THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.5906 and 5907 OF 2015

COMMON ORDER:

These two criminal petitions are filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.997 of 2015 on the file of III Additional Chief Metropolitan Magistrate at Hyderabad registered for the offences punishable under Sections 406, 418 and 420 read with 34 of Indian Penal Code (for short "I.P.C.").

The petitioner No.1 – M/s Prestige Estates and Projects Limited is a public limited Company registered under the provisions of the Companies Act and engaged in the business of Infrastructure and Real Estate Development having its registered office at Bangalore and branches at Hyderabad, Chennai, Kochi and Goa.

The defacto complainant - respondent No.2 is the proprietor of M/s Sun Property and Investment Consultancy engaged in business of property consultancy services. The respondent No.2 approached the petitioner for business at its Hyderabad branch for locating and identifying properties on the basis of joint development. The defacto complainant – respondent No.2 being a broker to deal between the petitioners Company and the landowners on a joint development basis, the property admeasuring an extent of Ac.10.00 gts in Survey Nos.334 and 335 of Puppalaguda Village, Rajendra Nagar Mandal, Hyderabad and allegedly agreed to undertake the deal and allegedly entered into a "mutually agreed explicit bilateral oral contract" with the petitioners Company as property consultant for locating, identifying and introducing properties with clear titles available on joint development basis. In the year 2011 the defacto complainant introduced 20 properties to the petitioners Company, in which the petitioner No.1 Company chosen two properties i.e. 17500 Sq. Yards at Banjara Hills, Road No.12 and the property ranging from Ac.10.00 gts to Ac.36.00 gts in Survey Nos.334, 335 of Puppalaguda village, Rajendra Nagar Mandal, Hyderabad. It is further alleged that the defacto complainant after negotiations with the land owners i.e. with Venkatramana @ Sundar and group clinched a deal in favoru of the petitioner No.1 – Company and thereafter the petitioner No.1- Company entered a joint development agreement on 03.06.2013 for the property of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalaguda Village, Rajendra Nagar Mandal, Hyderabad. Initially Sri Venkatramana @ Sundar refused to give the land to the petitioner No.1 – Company, then the defacto complainant made his effort and using his professional skills convinced him to agree to enter into an agreement with the petitioner No.1 – Company.

It is further alleged that the petitioner No.1 – Company pursuant to entering joint development agreement with the land owners refused to give 2% commission/consultancy charges as per the industry norms and cheated the defacto complainant and further committed breach of trust.

Respondent No.2 sent some unsolicited e-mails dated 28.07.2013, 29.07.2013, 05.08.2013, 12.08.2013, 19.08.2013, 23.08.2013, 29.08.2013, 19.10.2013, 21.10.2013, 24.10.2013, 31.10.2013, 06.11.2013, 07.11.2013, 08.11.2013, 09.11.2013, 02.12.2013, 16.12.2013, 17.12.2013, 18.12.2013, 19.12.2013, 20.12.2013, 22.12.2013, 24.12.2013, 25.12.2013, 26.12.2013, 06.01.2014, 09.01.2014, 10.01.2014, 17.01.2014, 03.02.2014, 05.02.2014, 07.02.2014, 08.02.2014, 10.02.2014, 11.02.2014, 12.02.2014, 18.02.2014, 20.02.2014, 24.02.2014, 27.02.2014, 01.03.2014, 03.03.2014, 04.03.2014, 05.03.2014, 06.03.2014, 07.03.2014, 08.03.2014, 10.03.2014, 11.03.2014, 12.03.2014, 13.03.2014, 14.03.2014, 15.03.2014, 18.03.2014, 19.03.2014, 20.03.2014, 21.03.2014, 22.03.2014, 24.03.2014, 28.03.2014, 29.03.2014, 02.04.2014, 04.04.2014, 05.04.2014, 07.04.2014, 25.04.2014, 28.04.2014, 29.04.2014, 02.05.2014, 06.05.2014, 07.05.2014, 09.05.2014, 10.05.2014 and 13.05.2014. Copies of the said e-mails are filed along with the present petitions. Based on the said e-mails, the respondent No.2 contended that he is instrumental for the joint development agreement entered by the petitioners and the owners of the land admeasuring an extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalguda Village, Rajendra Nagar Mandal, Hyderabad and the petitioners are liable to pay 2% commission on the agreement value, which comes to Rs.32.26 crores based on the "mutually agreed explicit bilateral oral contract." Non payment of commission of Rs.32.26 crores would constitute an offence punishable under Sections 406, 418 and 420 read with 34 of I.P.C.

Making those allegations, the defacto complainant – respondent No.2 filed private complaint under Section 200 Cr.P.C. the same was taken cognizance by the Magistrate by order dated 29.04.2015 against all the accused i.e. the petitioners herein after following necessary procedure.

