THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.6916 of 2011

ORDER :

This petition under Section 482 Cr.P.C. is filed by the petitioner/A4 seeking to quash the proceedings in C.C. No.505 of 2010 on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad.

2. The contention of the petitioner/A4 is that as per the complaint filed by the 2nd respondent, the petitioner/A4 and another aided the offence by furnishing the document containing signature of the 2nd respondent and his brother. The investigation conducted by the Police is farce. There is no material, either in the complaint or in the evidence and documents gathered by the Investigating Officer during the course of investigation, against the petitioner. Except stray allegations, there is no specific overt act attributed to the petitioner.

It is further contended that O.S. No.869 of 2009 filed by the accused No.1 against the 2nd respondent and his brother seeking perpetual injunction in respect of the hotel business is pending and the Memorandum of Understanding in question was also produced in the said suit. The alleged MoU is contra to the clause No.11 of the lease deed between the petitioner and A5 on the one hand and between the 2nd respondent and his brother on the other hand. Further, O.S. No.341 of 2009 filed by the petitioner and A5 against the 2nd respondent and his brother seeking ejection, recovery of rents and mesne profits in respect of the property was also pending. Besides the civil suits, C.C. No.188 of 2009 is also pending between A1 and the 2nd respondent and his brother. The 2nd respondent lodged the said complaint to settle the score against the accused. Further, there is no material to proceed against the petitioner.

3. *Per contra*, the 2nd respondent contended that there is *prima facie* material and specific allegation in the complaint as well as finding in the charge-sheet against the petitioner that he and another aided A1 and forged the signatures of the 2nd respondent and his brother, which is proved by the expert opinion and that the civil cases are no bar to maintain a criminal case.

4. The undisputed facts spell out from the grounds of criminal petition itself are that there is a registered lease deed between the petitioner/A4 and A5 on the one hand and between the 2nd respondent and his brother on the other hand in respect of the leases for running lodging business in the name and style of 'Hotel Samskar Inn' bearing Municipal No.16-2-704 at Malakpet, Hyderabad. O.S. No.869 of 2009 is filed by A1 against the 2nd respondent and his brother for perpetual injunction in respect of the said Hotel business and another suit O.S. No.341 of 2009 was filed by the petitioner/A4 and A5 for recovery of rents and mesne profits in respect of the leased property. It is also an admitted fact that between A1 and the 2nd respondent and his brother C.C. No.188 of 2009 is pending.

5. The petitioner in support of his contentions relied on the judgments viz., ***Inder Mohan Goswami Vs. State of Uttaranchal*** ((2007) 12 SCC 1); ***Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd.*** ((2009) 3 SCC (Cri) 824); ***Ch.Srinivasa Rao Vs. State*** (2014 (3) ALT (Crl.) 85 (AP)); and ***Mohd. Ibrahim Vs. State of Bihar*** ((2009) 8 SCC 751).

6. In the case of ***Inder Mohan Goswami Vs. State of Uttaranchal*** ((2007) 12 SCC 1) the Apex Court held that the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the 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 such magnitude that they cannot be seen in their true perspective without sufficient material.

7. In the case of ***Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd.*** ((2009) 3 SCC (Cri) 824) the Apex Court held that for the purpose of establishing the 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. It was further held that a cheque being a property, the same was entrusted to the respondents.

If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 may be found to have been made out.

8. The Apex Court further held that we cannot also lose sight of the fact that the respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, shall not have interfered with investigation thereof by the statutory authority.

9. In another case in ***Ch.Srinivasa Rao Vs. State*** (2014 (3) ALT (Crl.) 85 (AP)) this High Court held that from the facts and circumstances of the present case, it would appear that the complainant lodged the present complaint with an intention to wreak vengeance against the accused because of her enmity with the petitioner/accused. The Court has to necessarily scrutinize the allegations mentioned in the complaint to arrive at a conclusion whether the proceedings are liable to be quashed or not. The object of Prevention of Atrocities Act, 1989 is to prevent atrocities against members of Scheduled Caste and /Scheduled Tribe. The provisions of the Act however cannot be used as a weapon to settle personal scores against the members of non-scheduled caste or

