

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.12393 of 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in Crime No.707 of 2017 of Ramachandrapuram Police Station, Sangareddy District, registered for the offences punishable under Sections 420 read with 34 IPC, 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 and 5 and 6 of Andhra Pradesh Chit Fund Act, on the basis of the complaint lodged by Taqur Mahender Singh, the *de facto* complainant.

2. The *de facto* complainant and the petitioner are residents of same locality and that the 2nd respondent was staying in the first floor of the building and whereas, the petitioner occupied in the 2nd floor and he developed acquaintance with the 2nd respondent. The petitioner was running chits since long time. In the year 2004, the 2nd respondent joined as subscriber of the chit for Rs.5,00,000/-, agreeing to pay Rs.20,000/- per month in 25 months. Accordingly, the 2nd respondent paid total amount of Rs.3,78,566/- after deducting dividend and finally he become highest bidder of the chit for Rs.4,80,000/-. But the petitioner did not pay the same. As the petitioner constructing the house, promised to pay the said amount within short time and later the 2nd respondent also joined as subscriber in another chit for Rs.5,00,000/- and paid Rs.91,320/- in total, for seven month. But, the petitioner did not inform about the cancellation of chit due to non payment of monthly subscription by the other subscribers and the petitioner did not repay the amount. Therefore, the 2nd respondent requested the police to take necessary action against the petitioner.

3. Now the main contention of the petitioner before this Court is that the chit amount of Rs.4,80,000/- became due in the year 2014 and even after non payment of the amount, the 2nd respondent joined as subscriber of the second chit of Rs.5,00,000/-. It is most improbable to the circumstances of the case and requested this Court to quash the proceedings.

4. As seen from the allegations made in the complaint, the petitioner is running unauthorised and unregistered chits, which is contrary to the provisions of the A.P.Chit Fund Act and allegedly collected huge amount of Rs.4,80,000/- from the petitioner besides Rs.91,320/-, but did not repay the said amount as agreed and promised, which constitute offences punishable under Sections 420 and 406 IPC. Therefore, there is *prima facie* material against the petitioner to investigate into the crime.

5. Admittedly, the investigation is not yet commenced and in such a case, this Court cannot quash the proceedings. As per the decision of the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**¹”, wherein the Apex Court held 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

¹ (2005) 13 SCC 540

proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act 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.

6. In “**Kurukshetra University v. State Of Haryana**²”, 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 CrPC, 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.”

7. Therefore, in view of the law declared by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**” and “**Kurukshetra University v. State Of Haryana**” (referred supra) when the investigation is at fetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising power under Section 482 of Cr.P.C.

² AIR 1977 SC 2229

8. Keeping in mind the judgment of the Apex Court in ***State of Haryana v. Bhajan Lal***³, the Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

“(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 to 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

³ 1992 Supp. (1) SCC 335

(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.

9. According to Guidelines 2 and 3 of the Apex Court, if the allegations made in the complaint or charge sheet if taken on its face value, it would not constitute a case against the petitioner, this Court can exercise inherent jurisdiction under Section 482 Cr.P.C and quash.

10. But here in this case, the petitioner while running unauthorised chits, collected huge amount from the 2nd respondent and others and failed to repay the amount. At this stage, when the investigation is not yet commenced, this Court cannot quash the criminal proceedings under Section 482 Cr.P.C. Therefore, the criminal petition is liable to be dismissed.

11. Accordingly, the criminal petition is dismissed while permitting the petitioner to renew his request at appropriate stage.

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

M. SATYANARAYANA MURTHY,J

14.12.2017
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