THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.15388 OF 2018

ORDER:

Heard learned counsel for the petitioner/accused, learned Additional Public Prosecutor for respondent State and perused the record.

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.112 of 2011 on the file of the Judicial First Class Magistrate, Mummidivaram, East Godavari District.

Learned counsel for the petitioner would submit that the petitioner/accused has nothing to do with the alleged incident, FIR as well as the charge sheet. He did not operate any bank account in the name of Chenna Raja Sankara Reddy. He has nothing to do with the amounts deposited therein by the *de facto* complainant/L.W.1. Nothing was seized from his possession. The petitioner/accused did not contact L.Ws.1 to 20 and others to send them to Dubai and did not negotiate with them for money. L.W.1 is the person, who created fake documents, opened a bank account and responsible for deposit of Rs.6,56,500/- in that account. The petitioner/accused has no knowledge of either opening account or deposit of the amount therein. The investigating officer has not seized the details of bank account and the bank opening forms, etc. There are no allegations to substantiate any accusation for the offence under Section 420 IPC. The continuation of proceedings against him in the above C.C. is abuse of process of law and relied on a decision reported in ***State of Karnataka v. L.Muni Swamy and others***[1].

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[1] (1977) 2 SCC 699

On the other hand, learned counsel for respondent No.2 would submit that the petitioner/accused took lot of money from the victims i.e., L.Ws.1 to 20 and others. At the instance of petitioner/accused only, amount was deposited in the bank account opened and operated by the petitioner/accused. There are specific allegations against the petitioner/accused constituting the offence under Section 420 IPC, etc. The police have also seized passports and other material pursuant to the confession made by the petitioner/accused. Therefore, there are no merits in the petition and prayed to dismiss the same.

Learned Assistant Public Prosecutor would submit that the petitioner opened bank account in the fake name of Chenna Raja Sankara Reddy and operated the same. Further, the petitioner obtained two PAN cards, one in his real name and the other in the name of Akula Prasad Rao. The photos in both the PAN cards are one and the same, which belongs to the petitioner/accused and supported the submissions made on behalf of respondent No.2/*de facto* complainant.

In view of the contentions put forth by both sides, the point for determination is, whether the proceedings in C.C.No.112 of 2011 for the offence under Section 420 IPC can be quashed.

As per the FIR, charge sheet and the statements of the witnesses recorded by the investigating officer in the course of investigation, LWs.1 to 20 and other witnesses are the villagers, they are un-employees, they wanted to go to Dubai to eak out their livelihood. In that process, they have came in contact with the petitioner/accused through the *de facto* complainant/L.W.1 herein, who worked in Dubai from 1997 to 2005. The above mentioned witnesses went to Mumbai and met the petitioner/accused therein. The petitioner/accused introduced himself to them as Chenna Raja Sankara Reddy and then the witnesses cited above requested the petitioner/accused to send them to other countries and the petitioner/accused assured that he would obtain visas for them and send them to Kuwait and asked them to pay Rs.40,000/- each. L.Ws.1 to 5 were present on that day in Mumbai and agreed to pay Rs.40,000/- per head and they gave xerox copies of passports, etc. Thereafter, LWs.6 to 13 have also joined and the xerox copies of their passports were sent to the petitioner/accused through courier service. Thereafter, L.W.1 collected money from LWs.2 to 31 and also original passports and send to the petitioner/accused through First Flight courier, Amalapuram. Thereafter, L.W.1 having collected money from the aforementioned witnesses, deposited an amount of Rs.6,56,500/- in the account being operated by the petitioner/accused in the name of Chenna Raja Sankara Reddy. When L.W.1 contacted the petitioner/accused through cell phone in May 2010 several times and asked him to send the persons, who gave the money, to Kuwait, but the petitioner/accused did not do so. The petitioner/accused started absconding from L.W.1 and others. Thereafter, L.W.1 lodged a report to the police and the police concerned registered a criminal case against the petitioner/accused for the offence under Section 24 of Immigration Act and Section 420 IPC on 09.09.2010. In the course of investigation, the investigating officer/L.W.34 examined almost all 31 witnesses and recorded their statements. Those statements disclosed that the petitioner/accused promised the above witnesses to send to Kuwait to eak out their livelihood by arranging visas, on that, he collected huge money from them. When the petitioner/accused was arrested on 08.10.2010, he was interrogated in the presence of L.Ws.31 and 32 and from him, 18 passports belonging to L.W.1 and other victims, one cheque book which is in the fake name of Chenna Raja Sankara Reddy, one PAN card in the fake name i.e., Akula Prasad Rao, another PAN card in his original name i.e., Saka Paparao and one Reliance Sim card were seized. Thereafter, the petitioner/accused was remanded to judicial custody.

As per the statements of the witnesses and the material collected, there are specific allegations against the accused operating fictitious account in the name of Chenna Raja Sankara Reddy holding a PAN card in the name of Akula Prasad Rao, which is a fake name. There is another PAN card in the name of accused. There are also specific mentions in the statements of the victims that they have approached the accused in Mumbai. The petitioner/accused promised them to get visas to go to Kuwait. In that process, the accused demanded Rs.40,000/- from each of them. They have paid most of the money. In spite of that, the accused did not send them to Kuwait. There are bundle of allegations to substantiate the accusation under Section 420 IPC. Those are required to be adjudicated by a criminal Court in the course of trial. All contentions raised on behalf of the accused that the accused is innocent person, he has not opened bank account of Chenna Raja Sankara Reddy and he has nothing to do with the allegations levelled against him by L.Ws.1 to 31 cannot be taken as true at this juncture.

The Apex Court in ***State of Karnataka v. L.Muniswamy and others*** (1 supra) observed as under:

> "In the exercise of the wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the Court or that the ends of justice require that the proceeding ought to be quashed."

The facts mentioned in the said decision are different to the present facts of this case.

There are so many allegations with regard to collection of huge amount from LWs.1 to 31 under the guise of sending them to Kuwait. The possession of 18 passports belonging to the victims and cheque book, etc., are the incriminating circumstances against the petitioner/accused. The truth or otherwise of the allegations would be determined in a criminal trial.

Under these circumstances, the petition is devoid of merits. The continuation of proceedings would not abuse of process of law. The ends of justice demand continuation of proceedings against the petitioner/accused.

In the result, the Criminal Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

Dr. SHAMEEM AKTHER, J

19th February, 2018.
ssp