The present petitions are filed on the ground that though the defacto complainant – respondent No.2 offered services of a broker or consultant to the petitioners, the owner of the land did not agree to give land for development initially. Later, the owners of the land in Survey Nos.334 and 335 of Puppalguda Village, Rajendra Nagar Mandal, Hyderabad directly approached the petitioner No.1 – Company for negotiations and the petitioner No.1 – Company concluded the deal with the owners and entered into a joint development agreement dated 03.06.2013 for the property admeasuring an extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalguda Village, Rajendra Nagar Mandal, Hyderabad. The defacto complainant – respondent No.2 never participated in negotiations that took place between the petitioners and owners of the land and he was not instrumental for the contract between the owners of the land and the petitioners. Therefore, the defacto complainant – respondent No.2 has nothing to do with the transaction pertaining to the land admeasuring to an extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalguda Village, Rajendra Nagar Mandal, Hyderabad. While the work is going on, the defacto complainant – respondent No.2 started sending unsolicited e-mails to the petitioner No.1 – Company stating that the defacto complainant is identifier and introducer of the above subject land to the petitioner No.1 Company and claimed Rs.32.26 crores as his commission.

As stated above, the petitioner No.1 – Company had not entered into any contract with regard to payment of commission for the said land and the petitioner No.1 – Company never agreed to pay commission or fee to the respondent No.2 under any contract either oral or written, thereby denied its liability to pay the amount as claimed by the defacto complainant – respondent No.2.

Despite, petitioner No.1 – Company denied its liability to pay commission as claimed by the defacto complainant – respondent No.2 continued to send unsolicited e-mails to various officers of the petitioner No.1 – company and making claim for commission based on non-existing oral contract between the petitioner No.1 – Company and defacto complainant – respondent No.2 in respect of the transaction of Joint Development of land at Puppalguda village referred supra and finally the petitioner No.1 – Company rejected the claim of the defacto complainant. While the matters stood thus, the petitioner No.4 being the legal head of the petitioner No.1 - Company, in response to the unsolicited e-mails of defacto complainant - respondent No.2, sent an e-mail to the defacto complainant on 07.05.2014 stating that the Petitioner No.1 – Company negotiated directly with the owners of the land and there is absolutely no contract either oral or written with the defacto complainant to pay any commission to the defacto complainant and denied the claim of Rs.32.26 crores as commission raised by him. Thereafter, the defacto complainant – respondent No.2 sent a legal notice dated 09.10.2014 to the petitioner No.1 – Company repeating all his untenable claims regarding agreement to pay Commission at 2%, complainant’s failure to pay the same with a threat to initiate legal proceedings against the petitioners. Thus, there was no contract or agreement between the petitioners and the defacto complainant – respondent No.2 for payment of such commission amounting to Rs.32.26 crores.

The main grounds urged by the petitioners in both the petitions are as follows:

(1) The complaint, prima-facie, did not satisfy the essential ingredients of the offences punishable under Sections 406, 418 and 420 read with 34 of I.P.C. on a bare perusal of the allegations made in the private complaint.

(2) The defacto complainant – respondent No.2 filed private complaint with an ulterior motive against the officers and its executives succumb to his illegal demands in respect of the land to an extent of Ac.21.35 gts though there was no mutually agreed explicit bilateral oral contract between the petitioner No.1 – Company and the defacto complainant – respondent No.2.

(3) It is further contended that though the allegations made in the complaint even if true on their face value, it would not constitute an offence and at best it give raise to cause of action for filing Civil Suit for recovery of alleged commission if really it is agreed, but filed private complaint as an arm-twisting method and to harass the petitioner No.1- Company to come to his terms and thus, the very filing of the complaint is only an abuse of process of the Court, on this ground alone the complaint is liable to be quashed.

(4) The trial Court while taking cognizance of the offences by order dated 29.04.2015 did not apply its mind to the facts of the case and without satisfying itself about the existence of any ground to proceed against the

petitioners passed the impugned order and it is contrary to the principles laid down by the Apex Court.

(5) It is further contended that no material is filed along with the complaint to prove the alleged mutually agreed explicit bilateral oral contract between the petitioner No.1 – Company and the respondent No.2 and taking cognizance of the offences against the petitioners without any material merely on the allegations made in the complaint is erroneous and the same is liable to be quashed.

(6) None of the allegations made in the complaint would constitute any of the offences punishable under Sections 406, 418 and 420 read with 34 of I.P.C.

In addition to the grounds urged in Criminal Petition No.5906 of 2015, the petitioners in Criminal Petition No.5907 of 2015 raised additional grounds that the petitioners are only some of the directors, who are not directly participating in the affairs or day-to-day business. Therefore, they cannot be made liable for the offences on the principle of vicarious liability, apart from that for the offences punishable under Indian Penal Code, other than the individual, who allegedly committed offences, is not responsible unless any special enactment prescribes such vicarious liability to the directors for the acts of the company. Therefore, the petitioners are not liable to be proceeded and continuation of the prosecution against them would cause incalculable and irreparable injury since the complaint was filed with malafide intention and it is nothing but abuse of process of the Court so as to coerce the petitioners to come to the terms of the respondent No.2 as an arm-twisting method and the complaint is liable to be quashed by exercising jurisdiction under Section 482 of Cr.P.C.

