THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3246 of 2017

ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the sole petitioner/accused on pre-arrest bail since he is apprehending arrest in connection with Crime No.78 of 2017 of Police Station, Cyber Crime, Hyderabad, registered for the offences punishable under Sections 420 and 406 of IPC.

One T.Rammurthy Naidu lodged a complaint alleging that he intends to use pet coke for firing material of bricks and searching for suppliers. While so, he found petitioner's firm viz. M/s Vardhan Energy Holdings situated in Hyderabad. He contacted Mobile No.9133399522, one lady attended the call and informed that they supply pet coke and sent e-mail to them from mail *Id* vardanenergy5@gmail.com on 02.11.2016 informing the price of pet coke. On that, the de facto complainant sent purchase order for 21 tonnes of pet coke for total Rs.1,23,480/- to their e.mail Id. Later, as per the directions, the de facto complainant sent an amount of rs.1,23,480/- to their bank account i.e. Vardan Energy Holdings, Punjab National Bank, A/c No.4239002100103092, IFSC Code: PUNB-0423900, Basheerbagh Branch from their Standard Chartered Bank, Secunderabad Branch having account No. 44505087009 on 02.11.2016. After receiving the amount, they promised to send the material to the factory within two days, but they did not send the material to them. When they asked the lady, for delivery of material, she gave two mobile numbers of Gowtham and Vishnu of petitioner's firm, then the de facto complainant demanded for delivery of pet coke, but they dragged on one pretext or other and finally stopped even attending the calls. The de facto complainant verified the company at 6th Floor, Paigha Plaza, Basheerbagh, but no such office is existing and then he realised that they cheated him and failed to supply pet coke and collected Rs.1,23,480/-.

Learned counsel for the petitioner mainly contended that the relationship between the parties is contractual obligation, but do not give rise to any criminal liability and that apart the petitioner running the office at the same place and produced the copy of the registered certificate to show that the petitioner is running the office in the same premises. The acts of the petitioner would not attract any of the offences and prayed to enlarge him on pre-arrest bail.

The learned Public Prosecutor for the State of Telangana contended that the petitioner committed identical offence which is subject matter of Crime No.523 of 2014 and that the investigation is not completed, only one witness is examined till today, and there are no grounds to release the petitioner on pre-arrest bail and prayed for dismissal of the petition.

As seen from the allegations made in the complaint that the de facto complainant and the petitioner entered into transaction for supply of pet coke and the petitioner received an amount of Rs.1,23,480/- towards sale consideration for 21 tonnes of pet coke, but they did not supply. If it is a simple failure to supply pet coke, it would give rise to a civil liability. But, here the allegation is that the petitioner did not respond to the demand made by the de facto complainant for supply of pet coke and on the other hand, furnished two phone numbers to contact Goutham and Vishnu, but they responded for some time and thereafter they did not attend the phone calls and totally avoided. On verification, the office was shifted from the place of registered office. Therefore, shifting such office from the 6th Floor Paigha Plaza, Basheerbagh and avoiding to supply the material or repayment of money for failure to supply pet coke would create any amount of doubt on the part of the petitioner when the petitioner made a promise to supply pet coke of 21 tones and on the basis of such conduct, the de facto complainant parted with the huge amount of Rs.1,23,480/- and thereafter shifted the office to some other address without disclosing the address. Such act would fall within the definition of cheating and dishonest inducement of petitioner to attract the offence punishable under Section 420 of IPC and that apart the petitioner committed an identical offence in Crime No.523 of 2014. However, that is not relevant at this stage. But, when this Court come to conclusion that there is sufficient material to conclude that the petitioner committed offence, the petitioner can not be enlarged on bail in the event of his arrest since grant of pre-arrest bail is purely discretion of the Court and unless special circumstances exist enabling the petitioner to claim pre-arrest bail, this Court cannot exercise its discretion in favour of the petitioner who committed such fraud. Therefore, I find no ground to grant pre-arrest bail to the petitioner and the petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:27.04.2017
ccm

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