

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10680 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in Crime No.1141 of 2017 of L.B.Nagar L & O P.S., Rachakonda District, for the offences punishable under Sections 420 and 384 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Money Laundering Act, 2002 ("the Act" for brevity) on the ground that the dispute is purely civil in nature and the allegations made in the report lodged with the police would not constitute any offence, much less offences punishable under Sections 420 and 384 IPC and Sections 3 and 4 of the Act.

Respondent No.2-*de facto* complainant lodged a report with the police alleging that he borrowed an amount of Rs.32.00 lakhs as hand-loan from the petitioner while agreeing to repay the same together with interest @ 2% per month and the petitioner also obtained agreement of sale-cum-General Power of Attorney (GPA) as security for repayment of the loan from the wife of the *de facto* complainant. Even after the loan was cleared, the documents were not returned and on the other hand, the petitioner put him in fear and collected huge amount from him and thereby, committed the abovementioned offences.

Sri D.Madhava Rao, learned counsel for the petitioner, contended that the dispute is purely civil in nature with regard to property and this Court has to exercise its inherent power under Section 482 Cr.P.C. and quash the proceedings in Crime No.1141 of 2017 of L.B.Nagar L & O Police Station filed for the offences punishable under Sections 420 and 384 IPC and Sections 3 and 4 of the Act. Learned counsel for the petitioner also placed reliance on two judgments of the Apex Court reported in **ALPIC Finance Ltd. V. P.Sadasivan**¹ and **Vesa Holdings (P) Ltd. V. State of Kerala**² to contend that the allegations made in the complaint would not constitute an offence punishable under any penal law and this Court can exercise inherent jurisdiction under Section 482 Cr.P.C. and quash the proceedings pending with the L.B.Nagar L & O Police Station.

Sri S.R.Sanku, learned counsel for the second respondent, opposed the petition on the ground that collection of huge amount and putting the *de facto* complainant in fear through anti-social elements and obtaining documents by force would constitute an offence punishable under Section 420 IPC and the offences punishable under the provisions of the Act. Whereas the learned Public Prosecutor for the State of Telangana produced case-diary to establish that the petitioner collected huge amount and the diary maintained by the petitioner making

¹ (2001)3 SCC 513

² (2015)8 SCC 293

entries of the amount covered by the transaction was seized by the police during investigation which clearly establishes that the petitioner indulged in money laundering activities and requested to pass appropriate orders.

It is the clear case of the petitioner that he advanced amount to the second respondent as hand-loan and obtained agreement of sale-cum-GPA from the second respondent and his wife K.Shyam Priya as security for the said debt is nothing but abuse of power by the petitioner against the second respondent who was in need of money and if really he obtained an agreement of sale-cum-GPA from the second respondent and his wife, K.Shyam Priya, it is independent from the loan transaction and lodging of the report with the police would amount to abuse of process of Court but it is a question of fact to be decided only during the trial. On the other hand, the material collected by the investigating agency during the investigation, more particularly, the agreement of sale-cum-GPA and the diary maintained by the petitioner making entries regarding collection of amount, from the petitioner would substantiate the contention of the second respondent, *prima facie*, that the petitioner was collecting huge amounts. In addition to the collection of evidence during investigation, the police examined several witnesses and recorded their statements. All the statements recorded by the police under Section 161 Cr.P.C. also show that the petitioner was collecting huge amount by lending amount at

higher rate of interest and obtaining documents. Therefore, when investigation is not completed, this Court cannot exercise its power to quash the proceedings at the foetus stage.

Learned counsel for the petitioner mostly relied on the principle laid down in **Vesa Holdings (P) Ltd.** (2 supra) wherein the Apex Court held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. For the purpose of constituting an offence of cheating, the complaint 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 the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. There is no quarrel about the principle laid down in the above judgment but the investigation is at the threshold, only collected documents and that too only statements of two witnesses were recorded by the police during investigation apart from seizure of various documents. Therefore, at this stage, I am unable to agree with the contention that the petitioner did not commit any offence,

prima facie, punishable under Section 420 IPC. In the other judgment reported in **ALPIC Finance Ltd.** (1 supra), for failure to repay the finance amount, criminal complaint was lodged but it was held that finance agreement is totally different and non-payment would not constitute an offence. The said principle has no application to the facts of the present case.

Counsel for the petitioner contended that the provisions of the Act have no application to the facts of the present case but at the stage when investigation is not completed, in view of the law declared by the Apex Court in **Umesh Kumar v. State of Andhra Pradesh**³ the proceedings cannot be quashed. Therefore, I am not in a position to express my opinion as to whether the facts of the present case would attract offence punishable under the provisions of the Act since it is the power of the Court under Section 216 Cr.P.C. to alter any charge or add any charge if this Court expresses any such opinion as the power conferred on the Magistrate would become redundant.

Admittedly, investigation is not yet commenced and in such case, this Court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings. In **State of Orissa v. Saroj Kumar Sahoo**⁴, it is 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

³ (2013)10 SCC 591

⁴ (2005)13 SCC 540 : 2006(2) ALT (CrI.) 16

Court, being the highest Court of 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. The same principle was laid down in **Kurukshetra University v. State of Haryana**⁵.

However, if the investigating agency found that the petitioner did commit any offence, *prima facie*, punishable with imprisonment of less than seven years, the police concerned are directed to follow the procedure under Section 41-A Cr.P.C. and the guidelines issued by the Apex Court in **Arnesh Kumar v. State of Bihar**⁶.

In view of the law declared by the Apex Court in the judgments stated supra, I find no grounds to quash the proceedings at this foetus stage of investigation.

In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

17th November 2017
RRB

⁵ (1977)4 SCC 451 : AIR 1977 SC 2229

⁶ (2014)8 SCC 273