During hearing, Sri D.Prakash Reddy, learned senior counsel appearing on behalf of Sri N.Naveen Kumar for the petitioners in Crl.P.No.5906 of 2015 and Ms.Rubaina S.Khatoon, learned counsel for the petitioners in Crl.P.No.5907 of 2015, would contend that there was absolutely no agreement either oral or written between the petitioner No.1 – Company and the defacto complainant – respondent No.2 for payment of commission or charges or consultancy charges and on the other hand the petitioners entered into contract with the owners directly without any involvement of the defacto complainant – respondent No.2, in such case the petitioners cannot be made liable for payment of huge amount of Rs.32.26 crores as commission or charges of consultancy and that there was no such practice in the industry i.e. real estate.

The allegations made in the complaint did not satisfy the ingredients of offence punishable under Sections 406, 418 and 420 read with 34 of I.P.C.

He further contended that the total value of the property is about Rs.300 crores and claiming 2% commission is not based on any understanding or agreement. Even the e-mails correspondence between the parties also does not disclose any agreement for payment of such profession fee or commission or consultancy charges and in the absence of any terms for payment, it would not attract the offence under Section 406 of I.P.C. specifically.

He further contended that e-mails correspondence dated 29.07.2013 and reply dated 29.07.2013 would disclose that there was no entrustment of the property and thereby the question of breach of trust would not arise. The terms of agreement entered between the owners of the land and the petitioners more particularly, clause Nos.10 and 11 are sufficient to conclude that the petitioners are not liable to be proceeded.

Finally, it is contended that the complaint did not satisfy the ingredients of the offences punishable under Sections 406, 418 and 420 read with 34 of I.P.C. and that it is nothing but abuse of process of the Court, with a view to wreck vengeance against the petitioners as arm-twisting method and make them to come to his terms using criminal proceedings as a tool of harassment, in such case the proceedings are liable to be quashed, more particularly when the civil remedy is available even if the allegations made in the complaint are accepted, converting civil dispute into criminal dispute is nothing but abuse of process of the Court and placed reliance on ***"Sunil Bharti Mittal v. CBI[1]" "Thermax Ltd. v. K.M.Johny[2]" "SMS Pharmaceuticals Ltd. v. Neeta Bhalla[3]", "Indian Oil Corporation v. NEPC[4]" "Alpic Finance Ltd. v. P.Sadasivan[5]" "V.Y.Jose v. State of Gujarat[6]" "G.Sagar Suri v. State of UP[7]" "Uma Shankar Gopalika v. State of Bihar[8]" "Ramdev Food Products Pvt.Ltd v. State of Gujarat[9]" "Hridaya***

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[1] (2015) 4 SCC 609
[2] (2011) 13 SCC 412
[3] (2005) 8 SCC 89
[4] (2006) 6 SCC 736
[5] (2001) 3 SCC 513
[6] (2009) 3 SCC 78
[7] (2000) 2 SCC 636
[8] (2005) 10 SCC 336
[9] (2015) 6 SCC 439

Ranjan Prasad Verma v. State of Bihar[10]" and "National Bank of Oman v. Barkara Abdul Aziz[11]"

It is also contended that assuming for a moment that the petitioner committed breach of trust, to attach criminal liability the respondent No.2 must make specific allegations in the complaint that the petitioner No.1 – Company deceived the defacto complainant – respondent No.2 to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the defacto complainant to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to the defacto complainant in body, mind, reputation or property. Therefore, the alleged non-payment of commission would not attract the offence under Section 420 of I.P.C.

Per contra, Sri S.M.Deshmukh, learned counsel for the defacto complainant – respondent No.2, contended that while exercising jurisdiction under Section 482 of Cr.P.C. the Court cannot go into the minute details to exercise inherent jurisdiction to quash the proceedings and at best this Court's duty is to look into the allegations made in the complaint to find out whether those allegations on their face value would constitute, prima facie, offence under Sections 406, 418 and 420 read with 34 of I.P.C. and not otherwise. Though two remedies are available, both civil and criminal, the defacto complainant – respondent No.2 can proceed either in Civil Court or Criminal Court, more particularly when the proceedings are predominantly in the nature of criminal.

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[10] (2000) 4 SCC 168
[11] (2013) 2 SCC 488

He also contended that the allegations made in the complaint are suffice to proceed against the petitioners for the offence under Sections 406, 418 and 420 read with 34 I.P.C. the copies of the e-mails produced would show the entrustment of property etc. and the allegation that the respondent No.2 converted the civil dispute into criminal is absolutely without any material and thereby the proceedings cannot be quashed and drawn the attention of this Court to "***Medchl Chemicals and Pharma Private Limited v. Biological E.Limited***[12]" "***Ghanshyam Sharma v. Surendra Kumar Sharma***[13]" "***Mrs.Dhanalakshmi v. R.Prasanna Kumar***[14]" "***State of Karnataka v. M.Devendrappa***[15]" and requested this Court to dismiss both the petitions.

