

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8024 of 2015

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.480 of 2009 on the file of the II Additional Junior Civil Judge, Tadepalligudem, West Godavari District, registered for the offence punishable under Section 420 of Indian Penal Code (for short "I.P.C.")

One Mallipudi Saramma, resident of Madhavaram village lodged a report with the police alleging that a month prior to lodging report one Suribabu and another came to them, informed that they will advance loans to the poor people, if Rs.250/- is paid initially they would lend an amount of Rs.10,000/-, if Rs.500/- is paid, they would lend an amount of Rs.20,000/- and the said loan amount will be collected in monthly instalment basis, believing the words of Suribabu, petitioner herein, the respondent No.2 and 36 others paid Rs.250/- each to the petitioner herein, later the petitioner and other accused disappeared and no amount is advanced as loan and their whereabouts are not known.

On the strength of the report, police registered a case in Crime No.142 of 2009 of Tadepalligudem Rural Police Station and took up investigation. During investigation, 5 witnesses were examined as L.Ws.1 to 5 and police recorded their statements under Section 161 (3) of Cr.P.C. Based on the statements recorded by the police under Section 161 (3) of Cr.P.C. and other evidence collected by the investigating agency, concluded that the material

collected is sufficient to proceed against the petitioner for the offence punishable under Section 420 of I.P.C. and filed charge sheet before the Magistrate concerned.

The present petition is filed to quash the proceedings in C.C.NO.480 of 2009 on the file of the II Additional Junior Civil Judge, Tadepalligudem on the ground that the allegations made in the report would not constitute an offence punishable under Section 420 of I.P.C. Defacto complainant, who failed to avail other remedies, is not entitled to approach the police directly and there are malafides on the part of defacto complainant and lodged report with ulterior motive to wreck vengeance against the petitioner and the witnesses are planted witnesses. Therefore, continuation of proceedings in C.C.No.480 of 2009 pending on the file of the II Additional Junior Civil Judge, Tadepalligudem, West Godavari District, would cause serious harm to the petitioner and requested to quash the proceedings.

During hearing, learned counsel for the petitioner contended that the allegations made in the charge sheet coupled with the statements recorded under Section 161 (3) of Cr.P.C. even if accepted on their face value would not constitute any offence much less offence punishable under Section 420 of I.P.C. and that the report was lodged with ulterior motive to wreck vengeance against the petitioner; the defacto complainant is failed avail other remedies and sought to quash the proceedings in C.C.No.480 of 2009 on the file of the II Additional Junior Civil Judge, Tadepalligudem.

Learned Public Prosecutor supported the allegations made in the complaint as they are based on statements recorded by the police under Section 161 (3) of Cr.P.C.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

“Whether the allegations made in the charge sheet and material collected during investigation would disclose commission of any offence punishable under Section 420 of I.P.C., if not, the proceedings in C.C.No.480 of 2009 on the file of II Additional Junior Civil Judge, Tadepalligudem, are liable to be quashed.?”

P O I N T:

The first and foremost ground urged in the petition is that the allegations made in the charge sheet, if accepted on face value, would not constitute any offence punishable under Section 420 of I.P.C.

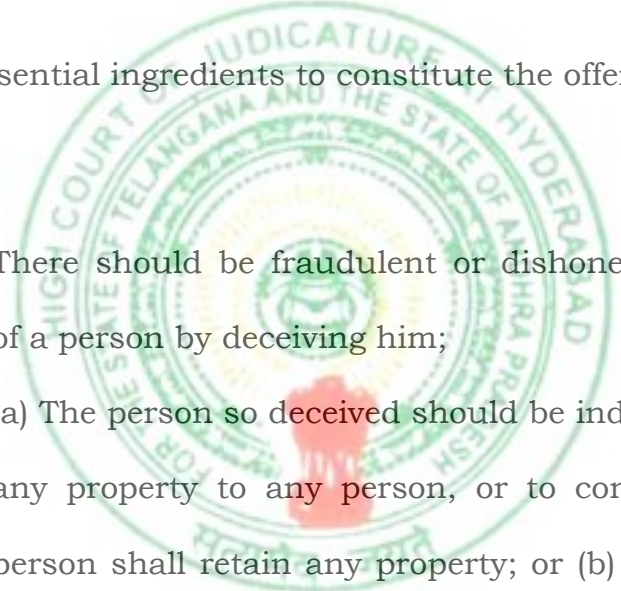
It is the specific case of the prosecution from the beginning that the petitioner herein along with other accused approached M.Saramma and others and informed that they will advance loans to the poor people, if Rs.250/- is paid initially they would lend an amount of Rs.10,000/-, if Rs.500/- is paid, they would lend an amount of Rs.20,000/-. Believing the promise allegedly made by the petitioner and other accused, the defacto complainant and 36 others paid Rs.250/- each, but the petitioner disappeared from village and did not advance any amount.

Section 420 of I.P.C. deals with punishment for the offence of ‘cheating’.

Cheating is defined under Section 415 of I.P.C and it is as follows:

“415. Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients to constitute the offence of cheating are:

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- (i) There should be fraudulent or dishonest inducement of a person by deceiving him;
 - (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
 - (iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In **V.Y.Jose v. State of Gujarat**¹ the Apex Court laid down following ingredients to constitute cheating.

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

- (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
- (2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.”

¹ (2009) 3 SCC 78

In the present case, the petitioner and other accused promised to arrange loan of Rs.10,000/- to the poor people subject to initial payment of Rs.250/- each and also to advance loan of Rs.20,000/- subject to initial payment of Rs.500/- each. Believing the representation, the defacto complainant along with 36 others paid Rs.250/- each. The said fact was spoken by L.Ws.1 to 5 in their statements recorded by the police during investigation under Section 161 (3) of Cr.P.C. but it is not substantive piece of evidence, but at this stage, except the statements recorded under Section 161 (3) of Cr.P.C. no other evidence is available. The petitioner is aware that he is incompetent to arrange loans, but still he collected amount promising to advance loans, such conduct of the petitioner shows that he had dishonest intention from the beginning. Therefore, the allegations made in the charge sheet would constitute offence punishable under Section 420 of I.P.C. *prima facie*. Hence, on the ground that the allegations made in the report and charge sheet would not constitute any offence punishable under Section 420 of I.P.C., the proceedings cannot be quashed.

The other ground urged before this Court is that the defacto complainant did not avail other remedies for recovery of amount in appropriate forum.

When the petitioner and other accused made the defacto complainant to believe that they will arrange loan of Rs.10,000/- subject to initial payment of Rs.250/- and she parted with such amount along with others, she need not approach the Civil Court for recovery of an amount of Rs.250/-. Therefore, availability of other remedy is not a ground to quash the proceedings.

Yet, the other ground urged before this Court is that the charge sheet was filed on the false complaint made by the defacto complainant to wreck vengeance against the petitioner, but this contention is without any substance. Poor villagers believing the representation of the petitioner along with other accused parted with Rs.250/- each, who are 36 in number, with a hope that the petitioner along with others would arrange loan to them. In fact, the petitioner is not a financier or banker and he is not competent to arrange such loan to the poor people. Thus, the conduct of the petitioner itself indicates that he has dishonest intention from the beginning *prima facie*. Therefore, I find no ground to quash the proceedings in view of voluminous material collected during investigation by the police. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.06.2018
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