

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.10426 of 2017****ORDER:**

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in Crime No.197 of 2017 of Chanda Nagar Police Station, Cyberabad, Rangareddy District, registered for the offences under Sections 406,420,506 IPC read with Section 156(3) Cr.P.C.

Respondent No.1/ *de facto* complainant filed a private complaint before XIX Metropolitan Magistrate, Cyberabad at Kukatpally, for the offences under Sections 406, 420 and 506 IPC and the same was referred to the police by the Magistrate under Section 156(3) Cr.P.C. On receipt of reference, the police of Chandanagar Police Station, registered the same as a case in Cr.No.197 of 2017 and issued FIR.

The main allegation against these petitioners is that they collected Rs.28,00,000/- initially to arrange P.G. medical seat in SVS Medical College to the son of *de facto* complainant and the complainant paid the said amount by way of cheques bearing Nos.715001 to 715003 in favour of accused No.1/petitioner No.1 after obtaining an undertaking from him that he would not present the cheques for collection till arranging the medical seat to the son of the complainant, but the petitioners did not arrange the PG medical seat as agreed and on the other hand, the petitioner No.1/A.1 allegedly threatened the *de facto* complainant with dire consequences and presented the cheques in violation of the undertaking and on presentation, the said cheques were returned unpaid for one reason or the other and therefore, he filed a private complaint in C.C.No.691 of 2015 on the file of Judicial First Class Magistrate at Bellampalli for the offence under Section 138 of NI Act.

It is also admitted fact that the *de facto* complainant lodged a complaint earlier, which is registered as a case in Cr.No.383 of 2015 on the file of Chandanagar Police Station for the offence under Section 507 IPC, but the police filed charge sheet under Sections 507 and 109 IPC which now pending on the file of XIX Metropolitan Magistrate, Kukatpally at Miyapur.

The main contention of the petitioners is that the allegations made in the present complaint with regard to collection of amount of Rs.28,00,000/- is the subject matter of the earlier complaint, which is pending on the file of XIX Metropolitan Magistrate, Kukatpally at Miyapur, for the offences under Sections 507 and 109 IPC and as the charge sheet was not filed for the offences under Sections 406, 420 and 506 IPC, the present complaint was filed before the Magistrate, who inturn referred to the Police under Section 156(3) Cr.P.C. When the allegations made in the present FIR and the earlier case in Cr.No.383 of 2015 are one and the same, the Court can exercise its power under Section 216 Cr.P.C. to amend/alter or frame additional charges, if evidence is adduced. In such a case, filing of a private complaint and investigation by the police is nothing but ordering re-investigation, which is impermissible under law.

Therefore, taking into consideration, the facts and circumstances of the case, more particularly, the allegations made in the earlier complaint, which is subject matter of C.C.No.409 of 2016 on the file of XIX Metropolitan Magistrate, Kukatpally at Miyapur, which are similar to the allegations made in the private complaint, which is the basis for registration of the crime No.197 of 2017 on the file of Chanda Nagar Police Station, Cyderabad, Ranga Reddy, as per the reference made by the Magistrate under Section 156(3) Cr.P.C., I

find that it is a fit case to quash the proceedings as it is an abuse of process of Court while permitting the *de facto* complainant to file appropriate application before the trial Court under Section 216 Cr.P.C. or any other law to amend/alter or frame additional charges based on the identical allegations made in the present complaint in Cr.No.197 of 2017.

Even if no application is filed by the petitioners, the Court can exercise such power under Section 216 Cr.P.C. if the Court find evidence in support of such charge/s after giving an opportunity to both parties. If for any reason, this Court records a specific finding about commission of an offence, the power conferred on the trial Court under Section 216 Cr.P.C. would become redundant, in view of the law declared by the Apex Court in *Umesh Kumar v. State of A.P and another*¹.

In view of my above discussion, this Criminal Petition is allowed and the proceedings in Cr.No.197 of 2017 on the file of Chanda Nagar Police Station, Cyberabad, Rangareddy District, are quashed, while permitting the *de facto* complainant to file appropriate application before the trial Court under Section 216 Cr.P.C. to alter/amend or frame additional charges, if any or permitting the Court to alter/amend or frame additional charges if charges were already framed by exercising power under Section 216 Cr.P.C.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06.12.2017
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¹ (2013) 10 SCC 591

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt. 06.12.2017

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