On considering the rival submissions and perusing the material available on record, the points that arise for consideration are as follows:

1) ***Whether there exists prima facie ground to proceed before the Criminal Court against the petitioners for the offences punishable under Sections 406, 418 and 420 r/w 34 of I.P.C and whether the proceedings are liable to be quashed in C.C.No.997 of 2015 on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad?***

2) ***Whether the liability arising out of contractual obligation or breach of obligation under the contract predominantly of criminal nature. If not, whether it amounts to conversion of civil law into criminal?***

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[12] AIR 2000 SC 1869
[13] (2014) 13 SCC 401
[14] AIR 1990 SC 494
[15] AIR 2002 SC 671

3) ***Whether the petitioners 4 to 11 being the Directors of the first petitioner company are vicariously liable for the acts of petitioner No.1 – Company? If not, the proceedings against them are liable to be quashed for the said offences.***

P O I N T Nos.1 to 3:

As the point Nos.1 to 3 are interconnected, I find it expedient to decide these points by common discussion.

In view of the specific contentions raised by the learned Senior counsel for the petitioners and the respondent No.2, this Court has to advert to the allegations made in the complaint to find out whether the allegations made in the complaint, on their face value, accepting in its entirety would constitute any offence punishable under Sections 406, 418 and 420 read with 34 of I.P.C.

The basis for the complaint is introduction of the owners of the land to extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalaguda Village, Rajendra Nagar Mandal, Hyderabad by the defacto complainant while carrying-on his ordinary course of business as real estate consultant and non payment of the agreed commission or consultancy charges at the rate of 2% of the commission amounting to Rs.32.26 crores in view of the oral agreement between the parties.

In the complaint certain allegations were made that the defacto complainant is responsible for arranging the joint development agreement between the petitioner No.1 – Company and the owners of the land, but there is nothing to show that the entrustment of the property and appropriating the same by the petitioners for their benefit or failure to appropriate the property as agreed between the parties and thereby offence under Sections 406 and 420 of I.P.C. would arise on account of alleged agreement to pay commission of Rs.32.26 crores as 2% commission on the value of the property. Similarly, there is nothing to show that there is dishonest intention on the part of the petitioners and deceived the defacto complainant to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induced the defacto complainant to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to the defacto complainant in body, mind, reputation or property.

In any view of the matter, the main reason for questioning the complaint is that the allegations made in the complaint, if accepted in its entirety, it would not constitute any offence punishable either under Section 406, 418 or 420 read with 34 of I.P.C. and the alleged non payment of the commission or consultancy charges would attract the civil liability, but not the criminal liability. In those circumstances, the petitioners cannot be proceeded in a criminal Court for the above said offences, whereas the learned counsel for the respondent No.2 would contend that at the stage of deciding a petition filed under Section 482 of Cr.P.C. the Court has to look into the allegations made in the complaint and documents annexed to it to find out whether those allegations accepting on their entirety would constitute any offence or not and placed reliance on several judgments reported in ***State of Karnataka v. M.Devendrappa*** (referred supra), wherein the Apex

Court while deciding an appeal preferred against the order passed under Section 482 of Cr.P.C. held that while exercising power under Section 482 of Cr.P.C. meticulous analysis of case to find out whether the case would end in conviction or acquittal is not necessary and placed reliance on "***State of Haryana v. Ch.Bhajan Lal***[16]". Therefore, quashing of proceedings on the ground that there is no direct evidence is not proper.

Learned counsel for the respondent No.2 placed further reliance on "***Ghanshyam Sharma v. Surendra Kumar Sharma***" (referred supra) and contended that the High Court cannot decide the provision under which the offence falls; it may be under the provisions cited in the impugned charge sheet or under the provision High Court felt was attracted, but it is for the trial Court to decide that on the evidence produced before it. Even if this principle is applied to the present facts of the case, still it is the duty of the respondent No.2 to make out a specific case to attract the offence punishable under Sections 406, 418 and 420 read with 34 of I.P.C., but this Court cannot express its opinion that the allegations made in the complaint would attract particular offence and in view of the undisputed law declared by the Apex Court it is clear that this Court cannot conclude that the allegations made in the complaint would attract particular offences going into the material meticulously.

Learned counsel for the respondent No.2 further contended that the power under Section 482 Cr.P.C. is to be exercised with care and sparingly, High Court has only to see whether allegations

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[16] AIR 1992 SC 604

in complaint make out prima facie case. It has no power to examine truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint. In support of his contention, he placed reliance on "***Medchl Chemicals and Pharma Private Limited v. Biological E.Limited***" (referred supra).

