

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.223 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the proceedings in Calendar Case No.1143 of 2014, pending on the file of the learned II Additional Judicial Magistrate of First Class, Tanuku, registered for the offence punishable under Section 406 read with 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. Petitioners herein are accused Nos.1 to 3, whereas respondent No.2 is *de facto* complainant - LW.1 in the aforesaid Calendar Case.

3. Respondent No.2 herein filed a private complaint against the petitioners herein for the offence punishable under Section 406 read with 34 IPC, alleging that on 11.01.2014, while the *de facto* complainant along with others went to the house of accused at Achanta to request them to take back her (LW.1) to their house, but all the accused refused to take back LW.1 and demanded for divorce. There upon, her father - LW.2 in the presence of elders - LWs.3 to 9, demanded the accused to return back the amount of Rs.12.00 lakhs entrusted to them along with interest and also gold ornaments weighing about 30 sovereigns given to LW.1 which was taken by the accused while at the time of shifting to Chennai, but all the accused in

one voice stated that the amount would be not returned and they sold the gold and appropriated the amount for their own use and challenged LW.2 to do whatever he wanted to do. Though the mediators, who were present there, admonished the accused and suggested to return the cash of Rs.12.00 lakhs and gold ornaments, they did not heed to their words and, thus, all the accused have misappropriated the property of respondent No.2 being husband and in-laws.

i) As the marriage of respondent No.2 with petitioner No.1 was performed on 15.05.2010 at Vasavi Kalyanamandapam, Siddantham in the presence of elders, who are arraigned as LWs.4 to 6, and at the time of marriage, her parents - LWs.2 and 3 presented 30 sovereigns of gold, land to an extent of Ac.1.2 cents and the cash of Rs.12.00 lakhs, in the presence of elders referred supra and, thus, the petitioners - accused Nos.1 to 3 misappropriated the movable property of respondent No.2, and thereby committed the aforesaid offence.

ii) The said private complaint was referred to the police by the concerned Magistrate exercising the power under Section 156 (3) of the Code.

iii) On the strength of the reference, Penugonda Police Station, West Godavari District, registered a case in Crime No.105 of 2014 and issued FIR, and on the strength of FIR, the police took up investigation, examined as many as nine (09) witnesses, recorded their

statements under Section 161 (3) of the Code. On the basis of the evidence collected during investigation. The police having concluded that there is *prima facie* material to proceed against the petitioners herein, filed charge sheet before the Magistrate for the offence punishable under Section 406 read with 34 IPC.

4. The main allegation made in the charge sheet is that the property that was entrusted i.e., dowry amount and gold ornaments, to the petitioners herein at the time of marriage, and did not return the same to the parents of respondent No.2 and dishonestly misappropriated by the petitioners. The present Criminal Petition is filed under Section 482 of the Code on the ground that the allegations made in the complaint as well as in the charge sheet filed based on the evidence collected do not disclose commission of any offence, much less the offence punishable under Section 406 IPC, and that the alleged payment of cash of Rs.12.00 lakhs for development by circulating the same on interest basis is neither true, nor correct, and that the allegations, even if accepted on its face value, do not constitute any offence punishable under Section 406 IPC and requested to quash the proceedings against the petitioners.

5. During hearing, learned counsel for the petitioners contended that the allegations made in the charge sheet and the statements recorded under Section 161 (3) of the Code, even if accepted as true, that would not constitute any offence, much less the offence punishable under Section 406 IPC, and that the complaint was

lodged with a view to wreck vengeance against them to settle the matrimonial dispute. Therefore, the proceedings in the aforesaid Calendar Case cannot be continued for the offence referred supra.