scheduled tribe or to settle the property dispute with them or to wreak vengeance. In the said case basing on the complaint, a case in crime No.47 of 2011 was registered for the offence punishable under Section 3(i)(x) of SC & ST (Prevention of Atrocities) Act, 1989. The Assistant Commissioner of Police, Malkajgiri Division investigated into the case and filed a final report dated 25.1.2011 before the III Metropolitan Magistrate, L.B.Nagar, referring the case as "lack of evidence". Thereafter, the complainant filed a protest petition purportedly under Section 202 of Cr.P.C. before the learned III Metropolitan Magistrate at L.B.Nagar, Cyberabad. The learned Magistrate took cognizance of the offence and issued summons to the petitioner. In the final report therein the Investigating Officer mentioned that in July, 2010, the complainant had drawn excess amount of arrears of Rs.46,422/-. On coming to know about the drawl of arrears in excess by the complainant, proceedings were initiated to recover the excess amount from the complainant in one or two instalments. The complainant made a representation to the Director, NGRI on 21.9.2010 requesting him to recover the excess amount in 36 instalments. The Administrative Officer recommended to recover the excess amount in 24 instalments instead of 36 instalments as requested by the complainant, but the petitioner who was the COA returned the representation of the complainant to the Administrative Officer with a note stating that " I would appreciate if you can support your suggestion by rule position." The Administrative Officer replied that there is no such rule position and it is only a submission to the competent authority for considering the request of the individual. The complainant on enquiry came to know that the recovery was ordered in two instalments contrary to the recommendation of the Administrative Officer for recovery in 24 instalments. Being aggrieved, the complainant sent a report to the Director, NGRI alleging that the recovery of instalments was ordered by the petitioner because the complainant belongs to Scheduled Caste. Ultimately ordered the amount to be recovered, which ultimately leads to the complaint.

10. In the case of ***Mohd. Ibrahim Vs. State of Bihar*** ((2009) 8 SCC 751) the Apex Court held that the question that arose for consideration in a petition under Section 482 Cr.P.C. is 'Whether the material on record prima facie constitutes any offences against the accused'. Further that the condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). The criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. However, civil disputes in some cases may also contain ingredients of criminal offences, such disputes have to be entertained as criminal offences, even if they also amount to civil disputes.

11. In the instant case the specific allegation in the complaint as well as in the charge-sheet against the petitioner is that the petitioner and another aided A1 and forged the signatures of the 2nd respondent and his brother. There is specific allegation in the complaint that the 2nd respondent/complainant and his brother Muneeswar Rao are partners of

Samskar Inn lodge. Prior to the registration of Samskar Inn, the partners entered into a lease deed with M/s.Jai Sri Hanuman Realtors represented by its partners petitioner/A4 and another on 16.4.2017. Subsequent to the lease deed, 2nd respondent and his brother running Hotel Samskar Inn. A1 had a business tie up with the partners of Samskar Inn. While so, A1 filed O.S. No.869 of 2009 for perpetual injunction against the 2nd respondent and his brother. The said A1 himself stated to the 2nd respondent while he was going to appear in the Court that he has forged the signatures of the complainant and his brother, got created a false MoU, dated 5.6.2008, which was also tampered and filed the same in O.S. No.869 of 2009 and the 2nd respondent cannot do anything. After receiving summons along with the documents, the 2nd respondent came to know that the said MoU is forged and fabricated. The petitioner/A4 aided A1 in forging and fabricating the said document. There is also specific allegation that A1 in collusion with the other accused i.e., including the petitioner, has created false document dated 5.6.2008 knowing petty well that the said document would cause wrongful gain to them and wrongful loss to the complainant. After getting knowledge of forgery and fabrication of his signatures and creating documents, the complainant approached the police, but the police did not accept or acknowledge the complaint, but made him to run from pillar to post, which compelled him to file the present private complaint. It is further alleged that the petitioner along with others have destroyed/tampered with non-judicial stamps and played fraud by altering the date of purchase, thereby deceived the Court and bagged the favourable orders in their favour, as such, the accused clearly fall under the provisions of Sections 420, 468 and 471 I.P.C. After thorough investigation, charge-sheet was filed against the petitioner and others. There is a clear finding of the Investigating Officer that A1 had purchased the said non-judicial stamp paper on 13.11.2008 and in collusion with the petitioner and others tampered the date of purchase from 13.11.2008 to 13.4.2008. The said document was sent to the document expert and the expert opined that the said document is a forged one.

