HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.11799 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the charge sheet in C.C.No.474 of 2008 pending on the file of IV Additional Munsif Magistrate at Warangal, Warangal District, for the offences punishable under Sections 420, 506 and 366 of IPC.

2. The first respondent filed a private complaint before the IV Additional Munsif Magistrate, Warangal for various offences referred supra and the Magistrate exercising power under Section 156(3) Cr.P.C. referred the case to the police concerned and on the basis of the reference, the police registered a case in Crime No.153 of 2005 and took up investigation. During investigation, the police examined four witnesses viz. 1) Syed Khaja Abdul Wahab, 2)Md. Shamsuddin, 3) Md.Khaleem and 4) Khaja Abdul Rahman and recorded their statements under Section 161 Cr.P.C. After completion of investigation, they filed charge sheet.

3. As seen from the allegations made in the charge sheet, A1 to A4 informed the 1st respondent herein that they are running business in the name and style of Johar's Entertainment International having corporate office at Saleemnagar Colony, Malakpet, Hyderabad and that they are sending candidates to US for employment as their cousin Mohmood Johar is residing at New York and he will arrange and provide job at USA. Believing the representation of A1 to A4 including the present petitioner/A1, the 1st respondent paid Rs.4,95,000/- in the month of August, 2004 and that A1 to A4 jointly promised that they will provide employment at USA within three or four months. But they failed to

provide any employment to the 1st respondent as promised. Thereupon, the 1st respondent approached them several times and demanded to provide employment, but they postponed on one pretext or other. In the month of March, 2005 again the 1st respondent approached A1 to A4 and demanded to return the amount, but they threatened the 1st respondent with dire consequences on 05.04.2005, when the complainant along with his driver were travelling on a scooter from RTO office, Nayeen Nagar to Warangal and when they reached Pedammagadda culvert, A1 to A4 obstructed them with Tata sumo without having registration number and forcibly took them saying that "their sir wanted to talk to the 1st respondent". Thereafter, they were taken to Hafeez Baba nagar while Shamsuddin was taken to Barkas and wrongfully confined them for two days. Thus, it is alleged that A1 to A.4 made a representation with dishonest intention and made the 1st respondent to part with huge amount of Rs.4,95,000/- and also kidnapped the 1st respondent and LW.2-Shamsuddin on one pretext or the other and obtained signatures on blank papers confining them in a room and thus, committed an offence punishable under Section 366 IPC.

4. The first and foremost contention raised by the petitioners in this case is that they did not commit any offence muchless the offence punishable under Section 366 IPC. The story of kidnap by the 1st respondent is improper and the statements recorded by the police of LWs.1 to 4 under Section 161 Cr.P.C. also does not disclose commission of offence and prayed to quash the criminal proceedings.

5. According to the contention of learned counsel for the petitioners is that the trial Court issued NBW against these petitioners is that there is no material against these petitioners to proceed in the case and even if the case is tried, it does not serve any purpose in view of the statements recorded by the police during investigation of LWs1 to 4.

6. Learned Additional Public Prosecutor submitted that the petitioners successfully avoided their appearance before the Court and thereby the Court has no other alternative except to issue NBW and it is pending for execution and that the petitioners having waited for 11 years, approached this Court belatedly and that the material available on record discloses commission of offence punishable under Section 420 of IPC etc. Therefore, the criminal proceedings cannot be quashed at this stage.

7. As per the facts narrated herein above, the petitioners along with three others collected Rs.4,95,000/- from the 1st respondent in the month of August, 2004 promising to provide employment in USA as his close relative is a resident of USA and that he provided employment to several persons in India and USA. Collection of Rs.4,95,000/- with a promise to provide employment in USA indicates that the petitioners and other accused had dishonest intention, made the 1st respondent to part with huge amount. Therefore, such act would attract *prima facie* offence punishable under Section 420 IPC.

8. The other offence allegedly committed by the petitioners and others is criminal intimidation punishable under Section 506 IPC as defined under Section 503 IPC as follows:

> 503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the

> person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

9. Here, the allegation against the petitioners and others is that they threatened the 1st respondent with dire consequences. Such act is supported by the statements recorded by the police during investigation. If the statements recorded by the police coupled with the allegations made in the charge sheet, if taken on its face value would constitute offence punishable under Section 506 IPC.

10. The other offence allegedly committed by the petitioners is under Section 366 IPC i.s kidnapping, abducting or inducing woman to compel her marriage, etc. Section 365 IPC deals with kidnapping or abducting with intent secretly and wrongfully to confine person. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. Here in this case, the 1st respondent and his driver LW.2 were taken to two secrete places and forcibly obtained signatures on stamp papers allegedly, which would attract Section 365 IPC. The allegations made in the charge sheet if taken on its face value would constitute offence punishable under Section 365, 506 and 420 IPC. In such a case, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C.

12. Though NBW is pending against the petitioners for the last 11 years and such power can be exercised in rarest of rare cases to give

effect to the orders passed under the code, to prevent abuse of process of the Court and to secure ends of justice.

13. The Apex Court in **State of Haryana v Bhajanlal**[1] laid down the following seven guidelines:

> *"(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 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."*

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[1] 1992 Supp(1) SCC 335

14. As per guidelines 2 and 3, if the allegations made in FIR or complaint are taken on its face value do not *prima facie* constitute any commission of offence, the Court can exercise its inherent power under Section 482 Cr.P.C. to quash the proceedings. But in the present case, the allegations made in the charge sheet coupled with the statements recorded by the police during investigation discloses, *prima facie* commission of cognizable offence. In such a case, this Court cannot exercise inherent jurisdiction to quash proceedings and consequently, the criminal petition is liable to be dismissed.

15. Accordingly, the criminal petition is dismissed at the stage of admission.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

30.11.2017
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