The principle laid down "***Medchl Chemicals and Pharma Private Limited v. Biological E.Limited***" (referred supra) is identical to the principles laid down in "***Mrs. Dhanalakshmi v. R.Prasanna Kumar***" (referred supra) and there is no quarrel about law declared by the Apex Court and this Court cannot venture to examine the correctness or truth in the allegations made in the complaint. The same principle is also reiterated in "***State of Orissa v. Saroj Kumar Sahoo***[17]", wherein the Apex Court 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

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[17] (2005) 13 SCC 540

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 proceeding 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 records 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.

Accepting the allegations made in the complaint on their face value, I would like to examine whether the allegations made in the complaint would constitute offence in view of the law declared by the Apex Court referred supra.

According to the learned counsel for the respondent No.2, the petitioner No.1 – Company approached the respondent No.2, who is dealing business in Real Estate consultancy to introduce certain properties and its owners for the business of the petitioners. Accordingly, respondent No.2 introduced the owner of the property to an extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalaguda Village, Rajendra Nagar Mandal, Hyderabad and the same was agreed to be given to the petitioner No.1 - Company for development under mutually agreed explicit bilateral oral contract and the respondent No.2 by using his talent finalized the deal, as a result of which the owners of the said land and petitioner No.1 – Company entered into the joint development agreement. The Petitioners denied that the development agreement was materialized at the instance of respondent No.2 while contending that when the respondent No.2 introduced the owners of the land to an extent of Ac.21.34 gts in Survey Nos.334 and 335 of Puppalaguda Village, Rajendra Nagar Mandal, Hyderabad, by name Venkatramana @ Sundar and group, they did not agree to give such property for development, later they came forward to give the property for development without the intervention of respondent No.2 and the petitioners entered into joint development agreement with the owners of the said land. The present dispute is with regard to utilizing the services of respondent No.2 and the same is a disputed question of fact. Assuming for a moment, the respondent No.2 is responsible for such deal to enter into joint development agreement by the owners of the property with the petitioner No.1 – Company, there must be a agreement between the petitioners and the respondent No.2 for payment of commission at the rate of 2% or consultancy charges, but the respondent No.2 pleaded it is only by virtue of oral agreement and it is a prevailing practice in the real estate business. The oral agreement is a matter of evidence.

At best, the respondent No.2 is only a commission agent and he is entitled to claim commission, if the case of the respondent No.2 is accepted in toto. For any reason, the commission agreed to be paid was not paid by the petitioners; the remedy open to the respondent No.2 is to file appropriate civil proceedings for recovery of the commission or consultancy charges but not under criminal law. The material produced before the Court is only e-mails. In none of the e-mails the petitioner Nos. 1 to 3 did agree for payment of any amount towards commission or consultancy charges to the respondent No.2. Moreover, none of the e-mails create either express or implied contract for payment of such commission or consultancy charges to the respondent No.2. E-mails dated 28.07.2013 and 05.08.2013 sent by the respondent No.2 and the replies by petitioners dated 29.07.2013 and 12.08.2013 were not denied and the said e-mails and replies to the said e-mails would serve no purpose and create contractual obligation between the parties for payment of any such amount. Later legal notice dated 09.10.2014 was got issued by M.M.Udaya Shankaran, respondent No.2 demanding payment of commission while threatening to initiate criminal proceedings against the petitioners for various offences, but it is of no use to decide the criminal liability of the petitioners. On the other hand, petitioner Nos.1 to 3 entered into joint development agreement – cum – General Power of Attorney dated 03.06.2013 with the owners of the property. Owners of the property, who are 54 in number executed the development agreement – cum – General Power of Attorney authorizing the petitioner No.1 – Company to develop the property and sell the developed flats to various persons etc. The said agreement on its face value would establish that an agreement was entered with the owners of the property directly by the petitioner No.1 – Company. Therefore, there is nothing on record to show that the petitioners utilized the consultancy services of the respondent No.2 for arranging the deal i.e. joint development agreement – cum – General Power of Attorney dated 03.06.2013.

No doubt, the allegations made in the complaint are based on oral agreement and if the alleged oral agreement is accepted, it would create contractual obligation between the petitioners and the respondent No.2 but failure to pay commission, if any, may amount to breach of contract, not a criminal liability. When the allegations made in the complaint are predominantly of civil nature, the parties cannot be allowed to resort to criminal proceedings as an arm-twisting method to come to their terms. Time and again, the Apex Court laid down certain guidelines with regard to exercise of inherent jurisdiction under Section 482 of Cr.P.C. when civil and contractual liability converted into criminal proceedings. In ***G.Sagar Suri v. State of UP*** (referred supra) the Apex Court held that jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. The Apex Court has laid certain principles on the basis of which High Court has to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice and relied on

"***State of Karnataka v. L.Muniswamy[18]" and "Kurukshetra University v. State of Haryana[19]"***

In "***Uma Shankar Gopalika v. State of Bihar"*** (referred supra) the Apex Court while dealing with similar situation for the offence punishable under Section 420 of I.P.C. expressed its view that when the complaint does not disclose any criminal offence at all, much less any offence either under Section 420 or Section 120-B of I.P.C. and the case is a case of purely civil dispute between the parties for which remedy lies before a civil Court by filing a properly constituted suit, in such case allowing the police investigation to continue would amount to an abuse of the process of Court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Cr.P.C.

