THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4251 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings in Crime No.35 of 2017 of Osmania University Police Station, Hyderabad City, registered against the petitioner for the offence punishable under Sections 406, 420 and 506 of the Indian Penal Code, 1860 (for short 'I.P.C.').

The second respondent filed a private complaint before the IV Additional Chief Metropolitan Magistrate, Hyderabad, under Section 200 Cr.P.C. alleging that he entered into a memorandum of understanding (MOU) with the petitioner herein on 23.03.2015. As per the terms and conditions contained in MOU, he handed over 7 tippers to the petitioner, since then the vehicles are in possession of the petitioner. The petitioner has to clear EMIs to the financial institutions and after clearing the same, the vehicles will be transferred to his name, till then, the registration of vehicles will continue in the name of the second respondent, further agreed to pay an amount of Rs.2,50,000/- to the second respondent, further agreed to clear the pending EMIs on or before May, 2015, but the petitioner did not pay the amount of Rs.2,50,000/- and also did not clear the pending EMIs due to the financial institution, but enjoying the vehicles by deploying them at his workplace. Thus the petitioner allegedly cheated and induced him to part with huge amount to transfer of 7 tippers and also threatened him with dire consequences and hence the second respondent requested to take necessary action.

Basing on these allegations, the learned Magistrate referred the complaint to the police concerned to investigate into and to file final report. On receipt of the reference under Section 156(3) Cr.P.C. from the learned Magistrate, the police registered the crime for the offence punishable under Sections 406, 420 and 506 of I.P.C. and issued F.I.R. No.35 of 2017.

The present petition is filed on the ground that the allegations made in the private complaint which are the part of F.I.R., at best, would constitute breach of promise or contract and would not constitute an offence either under Section 406 and 420 of I.P.C. or under Section 506 of I.P.C., but converted the civil litigation into criminal. It is also further contended that there is an arbitration clause for settling the dispute, if any arises under MOU, but without resorting to settle the matter before the arbitrator, lodged a private complaint before the learned Magistrate, and the other contention is that though the second respondent agreed to deliver 7 tippers as on today, delivered only 5 tippers and committed breach, thereby the petitioner is not liable to be proceeded for the offence punishable under Sections 406 and 420 of I.P.C.

During hearing, learned counsel for the petitioner mainly demonstrated as to how the second respondent violated the terms and conditions of MOU, even otherwise it would amount to breach of terms and conditions of MOU dated 23.03.2015 and even if the allegations made in the private complaint and F.I.R. are accepted, the Court can exercise power under Section 482 Cr.P.C. and requested to quash the proceedings.

Sri K.Lakshman, learned counsel appearing for the second respondent would contend that failure to pay EMI dues from May 2015 and non payment of an amount of Rs.2,50,000/- as agreed under MOU would constitute an offence punishable under Section 406 and 420 I.P.C. and threat to the second respondent with dire consequences would constitute an offence punishable under Section 506 of I.P.C. and requested this Court to dismiss the petition, since the power under Section 482 Cr.P.C. cannot be exercised to stifle the legitimate prosecution when the investigation is at fetus stage, more particularly, when the facts are incomplete and hazy before the Court.

It is an undisputed fact that both the petitioner and the second respondent entered into MOU on 23.03.2015 and it is placed on record. Conditions 2 to 4 of MOU are relevant to decide the present issue and they are extracted hereunder for better appreciation:

> ***"2. The second party (petitioner herein) would try to get the tippers transferred onto his name either by getting a finance from any bank or NBFC or private people. Till such time he would be paying the EMI's to the respective financiers every month without fail.***
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> ***3. The first party (second respondent herein) is due 3 EMI's to the two finance companies and the same is informed to the second party.***
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> ***4. The EMI amount to be paid to religare Finvest Ltd., for 5 tippers is Rs.3,49,452 (Rupees Three Lakhs Forty Nine Thousand Four Hundred and Fifty Two only) and EMI to be paid to Reliance Capital Ltd., is Rs.92,056 (Rupees Ninty Two thousand and Fifty Six only), the second party would issue cheques or directly transfer the amount to the Financier directly."***

Thus, in view of the terms and conditions of MOU, the obligation is cast upon both the parties and they have to discharge the contractual obligation as agreed. When the petitioner allegedly not paid an amount of Rs.2,50,000/- as agreed under MOU and failed to pay EMI due to the financial institution, whether such act would constitute an offence under Sections 406 and 420 of I.P.C. is a question to be decided.

Section 406 of I.P.C. deals with punishment for criminal breach of trust and the 'criminal breach of trust' is defined under Section 405 of I.P.C. According to it, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "Criminal breach of trust".

Here, according to the second respondent, he entrusted seven tippers to the petitioner, but he has not paid amount due to the financial institution, whereas the petitioner disputed the entrustment of seven tippers while admitting entrustment of five tippers as per terms of MOU. But the petitioner has to pay Rs.2,50,000/- as agreed and EMI due to the financial institution on or before May, 2015.

