THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL PETITION No.13440 of 2010

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ("The Code" for brevity), is filed by the petitioner/A1 requesting to quash the proceedings against her in P.R.C.No.96 of 2010 on the file of the Court of the learned IX Metropolitan Magistrate, Cyberabad at Miyapur, Kukatpally.

2. I have heard the submissions of *Sri T.Arunachalam,* learned counsel for the petitioner/A1, and of the learned Public Prosecutor for the State of Telangana. I have perused the material record.

3. The following are the preliminary facts.

"The 2nd respondent/informant lodged a report with the police *inter alia* stating as follows: 'She is a house wife and her husband is N.S.Ravi Kumar. On 30.06.2010 at about 10:00 AM, her husband proceeded on Honda Activa two wheeler bearing registration No.AP-26P-3845 to R.C.Puram, at which place Tata Sumo vehicle bearing reg.No.AP9R 7359 was given for repairs. He went there as the mechanic called him. Thereafter, there was no call from him. However, on 01.07.2010 at about 05:30 PM she received a phone call from phone No.08978026375 informing that he is with one Nandini i.e., the petitioner/A1 herein. She was further informed that the said A1 along with Srinivas, Ramakrishna, Ram Reddy, Satyanarayana, Srinivas, Ravi, and the mother of A1 have forcibly abducted her husband and confined him in a room and were demanding money from him. On phone, her husband requested to get him relieved from the clutches of A1. Hence, she lodged the report against the Petitioner/A1 and others.' In her said report she also mentioned the cell phone numbers of some of the accused. On the said report of the 2nd respondent-Manjula Rani lodged with the police, a case in Crime No.289 of 2010 was registered by the Station House Officer, Miyapur Police Station, Cyberabad, under Section 363 of IPC. After investigation, a charge sheet was filed against the petitioner/A1 and several others opining that the accused are liable to be punished for the offences punishable under Sections 364A and 384 read with 34 of IPC. The charge sheet discloses that while the investigation into the case was in progress, the victim-N.S.Ravi Kumar, who was examined as LW4, came to the police station and informed that he was abducted by the petitioner/A1 along with A2 to A15 and that he was wrongfully confined at two places and that gold ornaments and cash, which were in his possession, were extorted from him and that a demand for ransom was made with a common intention, but, however, he managed to escape from the clutches of the accused persons. On filing of the charge sheet, the learned Magistrate has taken the above-stated PRC on file. During the pendency of the proceedings in the said PRC, petitioner/A1 filed the present petition."

4. In this backdrop the case of the petitioner/A1, in brief, is this: "The material allegations in the report and the averments in the charge sheet are false and invented. This petitioner is an innocent person. She has not committed any offences much less the alleged offences. She is falsely implicated in the crime. LW4, the husband of the informant, who was said to be the victim, used to run VISA processing unit at Labbipet, Vijayawada. This petitioner/A1 worked as office in-charge in the said office. Over a period of ten years of the said business, he had collected huge amounts from various persons by making promises that he would get their VISAs processed. However, due to recession in software

Industry, he (LW4) could not process the VISAs and also could not refund the amounts to various persons. At that stage, LW4 enticed this petitioner/A1 to give her cheques on his behalf stating that he has got income tax problem and promised to deposit necessary amounts into her account. She having reposed confidence on LW4 gave her cheques to various customers. Thereafter, LW4 absconded and failed to deposit the amounts into the account of the petitioner/A1. As a result of which the cheques issued by the petitioner/A1 to the customers were dishonoured. With great difficulty, she paid some amounts to the customers. Subsequently, she caused enquiries and came to know the address of LW4 and went to the house of LW4 to request him to make payments of the amounts to the customers and discharge her from liability. However, the informant, who is the wife of LW4, and her parents have veiled LW4 and assaulted the petitioner/A1. The petitioner/A1 having no other alternative approached the Commissioner of Police, Vijayawada, and lodged a complaint against the 2nd respondent herein/informant in the present case, LW4 (the alleged victim) and also the parents of LW4. On her report, a case in Crime No.306 of 2010 was registered, on 21.06.2010, against them for the offences punishable under Sections 420 and 506 of IPC. This petitioner/A1 informed the customers about the whereabouts of the husband of the 2nd respondent. The 2nd respondent and her husband having come to know of the same, hatched a plan to evade payment and concocted the story of kidnap as a counter blast to Crime No.306 of 2010, which was registered against them, and influenced the police and got registered the present Crime against the petitioner/A1 and various other customers to whom the husband of the 2nd respondent owed huge amounts. No incident as alleged in the report had taken place. The present case is a cooked up case."