In the facts of the above case, an identical question regarding payment of the amount towards price of the vehicle to the dealer under hire purchase agreement was came up for consideration in a petition filed under Section 482 of Cr.P.C., the Apex Court categorically held that it will give raise to purely civil remedy but not criminal liability. Therefore, initiation of criminal proceedings to enforce contractual obligation would amount to abuse of process of law.

To constitute an offence of criminal breach of trust, there should be entrustment of the property/dominion over the property.

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[18] (1977) 2 SCC 699
[19] (1977) 4 SCC 451

In "***Indian Oil Corpn v. NEPC India Ltd.***" (referred supra) the Apex Court held as follows:

> "405. Criminal breach of trust, - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in Violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust.
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> A careful reading of the section shows that a criminal breach of trust involves the following ingredients : (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under Section 405) where there is 'entrustment':
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> (i) An 'Executor' of a wilt, with reference to the estate of the deceased bequeathed to legatees.
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> (ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.
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> (iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.
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> (iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.
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> (v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
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> (vi) A servant or agent with reference to the property of the master or principal.
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> (vii) A pledgee with reference to the goods pledged by the owner/borrower.
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> (viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-

cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor)."

The essential ingredients of the offence of 'cheating' are : (i) deception of a person either by making a false or misleading representation or by other action or omission (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

For constituting an offence of cheating, there should be dishonest intention since inception. To hold a person guilty of cheating, it is necessary to show that at the time of making the promise, he had fraudulent or dishonest intention.

In "***Alpic Finance Ltd. v. P.Sadasivan***" the Apex Court held as follows:

> "The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that

the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

Section 420 of I.P.C. deals with punishment for cheating and dishonestly inducing delivery of property. Cheating is defined under Section 415 of I.P.C.

415. Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients required to constitute the offence of cheating are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In "***V.Y.Jose v. State of Gujarat***" (referred supra) the Apex Court held as under:

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
>
> (i) deception of a person either by making a false or misleading representation or by other action or omission;
>
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
>
> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
>
> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.
>
> An offence of cheating may consist of two classes of cases:
>
> (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
>
> (2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

In "***Hridaya Ranjan Prasad Verma v. State of Bihar***" (referred supra) the Apex Court held as follows:

> "In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise."

The complaint did not disclose all the ingredients of offences punishable under Sections 406, 418 and 420 read with 34 of I.P.C. Therefore, on this ground the proceedings in C.C.No.997 of 2015 on the file of III Additional Chief Metropolitan Magistrate at Hyderabad are liable to be quashed.

The second ground urged by the counsel for the petitioners is that the petitioners/accused Nos.4 to 11 in Crl.P.No.5907 of 2015 are only directors of the Company and they are not vicariously liable for the alleged offences committed by the accused Nos.1 to 3 i.e. petitioners in Crl.P.No.5906 of 2015 as they are not actually participating in the day to day affairs of the Company.

In the copy of the complaint filed along with the petitions in paragraph No.4 it is specifically alleged that the accused No.1 is a Company having its Head Office at Bengaluru and accused No.2

(Mr.Irfan Razack) is CMD, who coordinated from Bangalore regarding introduction of property at Hyderabad through accused No.3 (Sri Suresh Kumar) and accused No.3 coordinated with the complainant on behalf of accused No.1. But no allegation is made in the entire complaint about the actual participation of accused Nos.4 to 11 in the day to day affairs of the company except arraying them as accused in the complaint. In the absence of any such specific allegation and material in support of it, prima facie, there exists no ground to proceed against them for the said offences committed by them. But at page No.32 of the complaint, there is a reference about accused Nos.4 and 5 regarding collusion with accused Nos.1 to 3. Similarly, in paragraph No.27 an allegation is made that accused Nos.2 and 3 are the personnel of accused No.1 committed illegal acts including keeping the complainant in the darkness of the execution of joint development agreement by accused No.1 – Company on 03.06.2013 for the property which the complainant successfully clinched in petitioner No.1 – Company's favour at accused No.1's behest represented by accused Nos.2, 3 and 4 to 11 and that the practice adopted by accused Nos.2 and 3 on behalf of accused No.1 unethical and dishonest and dishonest acts on the Complainant at various stages up to accused No.1 – Company's e-mail dated 07.05.2014, in which accused No.6 at the behest of accused No.2 dishonestly state that accused No.1 – Company did not take, at any point of time, any assistance regarding the transaction and thereby cheated and denied the complainant. At the same time, in paragraph No.28 an allegation is made that the issue was raised before accused No.5, Company Secretary, accused No.7, C.F.O, accused Nos.8 to 11, independent directors, regarding grievance for payment of the amount and requested to resolve the issue, but they remained mute spectators, thereby accused Nos.4 to 11 deliberately abated the dishonest, criminal and unlawful acts and deeds of accused Nos.1 to 3. Thus, the failure to resolve the dispute by accused Nos.4 to 11 being Company Secretary, C.F.O of accused No.1 – Company, independent directors maintaining silence does not amount to act or omission on their part to attract the offence punishable under Sections 406, 418 and 420 read with 34 of I.P.C. In the absence of any specific allegation about their actual participation of accused Nos.4 to 11, they cannot be saddle with any vicarious liability for the alleged offences committed by accused Nos.1 to 3.