In **Chellor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin**[1] while dealing the ingredients of criminal breach of trust, the Apex Court held as follows:

> ***"to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.***
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> ***It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."***

In **Jaswantrai Manilal Akhaney v. State of Bombay9**, the Apex Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment' and held as follows:

> ***".. S. 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."***

If these principles are applied to the present facts of the case, there was nothing in the complaint that the petitioner utilized the property for himself with dishonest intention. In the

[1] AIR 1953 SC 478

absence of dishonest intention, the allegations made in the complaint at best would amount to breach of contract but not criminal breach of trust.

The other offence allegedly committed by the petitioner is under Section 420 of I.P.C. Section 420 IPC deals with 'cheating and dishonestly inducing delivery of property'.

Section 415 of I.P.C. defined the word 'cheating'. According to it, 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".

According to Section 420 of I.P.C., there must be cheating coupled with dishonest inducement of a person to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

Therefore, to constitute an offence punishable under Section 420 of I.P.C., there main ingredients are that the person who allegedly deceives the other person i.e. the second respondent herein, must have an intention to cheat the petitioner at the inception itself.

In **ALPIC Finance Ltd., v. P.Sadasivan and another**[2] and in **V.Y.Jose and another v. State of Gujarat and another**[3] a similar question came up for consideration.

In **ALPIC Finance Ltd**., case (referred supra) the Apex Court reiterated the ingredients of the offences punishable under Section 420 of I.P.C. and held at paragraph 10 as follows:

> "***10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having***

[2] (2001) 3 SCC 513
[3] (2009) 3 SCC 78

accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

In **V.Y.Jose** case (referred supra) the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 of I.P.C. at paragraph 14 of the Judgment and they are as follows:

> ***"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;***
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> ***(ii) fraudulently or dishonestly inducing any person to deliver any property; or***
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> ***(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.***
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> ***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."***

In view of the law declared by the Apex Court, even if the allegations made in the complaint are accepted to be true and correct, there is nothing to indicate that the petitioner had an intention at the inception to dishonestly induce the second respondent to part with any property or valuable security. Therefore, to constitute an offence punishable under Section 420 of I.P.C., the second respondent has to explain as to how he was cheated and as to how he was induced to part with any property with dishonest intention at the inception of the contract itself. In the absence of any allegation that the petitioner with dishonest intention made the second respondent to part with any property or valuable security, the allegation in F.I.R. would not constitute an offence punishable under Section 420 I.P.C.

The other offence allegedly committed by the petitioner under Section 506 of I.P.C. It deals with the punishment for criminal intimidation. Section 503 of I.P.C. defines the word 'criminal intimidation'. According to it, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Thus, the main ingredients to constitute an offence punishable under Section 506 of I.P.C., there must be a threat to injure any person, reputation or property or to the person or reputation of any one in whom the second respondent is interested.

But, in this case the complaint is bereft of all these allegations and at this stage it is difficult to conclude that the petitioner has committed any offence punishable under Section 506 of I.P.C.

In any view of the matter, while exercising power under Section 482 of Cr.P.C., the Court has to take into consideration the allegations made in the complaint alone not any other material and if the allegations made in the complaint accepting on its face value would constitute the offences punishable under Sections 406, 420 and 506 of I.P.C., the court cannot exercise power Section 482 Cr.P.C. or in any other circumstances as enumerated by the Apex Court in **State of Haryana v. Bhajan Lal**[4] wherein the Apex Court laid down the following guidelines:

> ***(a) 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;***
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> ***(b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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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> ***(c) Where the uncontroverted 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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> ***(d) 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;***
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> ***(e) 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;***

[4] 1992 Supp.(1) SCC 335

> ***(f) 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;***
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> ***(g) Where a criminal proceeding is manifestly attended with malafide 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.***

In view of the law declared by the Apex Court in the judgments referred supra, when the parties entered into a contract with an intention to perform, in those circumstances, the default committed by the person at best would constitute breach of contract and not an offence. Therefore, I find no *prima facie* material to proceed against the petitioner.

In view of the guidelines laid down by the Apex Court in **Bajan Lal** case (referred supra), I am of the view that it is a fit case to quash the proceedings, since the civil litigation i.e. breach of contract is converted into criminal breach of trust giving flavour of criminality and the allegations made in the complaint accepting on its face value would not constitute the offences referred above.

Hence, the proceedings against the petitioner in Crime No.35 of 2017 of Osmania University Police Station, Hyderabad are hereby quashed. However, the second respondent is at liberty to redress his grievance in any competent court on civil side.

Accordingly, the criminal petition is allowed.

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

M. SATYANARAYANA MURTHY, J

Date:14.06.2018
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