

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 8245 OF 2018

ORDER:

This petition is filed under Section 482 of Cr.P.C. by the petitioner-accused No. 4 to quash the proceedings against him in C.C.No. 358 of 2018 on the file of the Court of Judicial Magistrate of I Class at Armoor registered for the offences punishable under Sections 420, 406, 109 and 411 of IPC.

2. Respondent No. 2 filed written complaint against the petitioner-accused No. 4 and accused Nos. 1 to 3 on 23-04-2018 alleging that he has been running a jewelry shop by name Siddi Jewelries at Gandhi Road, Armoor, for the last ten years; that accused No. 1 is doing gold design by collecting gold from owners of gold shops; that he knows accused No. 1 for the last ten years and he used to give gold raw material to accused No. 1 for designing; that seven days prior to 22-04-2018 at about 8 p.m., he telephoned to accused No. 1 and gave 350 grams of gold to accused No. 1 for designing it and the latter informed the former that he would give the ornaments next day; that later, accused No. 1 switched off his mobile phone and decamped with the gold by locking his house and that on enquiry, he could not able to trace out the address of accused No. 1 and came to know that accused No. 1 dishonestly misappropriated the gold entrusted to him by decamping with the gold given for design and fled away. On the basis of the above complaint, a case in crime No. 117 of 2018 has been registered, issued FIR and investigated into. During the course of investigation, the police examined as many as 21 witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of material collected during investigation and having concluded that there is *prima facie* material to proceed against the petitioner and accused Nos. 1 to 3, the police filed charge sheet for the offences referred *supra*.

3. The present petition is filed on the grounds that the allegations made in the complaint do not constitute the offence punishable under Section 109 of IPC and that the confession of co-accused to the police is not admissible in evidence under Sections 25 to 27 of the Indian Evidence Act, 1872 (for short, 'the Act'), and if that is excluded, there is no other evidence to enrope the petitioner with the offence punishable under Section 109 of IPC and therefore requested to quash the proceedings against the petitioner.

4. At the hearing, Sri Vedula Venkata Ramana, learned senior counsel, while reiterating the grounds urged in the petition, has drawn the attention of this Court to the confessional statements of co-accused to contend that the statements made before the police are inadmissible except to the extent of discovery of any fact and that part of statement alone is admissible under Section 27 of the Act and therefore there is absolutely no material *prima facie* to proceed against the petitioner for the offence punishable under Section 109 of IPC and requested to quash the proceedings against the petitioner.

5. The offence allegedly committed by the petitioner is punishable under Section 109 of IPC and Section 107 of IPC defines the offence abetment of a thing and according to it, a person abets the doing of a thing, who instigates any person to do that thing, or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. Section 109 of IPC deals with punishment for abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. In view of the language in Section 107 of IPC, there must be an instigation by any person or engagement by several persons in any conspiracy for the doing illegal

act or intentionally aids, by any act or illegal omission, the doing of that thing, constitutes abetment. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of IPC. Section 107 of IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These ingredients are essential to complete abetment as a crime. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107 of IPC. Section 109 of IPC provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 of IPC means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence (*vide Amalendu Pal alias Jhantu Vs. State of West Bengal*¹ and *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*²).

¹ AIR 2010 SC 512

² AIR 2002 SC 1998

6. In ***Shri Ram Vs. The State of U.P.***³, the Supreme Court had an occasion to interpret the word 'intentional aiding'. In order to constitute abetment, the abettor must be shown to have 'intentionally' aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107 of IPC. A person may, for example, invited another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107 of IPC. In ***Jamuna Singh Vs. State of Bihar***⁴, the Apex Court held that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under Section 107 of IPC, a person abets the doing of an act in either of three ways which can be instigating any person to do an act; or engaging with one or more persons in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under Section 115 of IPC even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to

³ AIR 1975 SC 175

⁴ AIR 1967 SC 553

commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.

7. Coming to the case on hand, accused No. 1 became due some amount to accused No. 4 and on receipt of information from accused No. 2, accused No. 4 sent accused No. 3 and demanded accused No. 1 to pay the chit amount due to him or otherwise handover gold to him; that thereupon, accused No. 1 handed over some gold to accused No. 3 on behalf of accused No. 4 and that having dissatisfied with the same, again accused No. 4 demanded for handing over some other gold and accordingly accused No. 1 handed over gold to accused No. 3 to satisfy the amount due to accused No. 4 towards chit amount and thereafter accused No. 1 was allowed to escape from the place. Though it is not an independent offence, the act of accused No. 4 would constitute the offence punishable under Section 109 of IPC as he accommodated accused No. 1 to escape from his residence by taking away huge amount of gold and cash belonging to the witnesses mentioned in the appendix of evidence. Thus, on account of the act of accused No. 4, accused No. 1 escaped from his residence with gold which amounts to misappropriation of property by accused No. 1 belonging to L.Ws.1 to 13. Therefore, the petitioner is also liable for the offence punishable under Section 406 read with Section 109 of IPC. The contention of learned senior counsel that the act of the petitioner does not constitute the offence cannot be accepted and whether or not the petitioner had any *mens rea* is a question to be decided at the end of trial. Moreover, when the charge sheet disclosed commission of an offence *prima facie*, this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings against the petitioner. I, therefore, find no ground to quash the proceedings at this stage and the petition is liable to be dismissed.

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

Date: 28-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.