The Apex Court time and again discussed about the liability of the directors, who did not participate in the day to day affairs of the Company.

In ***"Sunil Bharti Mittal v. CBI", "Thermax Ltd. v. K.M.Johny" and "SMS Pharmaceuticals Ltd. v. Neeta Bhalla"*** the Supreme Court discussed about the vicarious liability of the directors in the absence of any specific provisions of Indian Penal Code when the offences committed by the Company. In all the above judgments, the Supreme Court concluded that if there is any specific provision in the special enactment to attribute liability to the directors subject to other conditions regarding their participation in day to day affairs of the company, vicarious liability can be accepted by virtue of attributability.

In ***"Standard Chartered Bank v. Directorate of Enforcement[20]"***, Constitution Bench of five Judges dealt with the question as to whether a company could be prosecuted for an offence which requires *mens rea*. The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite *mens rea* to prove the guilt. Para 8 reads as under:

> "8. It is only in a case requiring *mens rea*, a question arises whether a corporation could be attributed with requisite *mens rea* to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."
>
> In Iridium India (supra), the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires *mens rea* and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59, 60, 61, 62, 63 and 64 herein: "59. The Courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. <u>The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.</u>
>
> No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.
>
> Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

[20] (2005) 4 SCC 530

> When the company is the offendor, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881."

The principle laid down in the above judgment is based on attributability. When act is done by a company or its officer, it can be attributable to the Directors, if the statutory permits such attributability based on the principle of 'alter ego'. Here, there is absolutely nothing to show that the Directors of the company are effectively participating in the day-to-day affairs of the company, much less, *prima facie* material to show their participation in the day-to-day affairs of the company. In such a case, it is difficult to hold that the Directors are also responsible for such offences. On the other hand, the complaint lodged before the police is only an outcome of contractual obligation which is purely civil in nature and governed by the provisions of Sale of Goods Act. When the liability arises out of such contractual obligation, the Directors of the company may be liable for civil liability, but not criminal liability applying doctrine of vicarious liability. Therefore, I am of the considered view that the Directors of the company are not liable for the alleged omissions or commissions of the company.

An identical question came up before the Apex Court in "***Anil Mahajan v. Bhor Industries***[21]", 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

[21] 2005 (10) SCC 228

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:

> "6.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, 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 view of the law declared by the Apex Court and in the absence of specific allegation about the participation of accused Nos.4 to 11 in the day to day affairs of the Company and in the absence of application of doctrine of vicarious liability to the directors of the Company under the provisions of Indian Penal Code, they cannot be proceeded for the above offences. Therefore, on this ground also the proceedings against accused Nos.4 to 11 – petitioners in Crl.P.No.5907 of 2015 are liable to be quashed.

The other contention raised before this Court is that the Magistrate did not apply his mind to scrutinize the evidence and put questions to the complainant and witnesses about the truth in the allegations and examine the offence, prima-facie, to find out whether the petitioners committed offences or not. Section 156 (3) of Cr.P.C. conferred power on the Magistrate to refer any complaint filed under Section 190 Cr.P.C. to the investigating agency i.e. statutory authority and on receipt of such proceedings, the investigating authority i.e. statutory authority may register the crime and issue F.I.R. and commence investigation. While ordering investigation by exercising power under Section 156 (3) of Cr.P.C., the Magistrate has to apply his mind to verify the truth or otherwise of the allegations made in the complaint, record his satisfaction and pass necessary orders.

Here, the Magistrate recorded the sworn statement and passed the following order:

> "This complaint under Section 200 Cr.P.C. filed by counsel for complainant against M/s.Prestige Estates and Projects Ltd. Rep. by Mr.Irfan Razack and 10 others for the offences under Section 406, 418 and 420 read with 34 I.P.C.
>
> The place of offence is shown in the limits of P.S. Banjara Hills and it falls under the jurisdiction of this Court.
>
> The complainant filed Xerox copies of documents.
>
> The complainant prays this Court to take cognizance of the offences against A1 to A11 and issue summons.
>
> Call on 01.04.2015."

