THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8342 OF 2011

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.806 of 2010 pending on the file of Krishnalanka Police Station, Vijayawada City, for the offence punishable under Section 420 IPC, on the ground that the dispute is purely civil in nature and the allegation if taken on its face value would not constitute an offence and prayed to quash the proceedings.

At this stage, it is relevant to look at the specific allegations made in the charge sheet. According to the allegation made in the charge sheet, the accused are carrying on cloth business in the name and style of 'Lakshmi Venkata Durga Textiles' for the last ten years. It is the case that the petitioners herein/accused 2 to 5 borrowed nearly an amount of Rs.10,00,000/- from the defacto complainant for their business development and failed to repay the said amount. As the petitioners failed to repay the amount, the defacto complainant lodged a complaint on the file of Krishnalanka Police Station, Vijayawada City for the offence punishable under Section 420 IPC.

Failure to repay the amount would not attract any offence, since it is a civil liability and the offence, particularly the allegation made in the charge sheet is predominantly in civil nature. Therefore, it would not attract an offence punishable under Section 420 IPC, on its face value, even if the allegation on its face value is believed to be true.

An identical question came up before the Apex Court in **Anil Mahajan v. Bhor Industries**[1], where the parties entered into Memorandum of Understanding for supply of steel grip tapes stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods in pursuance of the Memorandum of Understanding, the complainant delivered. In the said case, the complainant delivered 56,94,120 reels of steel grip tapes valued at Rs. 3,38,62,860 to the accused during the period 19-8-2000 to 20-11-2000 and out of this amount, the accused made only part payment of Rs. 3,05,39,086 leaving balance amount of Rs. 33,23,774. The accused did not make further payment despite repeated demands and started giving reasons such as cash flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. Based on the contents of the Memorandum of Understanding, the company filed a complaint against the petitioner for the offences punishable under Sections 415, 418 & 420 I.P.C and the Court took cognizance of it and the same is challenged before the Court.

In paragraphs 6,7 & 8 of the said judgment, the Court held as under:

> "Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent,

[1] 2005 (10) SCC 228

> dishonest intention is shown at the beginning of the transaction.
>
> 7. The order of the learned Additional Sessions Judge has been set aside by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.
>
> 8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defense of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

In **State of Haryana** v. **Bhajan Lal**[2] this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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] 1992 Supp. (1) SCC 335

(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 view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to

wreak vengeance by abuse of process of the law and moreover, a civil remedy is available even according to the allegations made in the complaint.

In view of the law declared by the Apex Court in the judgments referred supra, I find that it is a fit case to quash the proceedings in C.C.No.806 of 2010 pending on the file of Krishnalanka Police Station, Vijayawada City.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.806 of 2010 pending on the file of Krishnalanka Police Station, Vijayawada City.

Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:17.03.2017

SP