

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.7122 of 2011

ORDER :

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioners/A.1 to A.4 to quash the proceedings in Crime No.500/2011 of Vijayawada City Police Station I Town (Law and Order), Vijayawada, registered against them for the offences punishable under Sections 403 and 420 IPC.

The brief facts of case are that the 2nd respondent/complainant and his brother, K. Ravi Kumar are doing Gold business under the name and style of "SWATHI JEWELLERY" at Sivalayam Street, Vijayawada, and A.1 and A.2 were working with the complainant and his brother's shop. After some time, A.1 and A.2 started a new business in Gold with the financial support and aid of the complainant and his brother. A.1 and A.2 took two Gold Biscuits and cash of Rs.32,00,000/- from the complainant's brother. In that connection, they issued some cheques in the name of the complainant and his brother along with some pro-notes and promised to repay the said amounts within a short period. In spite of repeated demands, A.1 and A.2 failed to repay the said amount and it was revealed that they are not maintaining any Bank Account since the date of transaction. A.1 and A.2 with a malafide intention and motivation with the aid and support of A.3 and A.4 have transferred some

amounts and property for their own business. Thus, they have misappropriated the said amounts and failed to repay the same to the complainant and his brother. Further, A.1 and A.2 took the signature of the brother of the complainant as a surety to one of the chits with Margadarsi Chit and A.1, having become the successful bidder of the said chit and received the prize amount, did not repay the chit instalments, due to which the Margadarsi Chit authorities issued notice to the brother of the complainant, being one of the surety, thus A.1 and A.2 have cheated the complainant. With these allegations, the 2nd respondent/complainant has lodged a private complaint against A.1 to A.4 on the file of the Chief Metropolitan Magistrate Court, Vijayawada, and on reference, the same was registered as Crime No.500/2011 of Vijayawada City Police Station I Town (Law and Order), Vijayawada, for the offences punishable under Sections 403 and 420 IPC. Aggrieved by the same, the petitioners have filed the present Criminal Petition seeking to quash the proceedings in the above crime.

Heard learned counsel for the petitioners/A.1 to A.4 as well as the learned Additional Public Prosecutor appearing for 1st respondent – State of Andhra Pradesh and perused the material on record.

Learned counsel for the petitioners submits that the contents of the complaint are all civil in nature and they do

not attract the provisions under Sections 403 and 420 IPC and, therefore, the petitioners are entitled for quashing of the proceedings against them in Crime No.500/2011.

On the other hand, the learned Additional Public Prosecutor appearing for 1st respondent – State submits that the petitioners with a dishonest and malafide intention have misappropriated the cash and property of the complainant and, therefore, they are liable for punishment for the offences under Sections 403 and 420 IPC.

Section 403 of IPC reads as under:

“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 to two years, or with fine, or with both.”

From the above provision, it is clear that the words ‘converts to his own use’ necessarily connote the use or dealing with the property in derogation of the rights of the owner. The said proposition was laid down in RAMASWAMI NADAR v. STATE OF MADRAS¹. The word ‘*dishonestly*’ and ‘*misappropriate*’ are necessary ingredients of an offence under Section 403 IPC.

Further, any dispute being about recovery of money is purely of civil nature and hence a criminal complaint regarding such a transaction is not maintainable. The said

¹ AIR 1958 SC 56

proposition is laid down in the judgment in *U. DHAR v. STATE OF JHARKHAND*².

It is also pertinent to note that whether the allegations made in the complaint prima facie constitute any offence or not to quash the proceedings.

In the light of the judgment of the Hon'ble Supreme Court in **C.B.I. V/s. A. RAVI SHANKER PRASAD** reported in 2009 [6] SCC-351, certain guidelines rendered in Bhajanlal's case have been referred. The scope of Section 482 Cr.P.C is limited and this Court can exercise its inherent jurisdiction only to give effect to the orders passed under the Code to prevent abuse of process of the Court and to secure the ends of justice. Keeping in mind, the Apex Court in **State of Haryana v/s. Bhajanlal**³ laid down the following seven guidelines, which are as follows :

“(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.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose

² AIR 2003 SC 974

³ 1992 Supp(1) SCC 335

the commission of any offence and make out a case against the accused.

(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."

A perusal of the allegations in the private complaint lodged by the 2nd respondent/complainant would pave way only to civil litigation and not for criminal prosecution. Therefore, considering the allegations in the complaint as civil in nature, the proceedings against the petitioners/A.1 to A.4 in Crime No.500/2011 of Vijayawada City Police Station I Town (Law and Order), Vijayawada, can be quashed, as the said allegations, even if they are taken in their entirety, do not attract the provisions under Sections 403 and 420 IPC.

In the result, the Criminal Petition is allowed quashing the proceedings in Crime No.500/2011 of Vijayawada City Police Station I Town (Law and Order), Vijayawada, registered against the petitioners/A.1 to A.4 for the offences punishable under Sections 403 and 420 IPC.

As a sequel, miscellaneous petitions if any, pending in this Criminal Petition shall stand closed.

GUDISEVA SHYAM PRASAD, J

17.04.2018.

NOTE: L.R. Copy be marked.
(B/O)
Msr



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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17.04.2018
Msr

THE HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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%17-04-2018

#Mallavarapu Srinivasa Rao and others

... Petitioners

Vs.

\$The State of A.P., rep. by its
Public Prosecutor and another

... Respondents

! Counsel for the petitioners : Sri K. Somakonda
Reddy

^Counsel for the respondents : Public Prosecutor (TS) (R.1)

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? CITATIONS

- : 1. AIR 1958 SC 56
2. AIR 2003 SC 974
3. 1992 Supp(1) SCC 335

