

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10161 OF 2016

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in crime No. 121 of 2016 of Banjara Hills Police Station, Hyderabad City, registered for the offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code based on the report lodged by respondent No. 2 dated 05-02-2016.

2. Respondent No. 2 lodged report dated 05-02-2016 against the petitioners alleging that the latter are suffering financially and approached him with a *mala fide* intention; that believing the words and promise made by the petitioners, he paid an amount of Rs.56,25,100/- towards EMD and other payments and also invested huge amount of Rs.40,00,000/- towards mobilization of men and machinery for commencement of work but the petitioners did not provide him with a copy of the agreement, did not handover the site and also did not open the ESCROW account and that with intention to cheat him, the petitioners issued termination letter in order to siphon off the amounts paid by him.

3. The present petition is filed on various grounds mainly on the ground that the dispute is purely contractual in nature; that in fact, there was no relationship of contractor and sub-contractor; that as per the terms of agreement, any dispute has to be referred to arbitrator and that the allegations made in the complaint do not constitute any offence much less the offence referred *supra* and therefore requested this Court to quash the proceedings at the threshold.

4. During hearing, Sri T.Balamohan Reddy, learned counsel for the petitioners, while reiterating the contentions, would draw the attention of this

Court to the agreement between the parties so also the legal correspondence to demonstrate that the dispute is only with regard to breach of contract, if any, and requested this Court to quash the proceedings at the threshold of the crime. Learned counsel for respondent No. 2 would contend that at this stage, the proceedings cannot be quashed since investigation is not yet completed and that though there is a clause in the agreement for reference of dispute to arbitrator, that would not preclude him from lodging report with police since the act done by the petitioners would constitute not only an offence but also creates civil liability.

5. As seen from the material on record, there is an agreement between the parties regarding execution of work on back to back basis. Clause (22) of the said agreement deals with adjudication of disputes which reads as under:

"If any dispute arises between the parties concerning this agreement, the same shall be settled amicably through across the table sittings of both the Managing Directors of ADILPL and EIPPL. However, if such amicable settlement fails, the same shall be referred to Arbitration by an Arbitrator to be appointed by the Managing Director, EIPPL. The Arbitration shall be governed by Arbitration and Reconciliation Act 1996 and for this; the place of arbitration will be in Hyderabad. For all legal purposes, the jurisdiction of Courts of Bhadrak, Odisha State and or Hyderabad, Telangana State shall have the exclusive jurisdiction and language will be English."

Taking advantage of the above clause, learned counsel for the petitioners contended that when there is a clause for reference of disputes to arbitration, respondent No. 2 is not entitled to invoke the jurisdiction of the criminal law and it is nothing but abuse of process of the Court. In my opinion, when the crime registered and investigation is not yet commenced, this Court would not normally interfere with the investigation process except in rarest of rare cases. The Apex

Court in ***State of Orissa Vs. Saroj Kumar Sahoo***¹ held that the inherent powers under Section 482 Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. While exercising jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only *prima facie* be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on record but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

6. In ***Kurukshetra University Vs. State Of Haryana***², the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

"It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of Cr.P.C., it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act

¹ (2005) 13 SCC 540

² AIR 1977 SC 2229

according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

In view of the law declared by the Apex Court, when investigation is not yet commenced and the allegations made in the complaint *prima facie* constitute an offence, the Court would not normally interfere with the investigating process since the facts are incomplete and hazy before the Court irrespective of the magnitude of factual and legal issues involved in the case. Moreover, at the stage of exercising power under Section 482 Cr.P.C. at the threshold, the Court is not required to appreciate evidence but verify the same and find out whether the allegations made in the complaint or report if accepted, on its face value, would constitute an offence or not. Hence, at this stage, it is difficult for this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings. However, the petitioners are permitted to renew their request at appropriate stage. In the meanwhile, the investigating agency is directed to follow the procedure under Section 41-A Cr.P.C. and the guidelines issued by the Apex Court in ***Arnesh Kumar Vs. State of Bihar and another***³.

7. With the above direction, the criminal petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 12-12-2017.

JSK

M.SATYANARAYANA MURTHY, J.

³ 2014 (2) ALT (CrI.) 457 (SC)