

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL PETITION No.4139 of 2017**

**ORDER:**

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner-accused No.1 in Crime No.383 of 2017 on the file of the Station House Officer, Kusaiguda Police Station, Rachakonda District, registered for the offences punishable under Sections 406 and 420 IPC.

2. The petitioner is accused No.1 and the second respondent is *de facto* complainant in Crime No.383 of 2017..

3. Sri Manav Gecil Thomas, learned counsel for the petitioner, strenuously submitted that the *lis* involved between the parties is purely civil in nature without any element of criminality. He further submitted that even if the allegations made in the complaint are *prima facie* taken to be true and correct, no case is made out against the petitioner for the offence under Section 420 IPC. ***Per contra***, learned Assistant Public Prosecutor representing the first respondent-State submitted that the allegations made in the complaint *prima facie* constitute the offences alleged to have been committed by the petitioner.

4. A perusal of the record reveals that the petitioner entered into an agreement with the second respondent on 23.12.2016 to supply Automatic Sleeve Applicator Machine for an amount of Rs.33,25,000/-. As per the terms and conditions of the invoice, the petitioner has to deliver the machine on or before 03.4.2017. For one reason or the other, the agreement between the parties was cancelled on 23.3.2017. As per the allegations made in the

complaint, the petitioner paid an amount of Rs.5,00,000/- to the second respondent and promised to pay the remaining amount within one week therefrom. It is further alleged that the petitioner, with an intention to cheat the second respondent, did not pay the remaining amount.

5. While exercising the inherent power under Section 482 Cr.P.C., the Court has to take into consideration the allegations made in the complaint only. The Court is not justified in embarking upon an enquiry as to probability, reliability or genuineness of the allegations made in the complaint at the initial stage of investigation. Whether the petitioner has committed the alleged offences or not will come to light during the course of investigation. The material placed before the Court is *prima facie* sufficient to investigate into the matter in order to ascertain the truthfulness or otherwise of the allegations made in the complaint.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in **R.P.Kapoor v. State of Punjab<sup>1</sup>**, **State of Haryana v. Bhajan Lal<sup>2</sup>**, **V.Y.Jose v. State of Gurajat<sup>3</sup>** and **Teeja Devi v. State of Rajasthan<sup>4</sup>**, I am of the considered view that it is not a fit case to quash the criminal proceedings at the threshold.

7. Taking into consideration the facts and circumstances of the case and also the principle enunciated by the Supreme Court in

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<sup>1</sup> AIR 1960 SC 866

<sup>2</sup> AIR 1992 SC 604

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

<sup>4</sup> 2015 (1) ACR 564 (SC)

**Arnesh Kumar v. State of Bihar**<sup>5</sup>, the Station House Officer, Kusaiguda Police Station, Rachakonda District, is hereby directed to follow the procedure as contemplated under Section 41A Cr.P.C., in Crime No.383 of 2017 so far as the petitioner-accused No.1 is concerned.

8. With the above direction, the Criminal Petition is disposed of. Consequently, Miscellaneous Petitions, if any pending in this Criminal Petition, shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 08.06.2017

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<sup>5</sup> (2014) 8 SCC 273