The order is bereft of any reasons and not disclosing the application of mind. Section 156 (3) of Cr.P.C. has no application to the present facts of the case, since the Magistrate himself took cognizance after recording the statement under Section 200 Cr.P.C. and issued summons.

In "***Ramdev Food Products Pvt.Ltd v. State of Gujarat***" (referred supra), the Apex Court relying on "***Pepsi Foods Ltd. v. Judicial Magistrate***[22]" held as follows:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even

[22] (1998) 5 SCC 749

> himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Finally, the Apex Court held that the matter before it, is primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction and Supreme Court has cautioned against such abuse. Hence, the Magistrate rightly proceeded under Section 202 Cr.P.C. instead of proceeding under Section 156 (3) of Cr.P.C. and the Court is justified in affirming the order. This judgment is not much relevant to the present facts of the case, but in "***Pepsi Foods Ltd v. Judicial Magistrate***" (referred supra) it was held that the Magistrate applied his mind to the facts of the case and the law applicable thereto. Similarly in **"Priyanka Srivastava v. State of Uttar Pradesh[23]"**, the Apex Court reiterated that while considering the legality of the order passed under Section 156(3) of Cr.P.C, discussed the scope of various provisions of Cr.P.C and held as follows:

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[23] (2015) 6 SCC 287

> "Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."

While exercising power under Section 156(3), the Court must record its satisfaction as to what weighed the Magistrate to pass such an order which reflects the application of mind to the facts of the case in its entirety so as to enable the Higher Court to form an opinion.

Learned counsel for the petitioners also relied on "***National Bank of Oman v. Barkara Abdul Aziz***" (referred supra), wherein the Apex Court held that in cases where accused resides beyond area over which Magistrate concerned exercises jurisdiction, it is incumbent upon Magistrate to carry out an enquiry or order investigation under Section 202 Cr.P.C. before issuing process. But here the accused are residents of beyond territorial jurisdiction of Magistrate, but Magistrate took cognizance and no enquiry was conducted as required under Section 202 of Cr.P.C. except examining the complainant under Section 200 of Cr.P.C. Section 202 of Cr.P.C. deals with postponement of issue of processes. But in the present case, the Court issued processes under Section 204 of Cr.P.C. without following procedure under Section 202 of Cr.P.C.

though the petitioners are residents of various places, which are beyond the territorial limits of the Magistrate.

The duty of a Magistrate receiving a complaint is set out in Section 202 of the Code of Criminal Procedure and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Code of Criminal Procedure is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Code of Criminal Procedure is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made our; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

In the absence of such enquiry, taking cognizance by the Magistrate by his order dated 30.03.2015 for the offences punishable under Sections 406, 418 and 420 of I.P.C. cannot be upheld and the order is silent what weighed the Magistrate to issue such process to Accused Nos.1 to 11. Taking cognizance when the petitioners are the residents beyond the territorial limits of the Magistrate without making any enquiry as contemplated under

Section 202 of Cr.P.C., but that itself is not a ground to quash the proceedings against the petitioners.

Failure to comply with the requirement under Section 202 of Cr.P.C. may be one of the grounds to set aside the order dated 30.03.2015 when cognizance was taken and process was issued against the petitioners.

In "***State of Karnataka*** v. ***L. Muniswamy and Ors.***" (referred supra) the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

In any view of the matter, as discussed above, the allegations made in the complaint are predominantly of civil in nature though by clever drafting of a complaint using the verbatim of various provisions of I.P.C. in a private complaint is not sufficient to proceed against the petitioners for the above offences since the alleged payment of commission or consultancy charges of Rs.32.26 crores at 2% commission is allegedly arising out of contractual obligation and at best, it amounts to breach of promise, but not breach of trust or offer etc. Therefore, it is purely a case of civil nature, but instead of resorting to recovering the amount by proceeding in Civil Court, if any, the respondent No.2 adopted a shortcut method of filing complaint for recovery of amount subjecting the petitioners to harassment as a cloak to bring them to his terms. Thus, using the criminal law as a tool of harassment, which certainly cause incalculable damage to the petitioners and if the respondent No.2 is allowed to proceed under criminal law against the petitioners for the above offences, filing of such complaint is nothing but abuse of process of the Court to wreck vengeance against the petitioners. Therefore, in view of the guidelines laid down by the Apex Court in ***State of Haryana v. Ch.Bhajan Lal*** (referred supra) the Court can exercise the inherent power to quash the proceedings when the complaint is filed by abusing process of law.

Hence, I find no substance in the arguments of the learned counsel for the respondent No.2, consequently the proceedings are liable to be quashed and the petition is liable to be allowed.

In the result, the petitions are allowed and the proceedings against the petitioners herein in C.C.No.997 of 2015 on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad are hereby quashed.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.01.2017
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