

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.P.No.11845 of 2017

ORDER

This petition under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.287 of 2017 pending on the file of II Additional Judicial First Class Magistrate, Godavarikhani, Karimnagar District, registered for the offences punishable under Sections 420, 323, 506 read with Section 34 IPC, against the petitioner/A2.

2. The 2nd respondent, by name, Kotha Sathamma, lodged a report before the police on 07.06.2016 alleging that the petitioner, who is A2, in the above C.C., lured her promising to pay higher rate of interest than the interest being paid by the Bank, and believing such representation of petitioner and other accused, paid an amount of 2,00,000/- on 14.11.2015, Rs.3,00,000/- on 16.11.2015, Rs.2,50,000/- on 21.11.2015, Rs.3,00,000/- on 24.11.2015, Rs.50,000/- on 25.11.2015, in total a sum of Rs.11,00,000/-, to the accused, who in turn, executed a promissory note for a sum of Rs.10,50,000/- while agreeing to pay the amount of Rs.50,000/- within short time. When the 2nd respondent approached the accused for repayment of the amount to meet the expenses of her daughter's marriage, the petitioner and other accused threatened her with dire consequences and in case, she repeated such demand, they threatened to kill her. Thus, the accused made the 2nd respondent to part with huge amount. Similarly, the accused also received huge

amount from one Ganta Vijayalakshmi, Vemulavada Lavanya and others. On the strength of the complaint, a case in Cr.No.178 of 2016 of Godavarikhani-I Town Police Station, Karimnagar District, was registered against A1 to A4 for the offences punishable under Sections 420, 323, 506 read with Section 34 IPC. Thereafter, the police took up investigation, examined as many as three witnesses and recorded their statements, and on the basis of the evidence, the investigating agency concluded that the petitioner and others have committed the aforesaid offences and filed the charge sheet.

3. The present criminal petition is filed on various grounds. The main ground urged before this Court is that the other persons, by name, Ganta Vijayalakshmi and two others, did not lodge any report with the police against the accused and as such lodging a report with the police by the 2nd respondent is an abuse of process of the Court and therefore, requested this Court to quash the proceedings by exercising power under Section 482 of Cr.P.C.

4. During the course of hearing, learned counsel for petitioner would submit that the petitioner/A2 was allegedly executed a promissory note for Rs.10,50,000/- while agreeing to repay a sum of Rs.50,000/- out of Rs.11,00,000/-, but the execution of the promissory note creates a contractual obligation between the parties and in such case, lodging report with the police and filing charge sheet, is nothing but a conversion of civil litigation into criminal case and requested this Court to quash the proceedings.

5. As seen from the allegations made in the complaint and the evidence collected during investigation by the investigating agency, the petitioner collected huge amount from different persons, including the 2nd respondent herein, Ganta Vijayalakshmi, whose name is referred in the complaint. Their consistent statements would show that the petitioner made a false representation to pay higher rate of interest than the Bank lending rate of interest and executed a promissory note for Rs.10,50,000/- in favour of the 2nd respondent. Therefore, such transaction is governed by the Act and at best, if the petitioner committed any default in discharge of debt covered by the promissory note for Rs.10,50,000/-, certainly, it would give rise to civil liability, but not criminal liability. But failure to pay the amount of Rs.50,000/-, which was collected by petitioner on a promise to pay higher rate of interest than the Bank lending rate of interest, would attract the offence punishable under Section 420 of IPC since the petitioner is conscious about the liability of 2nd respondent to pay the higher rate of interest than the Bank lending rate and made such misrepresentation making the 2nd respondent to part with huge amount. Similarly, collection of amount from Ganta Vijayalakshmi and others would also attract an offence punishable under Section 420 IPC. In addition to the alleged incident of making false representation and making the 2nd respondent part with huge amount, the petitioner and others threatened her to kill, if she demands the amount again and beat her with hands. Such act would attract the offence punishable under Section 506 of IPC i.e., criminal intimidation, as defined under Section 503 of IPC. Similarly,

causing hurt voluntarily with hands would fall within Section 323 of IPC. These facts are supported by the statements recorded by the police under Section 161 of Cr.P.C., during investigation. Therefore, there is *prima facie* material against the petitioner for the offences punishable under Sections 420, 323, 506 read with Section 34 IPC.

6. Under Section 482 of Cr.P.C., this Court can exercise its inherent jurisdiction only to give effect to the order passed by the Court and to prevent abuse of process of the Court and to meet the ends of justice, not as a matter of routine and such power has to be exercised in rarest of rare cases. The Apex Court in **State of Haryana v. Bhajanlal**¹, laid down the following 7 guidelines, which are extracted hereunder:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted 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;

(d) 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;

¹ 1992 Supp(1) SCC 335

(e) 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;

(f) 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;

(g) 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.

Even according to guideline Nos.2 and 3 of the said judgment, if the allegations made in the charge sheet or FIR, if taken on its face value, would constitute the offences alleged, this Court cannot quash the proceedings. If the allegations made in the complaint and the statements recorded by the police under Section 161 Cr.P.C., including the evidence collected during investigation support the allegations made in the charge sheet, it constitutes the offences punishable under Sections 420, 323, 506 read with Section 34 IPC. Therefore, I find no ground to quash the proceedings at this stage.

7. Though the counsel for petitioner contended that the petitioner was falsely implicated by the police and did commit no offence, such question cannot be decided while exercising power under Section 482 of Cr.P.C. At best, after trial, if the Court finds no material pointing out the complicity of the accused for various offences referred supra, the Court may acquit him at the end of trial and not at

this stage, since, it is a disputed question of fact to be decided. Therefore, I find no ground to quash the proceedings at this stage and the criminal petition is liable to be dismissed.

8. In the result, the Criminal Petition is dismissed, at the stage of admission.

9. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

4th December, 2017

sj

