

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**Crl.P.No.11741 of 2017**

**ORDER**

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in Cr.No.237 of 2017 of Khammam I Town Police Station, Khammam District, registered for the offences punishable under Sections 406, 420, 506 read with Section 34 IPC, against the petitioners/A6 to A10.

2. The aforesaid crime was registered against the petitioners and others based on the complaint lodged by the second respondent, by name, Dr. P. Krupakar, with the police on 05.11.2017, alleging that he purchased the CT-scan machine (Sl.No.27295 Client No.40188729 Ref.ID.No.3002337792) for Rs.1,25,00,000/- under the claim of SC/ST Entrepreneur Scheme, by paying initial capital amount of Rs.32,53,000/- and obtained loan for the balance amount. As he was unable to run his hospital, he leased out the said machine to Apex Diagnostic Centre on 01.01.2014 through its Proprietor Kuthumbaka Naveen Kumar, on monthly rent of Rs.1,50,000/- in the presence of B. Upender and R. Pavan Kumar and entered into MOU incorporating the terms of lease, and accordingly, the machine was shifted to Apex Diagnostic Centre. During subsistence of lease, said Naveen Kumar died. Thereafter, when the de-facto complainant asked the wife of deceased, by name Dr. K. Swapna, about the machine, she did not permit him to verify the machine, and on suspicion and enquiry, he found that the management of Apex Diagnostic Centre sold the said machine in the year 2016 to Medi Life Hospitals, Mancheri, the petitioners herein. When he

questioned the same, the wife of deceased Naveen Kumar, who is running the Apex Diagnostic Centre and managing the same, abused him raising his caste name as he obtained the machine being a scheduled caste person by cheating etc., and insulted him in the presence of several persons and therefore, he requested to take necessary action against the petitioners and others.

3. On the strength of the report, the police registered a case in Cr.No.237 of 2017 for the offences punishable under Sections 406, 420, 506 read with Section 34 IPC and issued FIR on 05.11.2017. During investigation, the Police, Khammam, issued a notice dated 09.12.2017 to the petitioners informing that one K. Nagendra Chary, Assistant Investigating Officer, was authorised to issue notice in the reference cited, alleging that CT Scan Machine of Siemens 6 slice (ID-1016687634-somatom emotion 6(2007)-27295) was with the petitioners and it is under the dispute of ownership and the case was registered against the petitioners at Khammam I Town Police Station and instructed not to alienate, convert or use the machine till further orders. Thus, a restraint order was passed by issuing notice restraining the petitioners from alienating or transferring the machine until further orders.

4. The main contention of the counsel for petitioners is that the first respondent sold the machine to Apex Diagnostic Centre by receiving advance amount of Rs.45 lakhs on 18.07.2014 out of Rs.72,08,000/- towards sale consideration and thereafter permitted to shift the machine and the first respondent also issued an undated letter authorising Dr. K. Naveen Kumar of Apex Diagnostic Centre to

operate and manage the CT scan. His further contention is that the Apex Diagnostic Centre obtained the purchase order for shifting the machine from Kavya Nursing Home to the Apex Diagnostic and Medical Imaging and paid the amount of Rs.6,87,000/- towards installation charges on 13.05.2016. He also contended that the petitioners purchased the scanning machine by placing purchase order for Rs.42 lakhs and transferred the amount towards sale consideration by electronic transfer.

5. The undisputed fact is that the first respondent purchased the machine under SC/ST Entrepreneur Scheme initially investing capital amount of Rs.32,53,000/- and obtained loan for the balance amount. According to the first respondent, it was leased out to Apex Diagnostic Centre on monthly rent of Rs.1,50,000/- and entered into memorandum of understanding. But the contention of petitioners is that it was sold to Apex Diagnostic Centre by the first respondent by receiving an amount of Rs.45 lakhs and acknowledged the receipt of consideration on 18.07.2014. The receipt dated 18.07.2014 disclosed that Dr. P. Krupakar, the first respondent herein, received only Rs.45 lakhs out of Rs.72,08,000/-, but it is not clear from this receipt, whether the amount was received towards sale of scanning machine or not or for any other purpose. Apart from that, another undated letter addressed to Kavya Nursing Home, issued by the first respondent, shows that permission was granted for shifting the machine from his dispensary to Apex Diagnostic Centre to operate and manage the CT scan machine and the Siemens Limited issued a quotation for shifting the Emotion 6 scan system from Kavya

Nursing Home to Apex Diagnostic and Medical Imaging. These two letters, at best would establish that the machine was permitted to be shifted from Kavya Nursing Home to Apex Diagnostic Centre. Whether it was on lease or otherwise, is not disclosed in those letters, but it was a receipt acknowledging part payment of Rs.45 lakhs out of Rs.72,08,000/- without disclosing the purpose for which the amount was received. But, a vague reference was made about the part payment of the amount out of total amount of Rs.72,08,000/- on 18.07.2014. Whether it was paid towards sale consideration or the lease amount etc., is not known and based on such document, it is difficult, at this stage, to conclude that the CT Scan machine was sold to Apex Diagnostic by the first respondent. Therefore, the material placed on record, at best, would establish that the petitioners purchased the machine from Apex Diagnostic Centre, and in the absence of transfer of ownership to the Apex Diagnostic Centre by the first respondent by transfer in writing, it is difficult to accept the contention that the Apex Diagnostic Centre became the owner of the said machine, at this stage. Therefore, it is difficult for this Court to conclude that the Apex Diagnostic Centre became the owner of the property and from the said Centre, the petitioner purchased the same.

6. The investigation in the crime is not yet commenced, except issuing notice restraining the petitioners from alienating the property i.e., scan machine, until further orders. When the investigation is not yet commenced and is at fetus stage, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C., to quash the

proceedings since the facts are incomplete and hazy before this Court. The Apex Court in **State of Orissa v. Saroj Kumar Sahoo**<sup>1</sup> held that when the investigation is not yet commenced and the facts are incomplete and hazy irrespective of the magnitude of the facts and law involved in the matter, this Court cannot exercise inherent jurisdiction to quash the proceedings. Similar view was expressed earlier in **Kurukshetra University v. State Of Haryana**<sup>2</sup>. In view of the law declared by the Apex Court in the above two judgments, at this stage, it is difficult to conclude that the proceedings were initiated against the petitioners as an abuse of process of the Court converting the civil litigation into criminal.

7. The counsel for petitioners has placed reliance on the judgment of the Apex Court in **Suneet Gupta V. Anil Triloknath Sharma and others**<sup>3</sup> wherein it was held that a civil dispute between parties sought to be converted into criminal offence by resorting to pressure tactics and by taking police help is abuse of process of law. The law declared by the Apex Court is not in dispute, but at this stage, it is difficult to find out whether the dispute is civil in nature or not and that too, when the first respondent, who belongs to schedule caste community, as alleged in the complaint, was abused raising his caste name and insulted in the public view by the other accused i.e., Dr.K.Swapna. Therefore, at this stage, taking into consideration the facts and circumstances and the stage of investigation, I am unable to exercise the inherent jurisdiction under Section 482 of Cr.P.C., to quash the proceedings.

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<sup>1</sup> (2005) 13 SCC 540

<sup>2</sup> AIR 1977 SC 2229

<sup>3</sup> 2008) 11 SCC 670

8. Hence, the Criminal Petition is dismissed, at the stage of admission. However, the petitioners are at liberty to renew their request at appropriate stage.

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

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**M. SATYANARAYANA MURTHY, J**

20<sup>th</sup> December, 2017

sj