5. At the hearing, the learned counsel, while stating the case of the petitioner/A1, contended as follows: "The petitioner/A1 worked in the office of LW4, the alleged victim in the present case. He (LW4) used to run a VISA processing office. He collected huge amounts from various customers promising to get processed their VISAs. Eventually, LW4 neither got processed the VISAs of the customers nor paid back their amounts. He enticed petitioner/A1 to issue cheques on his behalf promising to deposit amounts into her account by stating that he has income tax problems. Petitioner/A1, an innocent lady working under him, not knowing the *mala fide* intentions of LW4, gave cheques to his customers by honestly believing LW4. The cheques were dishonoured as LW4 failed to deposit the amounts into the account of petitioner/A1, as promised. With great difficulty, petitioner/A1 could trace his address. When she went to his house to demand payment of amounts to his customers and to discharge her from liability, his wife and parents concealed him and beat petitioner/A1. Hence, she lodged a complaint with the Commissioner of Police, Vijayawada, and a case in Crime No.306 of 2010 was registered against LW4, his wife, and parents for the offences punishable under Sections 420, 506 IPC on 21.06.2010. The present case is a counter blast to the said case. No incident as alleged in the present complaint case has ever taken place. The story of kidnap, extortion of cash and gold ornaments was created. The Petitioner/A1 herself is a victim at the hands of LW4. Many criminal cases have been registered against LW4 by the police of Vijayawada for cheating various persons including his customers. Since petitioner/A1 informed the whereabouts of LW4 to his customers, he and his family members bore

grudge and foisted a false case against the petitioner/A1, who is innocent in the whole episode, to enable the LW4 escape from the financial liability and also the criminal prosecution in the crime registered on the report of this petitioner/A1 and others who were cheated by him."

6. Per contra, the learned Public Prosecutor while bringing to the notice of the Court the contents of the FIR and the charge sheet, which are already extracted supra, would submit as follows: "The material record discloses not only a *prima facie* case but a strong case for proceeding against the accused including petitioner/A1. A plain consideration of the material gathered and available on record and the facts emerging there from, even when taken at their face value, disclose existence of all ingredients constituting the elements of offence alleged against the petitioner/A1 and other accused. At this stage, the prosecution is not required to prove the case beyond any shadow of doubt and that the prosecution would be required to do so only at the time of conclusion of the case after full-fledged trial. The prosecution succeeded in its primary duty and in showing a *prima facie* case and a strong case for proceeding against all the accused. May be in the circumstances stated, LW4 having opened the VISA processing office, had cheated his customers and also petitioner/A1 herein who was his employee. The said facts do not permit the petitioner and other customers to take the law into their own hands. There is no justification on the part of the petitioner/A1 and others in kidnapping LW4 and keeping him in confinement for more than one day and extorting cash and ornaments from him while in confinement. Having resorted to such illegal acts by taking the law into their hands, the petitioner/A1 and other accused made themselves liable for prosecution as per the

investigation conducted in the matter. Hence, there is no merit in the petition and the petition is liable to be dismissed."

7. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution/complainant has placed on record sufficient evidence to show a *prima facie* case against the accused under a particular penal provision of law. In case the prosecution or complainant fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution/complainant to prove its case beyond any shadow of doubt at the time of framing of the charge or at the pre-trial stage as the prosecution or the complainant is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution/ complainant is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for

this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

8. I have given earnest consideration to the facts and submissions.

9. Since the facts and contentions are stated in detail, there is no need to dilate on the factual aspects. According to the version of the petitioner/A1, she worked earlier in the VISA processing office of LW4, the alleged victim in the present case. According to her further case, he cheated the customers by collecting huge amounts from them on the false promises that he would get their VISAs processed and that he later enticed her to give cheques to his customers on his behalf having promised to deposit money into her account and later deceived her by not depositing money into her account and by absconding from the scene and that she having paid some money to his customers, traced his address with great difficulty and went to his house to demand him to pay the amounts due to her and to his customers and discharge her from liability and that at that time he became scarce and that she was beaten up by his wife and parents at his house and was made a scapegoat in the whole matter and hence, she lodged a report against all of them with the police and that the police registered a crime against him and his family members for cheating and other offences and that on her said report, a case in Crime No.306 of 2010 was registered, on 21.06.2010, against them for the offences punishable under Sections 420 and 506 of IPC and that as this petitioner/A1 informed the customers about the whereabouts of the husband of the 2nd respondent/informant in the present case, she and her husband-LW4 having come to know of the same, hatched a plan to evade payments to his customers and the petitioner and falsely implicated the petitioner as A1 in the present case as a counter blast to the case in Crime No.306 of 2010, which was registered against them. Her specific case is that she was not at all involved in the alleged kidnap of LW4 and extortion from him and that she is herself a victim at the hands of LW4 and his wife-LW1/informant

herein. As rightly urged by the petitioner the theory that LW4, who was allegedly kidnapped, somehow escaped and went to the police station and gave a statement and the further fact that no recovery of the alleged extorted ornaments was made from the petitioner/A1 lends credit to her submissions.

10. In this regard it is apt to refer to the decision of the Supreme Court in Central Bureau of Investigation v. K. Narayana Rao[1] where in the following principles were postulated.

> On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
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> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
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> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
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> (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
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> (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
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> (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out

[1] (2012) 9 SCC 512

> if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
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> (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

On the consideration of the broad probabilities of the case, the total effect of evidence collected and the basic infirmities appearing in the case, the legal position obtaining and the submission of the petitioner/A1 this Court finds that there is acceptable merit in the submissions of the petitioner/A1.

11. On the above analysis, this Court finds that sufficient case is made out for quashing the proceedings against petitioner/A1 and that the prosecution of the petitioner/A1 pursuant to the aforestated PRC no. 96 of 2010 would amount to abuse of process of law.

12. In the result, the Criminal Petition is allowed; and the proceedings against the petitioner/A1 in P.R.C.No.96 of 2010 on the file of the Court of the learned IX Metropolitan Magistrate, Cyberabad at Miyapur, Kukatpally, are hereby quashed. The bail bonds of the petitioner/A1, if any, shall stand cancelled.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

03.11.2017
LMV