

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1385 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the Code') for quashment of the First Information Report in Crime No.7 of 2017 on the file of Ongole I-Town P.S., Prakasam District.

2. The petitioner, who is arraigned as accused No.2 in the aforesaid crime, alleged to have committed the offences punishable under Sections 420, 384, 467, 468 & 120B of the Indian Penal Code (for short, 'I.P.C.').

3. Admittedly the complaint was filed under Section 200 of the Code before the II-Additional Judicial Magistrate of First Class, Ongole, and the same was heard on 26.12.2016 and posted for consideration on 28.12.2016. On 28.12.2016, the learned Magistrate referred the complaint to police for investigation under Section 156 (3) of the Code and for report by 6.2.2017. Since the said order is of great importance in the present context, it would be appropriate to extract the same. It reads thus:

“28.12.2016. For consideration, forward to S.H.O. of I-Town P.S., Ongole for investigation and report u/s. 156(3) Cr.P.C. by 6.2.2017.”

4. Heard Sri Sitaram Chaparla, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

5. The fact situation occurring in the instant case is that due to financial constraints the 2nd respondent/*de facto* complainant in 2011 borrowed an amount of Rs.23,50,000/- from the 1st accused on interest at Rs.3/- p.m. per hundred and even executed seven promissory notes and seven signed blank cheques to pay that amount. According to the complainant, he paid Rs.5,10,000/- and Rs.4,96,000/- in the month of January, 2013, that the accused No.1, having not satisfied with the payments, and on 21.5.2014 he calculated the rate of interest through Somisetty Radha Krishna in the presence of Nadendla Mahesh Babu and Panda Harish and arrived at that the *de facto* complainant was due an amount of Rs.60.00 lakhs, even after giving credit to the amounts paid by the complainant. Even on that date, the accused No.1 insisted the complainant to hand over ten signed blank promissory notes and ten signed blank cheques and obtained signatures of the complainant on three blank stamp papers and three brown sheets which all had taken place in the presence of the witnesses, and thereafter the 1st accused threatened the complainant that he would make use of the promissory notes and cheques, if the complainant fails to hand over the additional promissory notes and cheques signed by him. When the threat and intimidation caused by the 1st accused in the presence of Somisetty Radha Krishna, Nadendla Venkata Mahesh Babu and Panda Harish along with accused Nos. 2 to 4, the *de facto* complainant also added more persons as accused Nos.5 to 8, as associates to accused Nos.1 to 4. The case of the *de facto* complainant is that he paid Rs.10 lakhs to the 1st accused in

June, 2012 and the complainant's case further is that the 1st accused Makineni Narasimham and Nalluri Masthan Rao jointly purchased Plot No.44 in Sy. No.150/2 under a Registered Sale Deed, bearing Document No.819/2011 and the 1st accused borrowed the amounts from Gundavarapu Venkata Narayana and Mannem Venkata Sessaiah and in discharge of the amounts due to them, the 1st accused executed Sale Deed in favour of the said Gundavarapu Venkata Narayana and Mannem Venkata Sessaiah, and the value of the share of the *de facto* complainant was arrived at Rs.21,85,000/-. The accused No.1 demanded the *de facto* complainant if he executes sale deed in favour of Gundavarapu Venkata Narayana and Mannem Venkata Sessaiah, his share of interest in the land, he would return the blank signed promissory notes and cheques and other signed documents and made him to believe the words and on that promise the *de facto* complainant executed Sale Deed bearing No.8397/2014 in favour of Gundavarapu Venkata Narayana and Mannem Venkata Sessaiah along with accused No.1. Thereafter, when the *de facto* complainant demanded the accused No.1 to return the promissory notes, cheques and other signed papers to him, the accused No.1 said to have represented to him that all these documents are kept by him in the locker and will return the same very soon and made the complainant to believe that version, but the complainant later came to know that the accused No.1 borrowed huge amounts from several persons and absconded and presently stayed in Chennai.

