THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2142 OF 2018

ORDER:

This criminal petition is filed by petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against him in C.C.No.427 of 2017 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripet, Guntur District registered for the offence punishable under Sections 403 and 420 of Indian Penal Code (for short "I.P.C.").

The respondent No.1 is a Doctor by profession; he filed a private complaint before the Magistrate for the offence punishable under Sections 403 and 420 of I.P.C. and the same was referred to the police by exercising power under Section 156 (3) of Cr.P.C. On reference, police examined 6 witnesses and recorded their statements and finally came to the conclusion that there is material to proceed against the petitioner and filed charge sheet before the Magistrate for the offence punishable under Sections 403 and 420 of I.P.C. The relevant allegations made in the charge sheet, in brief, are as follows:

The accused is a resident of Hyderabad, who is a professional dog keeper and a pet lover. Accused was introduced to the defacto complainant/respondent No.1 in a dog show at Hyderabad. Out of acquaintance between the defacto complainant and the accused, they entered into an oral agreement to purchase a good breed dog, for business on its productivities. Then, respondent No.1 obtained hand loan of Rs.2,00,000/- from L.W.4 and paid Rs.2,10,000/- to the accused at his Pragathi Nursing Home, Chilakaluripet in the presence of L.Ws.2 and 3 and also further transferred an amount of Rs.1,40,000/- to the bank account of accused on 10.07.2013 through NEFT from his HDFC Bank account No.24371000003306 and in total, respondent No.1 had paid Rs.3,50,000/- to the accused towards his share for joint purchase of dog. Later, accused purchased “Sky” named German breed dog as per their oral understanding by spending Rs.7,89,000/- including all expenditure. Having believed the accused, L.W.1 left all formalities on him including the ownership transfer certificate jointly as per the terms and conditions of “The Kennel Club of India” but the accused wantonly with dishonest intention for wrongful gain mutated only his name on the ownership certificate. Having suppressed the mutation of ownership transfer of dog, accused stated to the respondent No.1 that he obtained ownership transfer certificate jointly. Since the date of purchase of dog, accused demanded the respondent No.1 money for expenses on the dog. Accused one way or the other taken money from the respondent No.1 towards expenses and maintenance of the dog and lastly, respondent No.1 sent Rs.12,000/- to the accused towards expenses for dog. Later, respondent No.1 came to know that accused transferred the ownership of dog on his name and getting good income on the dog. Subsequently, respondent No.1 along with L.W.6 went to Hyderabad in car which was driven by L.W.4 and asked the accused in the presence of L.Ws.4 and 6 to return the money spent by him towards the purchase of dog, but the accused refused to return money. Thus, the accused with dishonest intention encouraged the respondent No.1 to spent money on dog and played fraud by got mutating only his name in ownership transfer of dog instead of joint names of respondent No.1 and accused and that the accused misappropriated the amount spent by the respondent No.1 and cheated him for wrongful gain.

As stated above, the complaint was referred under Section 156 (3) of Cr.P.C. to the police for investigation and police after investigation filed the charge sheet.

The present petition is filed by the petitioner/sole accused on the ground that the allegations made in the charge sheet would not constitute any offence punishable under Sections 403 or 420 of I.P.C. When the dispute is with regard to ownership of dog, the allegations made in the complaint or charge sheet would not constitute any offence punishable under Section 403 or 420 of I.P.C. It is also contended that since the respondent No.1 deviated the oral contract between the petitioner and the respondent No.1 and violated the terms and conditions of oral agreement, the remedy open to the respondent No.1 is to approach the Civil Court and claim necessary relief through Civil Court, instead of doing so, the respondent No.1 filed a complaint by abusing process of law and the allegations made in the charge sheet would not constitute any offence and prayed to quash the proceedings.

During hearing, sri K.Chidambaram, learned counsel for the petitioner, reiterated the contentions urged in the petition while contended that since the dispute is with regard to ownership of dog, the remedy available to the respondent No.1 is to approach the Civil Court and the Criminal Court cannot decide such issue, consequently the charge sheet is liable to be quashed as the respondent No.1 gave cloak of criminal liability to the civil wrong. It is also further contended that absolutely there is no material to establish that the petitioner committed any offence much less offence punishable under Section 403 and 420 of I.P.C. and prayed to allow the petition and quash the proceedings in C.C.No.427 of 2017 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripet, Guntur District.

Sri Sricharan Telaprolu, learned counsel for the respondent No.1, contended that collection of huge amount of Rs.3,50,000/- towards share of respondent No.1 to purchase a dog for sale of its productivities and getting the dog registered in the name of the petitioner would constitute a grave offence punishable under Section 403 and 420 of I.P.C. and that itself is suffice to conclude that the petitioner committed offences punishable under Section 403 and 420 of I.P.C. in view of registration of Dog in the name of petitioner alone and prayed to dismiss the petition as there are no justifiable grounds to quash the proceedings.

