

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.12669 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in Crime No.173 of 2017 of Maharanipeta Police Station, Visakhapatnam City, registered for the offence punishable under Sections 408 and 420 IPC on the strength of the report submitted by M.Mohana Rao, the authorised officer of the SNSO Secutrak Limited.

2. The petitioner is accused in the above crime and he worked as employee in the 2nd respondent organisation from 08.02.2010 to 15.11.2016. Thereafter, the petitioner sent resignation letter by courier service to the Branch Manager. While the petitioner was working in the 2nd respondent company, he and his wife opened account No.36058664782, in the month of September, 2016 with State Bank of India, Madhavadara Branch, Visakhapatnam by starting independent business in the name and style of ENSO Secutrak. The amounts paid to the credit of the 2nd respondent company, the petitioner diverted to his account i.e. diverting Rs.9,645/- paid by his customer by way of D.D.No.460193948, dated 23.03.2017 on 24.06.2017 and similarly the petitioner diverted Rs.15 lakhs to his account and thereby, the petitioner committed the above offence.

3. The main ground urged before this Court is that the report does not disclose the details as to when the account was opened and when the amount was diverted. Therefore, it would not constitute any offence and prayed to quash the proceedings.

4. No doubt, the report lodged with the police, which is basis for setting the criminal law into motion intimating about the

commission of offence did not disclose the minute details of the incident as to the dates of diversion etc. But the petitioner gave details of the diversion of Rs.9,645/-..

5. As far as the specific contention that the report does not disclose the details of offence is concerned, this Court cannot exercise inherent jurisdiction to entertain the petition, since FIR is not expected to contain all details and is not expected to disclose the minute details of the offence including dates of diversion etc. Therefore, failure to give details is not sufficient to quash the proceedings. Apart from that, investigation is not yet commenced in the matter.

6. Normally, this Court would not exercise its inherent jurisdiction when the investigation is not yet commenced irrespective of the magnitude of facts and law. When the facts are incomplete and hazy before the Court, as held by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**¹” that the inherent powers under Section 482, Cr. P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act

¹ (2005) 13 SCC 540

as if it was a trial court. Even when charge is framed, at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

7. In “**Kurukshetra University v. State Of Haryana²**”, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

8 In view of the law declared by the Apex Court in both the judgments referred supra and when investigation is at foetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising inherent power under Section 482 of Cr.P.C. Hence, I find that it is not appropriate stage to quash the proceedings. However, as the offence allegedly committed by the petitioner is punishable with imprisonment of less than seven years, the police is directed to follow the procedure

² AIR 1977 SC 2229

under Section 41-A Cr.P.C. and the guidelines issued by the Apex Court in **Arnesh Kumar v. State of Bihar**³.

9. With the above observation, the criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

20.12.2017
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³ (2014) 8 SCC 273