

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10352 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in C.C.No.1 of 2016 on the file of the Metropolitan Sessions Judge, Nampally, Hyderabad filed for the offences punishable under Sections 120-B, 406, 409, 420, 477-A and 201 of the Indian Penal Code and Section 5 of the APPDFE Act, 1999, on the sole ground that none of the witnesses did state against the petitioner-accused No.1 in their statements under Section 161 Cr.P.C.

It appears from the contentions raised by the petitioner that the prosecution is groundless or without any *prima facie* material to proceed with. In such a case, the petitioner is entitled to file a petition under Section 239 Cr.P.C. to discharge him for the aforesaid offences.

In similar circumstances the Apex Court in **Umesh v. State of Kerala** (Crl.A.No.227 of 2017 dated 03.02.2017) held as under.

“Even if all contentions taken by the appellant are taken on their face value also, it is for the Magistrate concerned to consider those contentions in an appropriate application filed under Section 239 of the Cr.P.C. In that view of the matter, we do not propose to go into all the contentions taken by the appellant. The appeals are hence disposed of as follows:

The appellant shall surrender before the Judicial Magistrate, First Class, Chavakkad, where the criminal cases are pending within four weeks from today. On this surrendering, on the appellant's furnishing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand), in each case, along with two solvent sureties for the like amount, the appellant shall be released on bail. The appellant will be free to file applications under Section 239 Cr.P.C.

We direct the learned Magistrate to consider the applications, if any filed, having regard to the contentions taken by the appellant and dispose of the same, in accordance with law.

Pending application(s), if any, shall stand disposed of.”

Following the same principle, the petitioner is given liberty to file an application under Section 239 Cr.P.C. to raise all his contentions, more particularly, that the proposed charges are groundless and that there is no *prima facie* material to proceed against the petitioner or any other ground.

With the above observation, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

8th November 2017
RRB

