

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10196 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., by the petitioner/A.1 to quash the proceedings in C.C.No.359 of 2016 on the file of Judicial Magistrate of First Class, Zaheerabad, registered for the offences punishable under Sections 406 and 420 IPC.

2. The 2nd respondent-*de facto* complainant lodged a complaint against the petitioner and others alleging that the petitioner is a Contractor and he is working under the 2nd respondent municipality for doing the works of sanitary/cleaning water supply by engaging labourers. According to the terms and conditions of the agreement between the municipality and the petitioner, the petitioner has to deposit 1/3rd contribution towards Provident Fund Account to labourers he engaged, but, the petitioner failed to deposit the Provide Fund contribution towards his share to the labourers. Since the petitioner gave sub-contract to the others persons, who misappropriated the amount, therefore, the petitioner did commit no offence punishable under Sections 406 and 402 IPC.

3. Learned counsel for the petitioner submits that the petitioner paid entire amount of Rs.46,91,174/- towards employee's share including contribution by the municipality; and that the petitioner underwent four stunt operations, therefore, requested the Court to quash the proceedings.

4. There is no dispute with regard to engaging the services of the petitioner by the 2nd respondent municipality as a Contractor for maintaining the works of sanitary/cleaning, water etc. The petitioner engaged various coolies, who are listed as witnesses i.e., LWs.1 to 95, who are the victims. As per the terms of the agreement between the 2nd respondent-municipality and the petitioner, the petitioner has to contribute Provident Fund inclusive of the amount payable under contract to the petitioner for maintenance of providing sanitary works etc. It is also an undisputed fact that the petitioner paid the entire Provident Fund amount, subsequent to lodging of the complaint, which is inclusive of share of municipality, but, he failed to deposit the amount with the Commissioner of Provident Fund, within time prescribed.

5. Section 405 IPC defined 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". Explanation No.1 under the provision inserted by Act 38 of 1975 w.e.f. 01.09.1975 is clear that the person being employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employees' contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund

established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

6. In view of Explanation-1 to Section 405 IPC, though the petitioner paid his share of amount towards Provident Fund contribution payable to L.Ws.1 to 95 due by him, who were engaged as workers to attend the work, it amounts to criminal breach of trust, which is an offence punishable under Section 406 IPC. Therefore, the contention that the petitioner cannot be prosecuted for the aforesaid offence is without any basis. Hence, this Court is of the considered opinion that there is no merit in the contention of learned counsel for the petitioner to quash the proceedings against the petitioner exercising the inherent powers under Section 482 Cr.P.C., which can be exercised in rarest of rare cases keeping the guidelines laid down in ***State of Haryana v. Bhajanlal***¹, the Apex Court laid down certain guidelines enabling the Court to exercise inherent power under Section 482 Cr.P.C., which read as under:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers

¹ 1992 Supp.(1) SCC 335

under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In view of the guidelines laid down in Judgment, the case of the petitioner does not fall in any of the guidelines laid down by the Hon'ble Apex Court, the Criminal Petition is liable to be dismissed.

7. Accordingly, the Criminal Petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

NOVEMBER 03, 2017

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Date: 03.11.2017

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