

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 5367 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-accused to quash the proceedings against him in C.C.No. 792 of 2016 on the file of the Court of III Additional Chief Metropolitan Magistrate at Gajuwaka, Visakhapatnam District (for short, 'the Court below'), registered for the offence punishable under Section 420 of IPC.

2. Respondent No. 2-Theeda Manga Raju filed a private complaint before the Court below against the petitioner-accused alleging that the petitioner borrowed an amount of Rs.5,00,000/- on three different occasions; that out of Rs.5,00,000/-, the petitioner borrowed Rs.4,00,000/- as loan, for which a promissory note was executed and the remaining Rs.1,00,000/- on the promise to provide employment to him and that thereafter the petitioner neither repaid the amount nor provided employment to him. The Court below by exercising power under Section 156 (3) of Cr.P.C. referred the case to police for conducting investigation. On receipt of reference, the S.H.O., Gajuwaka Police Station, Visakhapatnam City, registered a case in crime No. 411 of 2016 and issued F.I.R. During the course of investigation, four witnesses are examined and recorded their statements under Section 161 (3) of Cr.P.C. After collection of entire evidence, having satisfied that there is *prima facie* material to proceed against the petitioner for the offence punishable under Section 420 of IPC, charge sheet has been filed. Questioning the same, the present petition is filed.

3. At the hearing, learned counsel for the petitioner has contended that the transaction between the petitioner and respondent No. 2 is purely civil in nature and that when the relationship between the petitioner and respondent No. 2 is

debtor and creditor, initiating criminal proceedings against the petitioner is nothing but giving flavour of criminal offence for civil wrong. In support of his contention, learned counsel for the petitioner has placed reliance on the judgments of the Apex Court in ***Devendra and others Vs. State of Uttar Pradesh and another***¹ and ***Chunduru Siva Ram Krishna and another Vs. Peddi Ravindra Babu and another***².

4. Whereas learned counsel for respondent No. 2 has opposed the petition on the ground that receiving Rs.1,00,000/- on the promise to provide employment is a serious crime.

5. As seen from the allegations made in the complaint and material collected during investigation including the statements recorded by police, the petitioner borrowed twice @ Rs.2,00,000/- from respondent No. 2 as hand loan and Rs.1,00,000/- on the promise to provide employment to him. The allegation that receiving Rs.1,00,000/- from respondent No. 2 on the promise to provide employment to him itself is sufficient to constitute the offence punishable under Section 420 of IPC since the petitioner is incompetent to provide employment. Therefore, the contention of learned counsel for the petitioner that respondent No. 2 gave flavour of criminal offence to civil wrong cannot be accepted. In the decisions relied upon by learned counsel for the petitioner, it is concluded that when the dispute is purely civil in nature and no offence is made out, criminal proceedings are liable to be quashed. However, the allegation in the present case to the extent of payment of Rs.1,00,000/- for securing employment is sufficient to constitute the offence punishable under Section 420 of IPC. I,

¹ (2009) 7 SCC 495

² CRIMINAL APPEAL No. 549 OF 2009

therefore, find no ground to quash the proceedings at this stage and consequently, the petition is liable to be dismissed.

6. The criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 03-08-2018.

M.SATYANARAYANA MURTHY, J.

JSK