6. The prime allegations made in the complaint and in the charge sheet are that at the time of marriage of respondent No.2 with petitioner No.1 performed on 15.05.2010 at Vasavi Kalyanamandapam, Siddantham her parents presented cash of Rs.12.00 lakhs and 30 sovereigns of gold, besides agricultural land. The amount and gold were entrusted to the petitioners herein for the benefit of respondent No.2 herein on the promise to develop the cash by circulating it on interest basis. But, the dispute is that the petitioners did not allow her to live with petitioner No.1 and did not return the amount entrusted to them. Whereas, the learned counsel for the petitioners contended that the alleged entrustment of cash of Rs.12.00 lakhs and gold does not constitute an offence punishable under Section 406 IPC, and it is only a dowry, if it is accepted. Therefore, the allegations made in the complaint are not sufficient to proceed against the petitioners herein for the offence punishable under Section 406 IPC.

7. Section 405 IPC defines the offence '**Criminal breach of trust**' - 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 wilfully suffers any other person so to do, commits '**criminal breach of trust**'. If the definition of the '*criminal breach of trust*' is applied to the present facts of the case, respondent No.2 and her parents allegedly entrusted the cash of Rs.12.00 lakhs to the petitioners for development by circulating the same on interest basis. But, they did not repay the same even after matrimonial tie is disturbed.

8. To constitute an offence of '*criminal breach of trust*', it must be proved that the beneficial interest in the property in respect of which the offence is alleged to have been committed was vested in some person other than the accused, and that the accused held that property on behalf of that person. A relationship is created between the transferor and transferee, where-under the transferor remains the owner of the property and the transferee has legal custody of the property for the benefit of the transferor himself or transferee has only the custody of the property for the benefit of the transferor himself or someone else. At best, the transferee obtains in the property entrusted to him only special interest limited to claim for his charges in respect of its safe retention, and under no circumstances does he acquire a right to dispose of that property in contravention of the condition of the entrustment. The word entrusted in the section is very important unless there is entrustment there can be no offence under section 406

IPC. The necessary requirement to constitute an offence punishable under Section 406 IPC are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it, as held by the Hon'ble Supreme Court in **Sadhupati Nageswara Rao v. State of Andhra Pradesh**¹.

9. In the present facts of the case, as per the material on record including the complaint, charge sheet and the statements of witnesses recorded under Section 161 (3) of the Code, material is consistent that there was an entrustment of cash of Rs.12.00 lakhs to the petitioners along with gold weighing 30 sovereigns to develop the same by circulating it on interest basis. Neither the petitioners developed the same by circulation on interest basis, nor repaid the same to respondent No.2 and, therefore, the allegations made in the complaint and charge sheet coupled with the evidence collected during investigation *prima facie* disclose a commission of offence punishable under Section 406 read with 34 IPC. The property entrusted to the accused allegedly Stridhana of respondent No.2. Such entrustment creates an implied trust. Failure to return the Stridhana property of respondent No.2 amount to criminal breach of trust as held by the

¹. AIR 2012 SC 3242

Hon'ble Supreme Court in **Smt. Rashmi Kumar v. Mahesh Kumar Bhada**².

10. Power of this Court under Section 482 of the Code is limited and this Court can exercise such power only in rarest of rare cases where allegations made in the complaint do not disclose any commission of cognizable offence as held by Hon'ble Supreme Court in **State of Haryana v. Bhajanlal**³. Even otherwise, the scope of jurisdiction under Section 482 of the Code is limited and this Court can exercise such power only to implement the orders passed by the Court to prevent abuse of process of Court or to secure ends of justice. But, at this stage, this Court need not minutely examine each and every material and record its findings that whether the allegations constitute an offence based on the evidence, but the Court is required to examine whether the complaint or charge sheet disclose *prima facie* case to proceed further against the petitioners for the offence punishable under IPC. If these principles are applied to the present facts of the case, I am of the considered view that the allegations made in the charge sheet coupled with evidence collected during investigation disclose commission of offence punishable under Section 406 IPC, and thereby this Court cannot stifle the legitimate prosecution by exercising power under section 482 of the Code. Hence, I find no ground to quash the proceedings, at this stage.

². (1997) 2 SCC 397

³. 1992 Supp (1) SCC 335

11. In the result, the present Criminal Petition is dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2018
Mgr

