

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.85 of 2017

ORDER:

Though notice is served on respondent No.1, there is no representation on his behalf.

Heard learned counsel for the petitioners and learned Public Prosecutor for the State and perused the record.

The Court below has taken cognizance of offences against the petitioners vide docket order, dated 12.02.2015, which reads as follows:

“Perused the complaint and statement of P.W.1 and also all documents filed along with complaint. As per statement of complaint, the accused A.1, A.2 cheated the complainant and misappropriate the complaint. From the statement of complainant and also from the material on record, it appears that there is sufficient ground to proceed against the accused A.1 and A.2. Hence, cognizance taken for the offences punishable under Sections 403, 406, 409, 418 and 420 IPC read with Section 34 IPC against accused A.1 and A.2. Issue as to A.1 and A.2 on payment of process for report call on 27.03.2015.”

Learned counsel for the petitioners would submit that while taking cognizance of offences, the Court below stated that it has perused the statement of P.W.1 and documents enclosed to the complaint, but, as per the record, there are no documents filed along with the complaint and it is only a protest petition filed under Section 190(1)(b) Cr.P.C. and no documents were enclosed to the complaint or to the protest petition. Without there being

any such material, the Court below has taken cognizance of offences punishable under Sections 403, 406, 409, 418 and 420 IPC read with Section 34 IPC against the petitioners/A.1 and A.2. In this connection, he relied on a decision reported in **Sunil Bharti Mittal v. Central Bureau of Investigation**¹.

In paragraph 53 of the above-cited decision, the Apex Court clearly observed as follows:

“However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

In this case, there is also no record to show that the statement of P.W.1 was filed along with the complaint before the cognizance was taken by the Court below. In the docket order, dated 12.02.2015, no reasons are assigned by the Court below for taking cognizance of offences supra against the petitioners/accused. Copies of documents are also not found in records of case, as pointed out by the learned counsel for petitioners.

¹ (2015) 4 Supreme Court Cases 609

Under these circumstances and in view of the above-cited judgment of the Apex Court, the docket order, dated 12.02.2015 is set aside and the matter is remanded to the Court below to proceed in accordance with law.

The Criminal Petition is accordingly allowed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Dr. SHAMEEM AKTHER, J

6th OCTOBER, 2017.

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