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

> ***"Whether the allegations made in the complaint would constitute any offence much less the offence punishable under Section 403 and 420 of I.P.C., if not, whether filing private complaint before the Magistrate is an abuse of process of law giving colour of criminal liability to the civil wrong? If so, whether the proceedings in C.C.No.427 of 2017 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripet, Guntur District, are liable to be quashed?***

P O I N T:

It is an undisputed fact that there was an agreement between the petitioner and respondent No.1 for purchase of dog, accordingly the petitioner purchased "Sky" named German breed dog for Rs.7,89,000/-. Transfer of Rs.1,40,000/- by the respondent No.1 to the bank account of accused on 10.07.2013 through NEFT from HDFC Bank account No.24371000003306, is suffice to conclude that there was agreement between the parties to purchase a dog in the joint name and sell its productivities, but the alleged payment of Rs.2,10,000/- in the presence of L.W.4 is not evidenced by any material. The factum of payment of Rs.1,40,000/- to the petitioner is not disputed. However, the respondent No.1 did not state anything in the petition as to why he paid such huge amount of Rs.1,40,000/-. The petitioner contended that respondent No.1 violated terms and conditions of oral agreement for purchase of "Sky" named German breed dog. Even according to the allegations made in the petition and in the complaint there was an oral agreement for purchase of Dog and registration of same in the joint names of both parties. Making such representation with dishonest intention, the petitioner induced the respondent No.1 to pay Rs.2,10,000/- by cash and payment of Rs.1,40,000/- towards purchase of Dog as part of consideration through account transfer *prima facie* proved that the petitioner induced the respondent No.1 to pay his share of amount for purchase of Dog. Purchase of Dog is also not in dispute. Similarly, registration of Dog in the name of petitioner with "the Kennel Club of India" is not disputed much. When the petitioner induced respondent No.1 to part with amount with dishonest intention to purchase a dog in the joint name and failure to keep up promise would constitute offence punishable under Section 420 of I.P.C.

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:

(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:
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> (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

[1] (2009) 3 SCC 78

(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."

If the principle laid down in the above decision is applied to the facts of the present case, the act of the petitioner constitutes an offence punishable under Section 420 of I.P.C. *prima facie*.

The other offence allegedly committed by the petitioner is punishable under Section 403 of I.P.C. Section 403 of I.P.C. deals with "dishonest misappropriation of property", which reads as follows:

"403. Dishonest misappropriation of property:- Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend two years, or with fine, or with both."

Here, the relationship between the petitioner and respondent No.1 is contractual in nature, but the petitioner did not keep up his promise and got the dog registered in his name with "The Kennel Club of India" though it was purchased with the money advanced by respondent No.1. But at this stage, it is difficult to express any opinion as to whether the allegations made in the charge sheet would attract the offence punishable under Section 403 of I.P.C.

Coming to the part-II case diary produced before the Court, L.W.1 – respondent No.1 clearly testified about the promise made by the accused and how he was dishonestly induced by the petitioner/accused to part with money and misappropriation of huge amount advanced by him.

L.Ws.2 and 3 also supported the case of the prosecution regarding payment of amount by the respondent No.1 towards purchase of "Sky" named German breed dog with an understanding that the registration of dog in the name of petitioner and respondent No.1. Petitioner/accused violated the oral agreement and got the Dog registered in his name alone with "the Kennel Club of India". Therefore, the material produced before the Court is suffice to conclude that the act done by the petitioner would constitute would constitute offence punishable under Section 403 and 420 of I.P.C. *prima facie.*

It is the contention of the learned counsel for the petitioner that for a civil wrong, a flavour of criminal is given by respondent No.1 and filed private complaint to wreck vengeance by abuse of process of Court.

The undisputed facts stated above show that the respondent No.1 paid Rs.1,40,000/- by account transfer for purchase of Dog and he allegedly paid Rs.2,10,000/-. Thus, in total he paid Rs.3,50,000/- to the petitioner for purchase of Dog, the petitioner purchased the Dog as agreed, but got it registered in his name claiming exclusive ownership over the Dog. Denial of joint ownership of the respondent

No.1 over the Dog *prima facie* constitute an offence punishable under Section 420 of I.P.C. as the petitioner made dishonest representation to part with huge amount by respondent No.1. Therefore, it is difficult to conclude that the respondent No.1 filed private complaint with a view to wreck vengeance against the petitioner herein by abusing process of law. Though, abuse of process of Court and filing a complaint to wreck vengeance is a ground to quash the proceedings in view of guidelines issued by the Apex Court in "***State of Haryana v. Bhajan Lal***[2]"

In "***State of Haryana v. Bhajan Lal***" (referred supra) the Apex Court considered in detail the powers of High Court under 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 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.
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> (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.

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[2] 1992 Supp (1) SCC 335

(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.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar[3]"***

In another judgment "***Umesh Kumar v. State of Andhra Pradesh***[4]" the Apex Court is of the view that at the stage of exercising power under Section 482 of Cr.P.C. the High Court could examine the charge sheet, case diary and other material in the charge sheet which by no means can be termed as substantive evidence. However, in exercise of power under Section 482 of Cr.P.C., it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition Under Section 482 Code of Criminal Procedure for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court

[3] AIR 1990 SC 494
[4] (2013) 10 SCC 591

should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

In view of my foregoing discussion, I find no substance in the contentions of the learned counsel for the petitioner. 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

06.07.2018
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