6. The complainant states that all the accused Nos.1 to 8 threatened him that they would file complaints and, thus, hatched conspiracy and the accused No.2 created promissory note as if on 22.10.2012, he (complainant) borrowed an amount of Rs.20 lakhs from him agreeing to repay the same with interest at 24% p.a. and also issued cheque bearing No.065790, dt. 17.3.2015 in his favour for an amount of Rs.30 lakhs. The complainant states that he never executed any promissory note or issued any cheque to the 2nd accused. Likewise, the accused No.3 also created promissory note, dated 20.12.2014, as if he (complainant) borrowed Rs.25,00,000/- from him and also as if he (complainant) has issued Cheque bearing No.000013 of City Union Bank, Ongole for an amount of Rs.20 lakhs. Thus, the complainant laid the complaint against the accused punishable under Sections 420, 384, 467, 468 & Section 120-B of IPC alleging forgery and fabrication of documents, as referred to in the above.

7. The petitioner in his grounds has set up various submissions stating that the complainant approached the II-Additonal Judicial Magistrate of First Class, Ongole, with unclean hands as he suppressed the attachment order which was passed in O.S. No.128 of 2015 on the file of Judge, Family Court-cum-Additional District Judge, Ongole and also facing proceedings under Section 138 of Negotiable Instruments Act in C.C. No.254 of 2016 on the file of Special Judicial Magistrate of First Class for Excise Cases, Ongole.

8. The petitioner, therefore relying upon the ruling of the Supreme Court in **Rajiv Thapur v. Madanlal Kapoor**¹ and **Sagar Suri v. State of Uttar Pradesh**² to substantiate that the dispute is only civil in nature and penal provisions do not attract, sought to quash the First Information Report.

9. Learned Additional Public Prosecutor for the State of Andhra Pradesh would submit that it is a clear case of forgery and fabrication of documents and, therefore, the petition is liable to be dismissed.

10. Admittedly one thing is clear from the order passed by the learned Magistrate in referring the complaint to the police for investigation under Section 156 (3) of the Code, that the learned Magistrate has not applied his mind as to whether the complaint makes out a reasonable apprehension having committed the offences alleged therein by the accused persons named therein and then assigning reasons therefor. When non-application of mind is manifest in the afore extracted order in referring the complaint to the police under Section 156 (3) of Code, dated 28.12.2016, it is liable to be set aside.

11. The decision in **Priyanka Srivatsava v. State of Uttar Pradesh**³ in the context of non-application of mind at the time of

¹ (2013) 3 SCC 330

² (2002) 2 SCC 636

³ (2015) 6 SCC 287

taking cognizance of the offence is apt to refer to and the Hon'ble Supreme Court in paragraph-20 held thus:

“20. The learned Magistrate, as we find, while exercising the power under Section 156 (3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. *Police officer's power to investigate cognizable case:-* (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

12. In **S. Purnachandra Rao and another v. State of A.P., rep., by its Public Prosecutor, High Court of A.P. and another**⁴, a learned Single Judge of this Court dealing with a situation relating to the offences punishable under Sections 504, 506 and 120-B of IPC held that the Magistrate has to give reasons while referring the case under Section 156 (3) of Cr.P.C. or while taking cognizance of the offence and shall also give reasons while empowering the police officer to investigate into a non-cognizable offence or referring the case to police, and thereby, set aside the order passed by the Magistrate, but, however, remanded the matter for fresh consideration. In the said decision, learned Single Judge had the occasion to refer to the purport of Sections 155 (2), 156 (3), 239, 240 and 482 of the Code.

⁴ 2015 (1) ALT (Cri.) 49 (A.P.)

13. In the beginning itself, the order passed by the learned Magistrate under Section 156 (3) of the Code for report is extracted.

14. Thus, the law declared by the Hon'ble Supreme Court in **Priyanka Srivatsava** (3 supra) would squarely apply to and so also in **S. Purnachandra Rao** (4 supra) rendered by this Court. In such an event, it is a case where the order referring the complaint for investigation report is liable to be set aside and to remand the matter to the learned Magistrate for fresh consideration in the light of the directions given by the Hon'ble Supreme Court in **Priyanka Srivatsava** (3 supra).

15. Accordingly, the present Criminal Petition is allowed.

The learned Magistrate is also directed to take into consideration whether the dispute is of civil nature only or penal provisions would attract.

As a sequel thereto, miscellaneous petitions if any pending in the criminal petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 31.03.2017

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