12. Now, the question that arises for consideration is :

> *"Whether the material on record prima facie constitutes any offence against the petitioner/A4"*

The contention of the petitioner/A4 is that if the allegations made in the complaint, F.I.R. and charge-sheet even accepted to be true in entirety did not disclose ingredients of any offences of forgery under Sections 468 and 471 or cheating under Section 420 and there was no other material to show any offence, therefore, the proceedings can be quashed.

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows :

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

To constitute an offence under Section 420, there should not only be cheating, but as a consequent of such cheating, the accused should have dishonestly induced the person deceived :

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. Section 468 IPC reads as follows :

> "**468. Forgery for purpose of cheating**.—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

15. Section 471 IPC reads as follows :

> **"471. Using as genuine a forged document or electronic record.—**Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."

16. There is a specific allegation that the petitioner aided A1 with dishonest and fraudulent intention to grab the property and not only the accused had forged the signatures of the complainant and his brother for the purpose of cheating and creating a false document, but they used the same as genuine with a fraudulent and misleaded intention. The petitioner and other accused are also aware that by creating false document, they can be punished, in spite of it as if it is genuine document, they misleaded the concerned civil court and other institution. There is also specific allegation that petitioner along with others has destroyed or tampered with the non-judicial stamp papers and played fraud by altering the date of purchase, thereby deceived the court and bagged the order in their favour in O.S. No.869 of 2009.

17. In the charge-sheet also there is specific finding that the 2nd respondent and his brother are running Hotel Samskar Inn at Malakpet after taking on lease the building belongs to the petitioner and A5 under a lease deed dated 16.4.2007. A1 is running a bar in the name and style of Signature Bar and Restaurant and used to supply food to the customers of the lodge run by the 2nd respondent and his brother. By noticing the huge business node by the lodging run by the 2nd respondent and his brother, A1, with a dishonest intention to grab the property and run a lodge on his own at the said premises, colluded with A2 to A5 and hatched a plan. Accordingly, he purchased one 100 rupee non-judicial stamp paper No.68585, dated 13.11.2008, altered and tampered the date of purchase from 13.11.2008 to 13.4.2008 and in collusion with A2 to A5 prepared a false and fabricated MoU purported

to be executed by the 2nd respondent and his brother in favour of A1. The petitioner and others aided A1 by furnishing him the document containing the signatures of the 2nd respondent and his brother for making the forged signatures on the fabricated MoU with intention to have illegal gains. A1 produced the same fabricated MoU in O.S. No.869 of 2009 and obtained the injunction order and accordingly the charge-sheet was filed against the petitioner and others for the offences under Sections 420, 468 and 471 read with Section 34 I.P.C.

18. In view of the facts and circumstances discussed above, I am of the considered view that there is *prima facie* material against the petitioner/A4 and that accused forged MoU dated 5.6.2008 with the help of the signatures contained in the lease deed entered into by the 2nd respondent and his brother on one hand and the petitioner/A4 and A5 on the other hand and the petitioner/A4 aided A1 in creating the forged document and cheating. There is *prima facie* material against the petitioner. The facts of the cases relied on by the petitioner are different from the facts of the present case. Though civil suits are pending which are filed seeking one for injunction and another for recovery of rents, so that is different issue altogether. Here the case is basing on forgery, cheating and dishonest intention, which attract the criminal liability. The veracity of the facts alleged by the 2nd respondent was ascertained on the basis of the evidence and documents gathered by the Investigating Officer during the course of investigation and allegations made in the complaint. The civil disputes with regard to injunction and recovery of rents have nothing to do with the allegation of forgery with a dishonest

and fraudulent intention to cause wrongful loss to the complainant/ 2nd respondent and to wrongful gain to accused. The petitioners allegedly created the said MoU by forging the signatures of the 2nd respondent and his brother and by tampering the date of purchase of the non-judicial stamp papers from 13.11.2008 to 13.4.2008 and cheated the complainant. Since there is *prima facie* material on record, there is nothing on record to show that the 2nd respondent/complainant abused the process of law and hence the criminal proceedings against the petitioner are tenable.

19. In the result, the criminal petition is dismissed.

20. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

23th October, 2018

skmr