally the car was possessed by one Md. Khamder Ali Quraishi for the period from

26.08.2016 to 04.11.2011 and, thereafter, it was transferred to one Hassan Abdul from 04.11.2011 to 11.07.2012 and again it was transferred to Gaddam Varsha from 11.07.2012. It is further stated that the hypothecation agreement was in force for the period from 24.08.2006 to 04.11.2011 with ICICI Bank Limited, Begumpet, Hyderabad, and, thereafter, it stood in the name of Mahesh Finance Corporation, Somajiguda, Hyderabad, for the period from 04.11.2011 to 11.07.2012 and again it stood in the name of HDFC Bank Limited for the period from 11.07.2012 to 08.01.2014. Thus, one-thing, is certain that hypothecation agreement was in force till 08.01.2014 even from the complaint averments. In which event, on the date when the *de facto* complainant said to have taken the car on 09.01.2013, the hypothecation agreement was in existence, which fact, the *de facto* complainant complained of in the direction of not informing him and, thus, the same would require adjudication if it amounts to cheating in case the ingredients are established by adduction of evidence.

8. The second question is, whether the refund of amount by way of transfer through RTGS on 07.04.2014 would aid the petitioners to get the relief of quashment. It is again a question of fact, which requires a thorough probe that can be done only when trial takes place to infer from the evidence that would be led by the prosecution whether there was deception from inception. Thus, when disputed facts are required to be dealt with, this Court cannot hold a

roving inquiry while dealing with an application under Section 482 of the Code. Therefore, it has to be held that there is no merit in the petition to accede to the request as it cannot be viewed that prosecution of the petitioners would amount to the abuse of process of Court.

9. The Learned counsel for the petitioners would request to direct the learned Magistrate to dispose of the Calendar Case by fixing timeline in view of the fact that the *de facto* complainant may not be willing to proceed with the matter in view of transfer of the amount of Rs.4,50,000/- through RTGS on 07.04.2014 to the account of the *de facto* complainant. The said request appears to be reasonable. Hence, the learned XI Additional Chief Metropolitan Magistrate, Secunderabad, is directed to dispose of the Calendar Case No.1970 of 2015 within a period of three (03) months from the date of receipt of a copy of the order. The learned Magistrate is further directed to dispose of the case uninfluenced by any of the observations made hereinabove.

With the above observation, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition stand closed.

A. SHANKAR NARAYANA, J

April 10, 2017.
Mgr/INL