

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.7205 OF 2013

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioners, who are A1 and A2, in C.C.No.355 of 2011 on the file of II Additional Judicial Magistrate of First Class, Tanuku. The offences alleged are under Sections 406 and 420 IPC.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 2nd respondent. None appears for the 1st respondent in spite of notice.

3. The complaint is filed stating that A1 is a firm, of which A2 is the Managing Partner and A3 is the Manager. A3 used to look after the regular affairs of A1 on behalf of A2. They are doing outsourcing work of handling of data, digitalization, data mining, data processing, etc. The complainant also does the same business. The accused approached the complainant, stating that they will procure work from various multi national companies and that the complainant has to do work, for which the complainant has to pay certain amount as advance and also pay certain amounts as security for getting works. There was an agreement between them and as per the terms of the agreement, the complainant so far paid Rs.13,50,000/- on different dates. The accused, after entering into the agreement, approached the complainant and stated that they have procured some work from a multi national company, situated in West

Bengal State and asked the complainant whether he can afford money to get that work and promised that in case of failure of procuring the work in case of non payment of the money by the said company, they will be responsible for the said amount. The complainant, believing the words of the accused, parted with huge amounts. After payment of the amounts, the accused failed to provide the work.

4. These being the allegations in the complaint, the counsel for the petitioners submit that even as per the agreement between the parties, one year is the period of agreement and the complainant, without waiting for the said one year, have filed this complaint. However, the agreement shows that within the said one year also certain obligations are to be fulfilled the accused.

Non-fulfillment of such obligations would definitely give cause of action for the complainant to file complaint. But the said agreement, at clause 19, shows that the parties agreed to refer the disputes to arbitration.

5. The contention of the petitioners' counsel is that, in view of the said arbitration clause, this complaint is not maintainable. Even otherwise, the offences alleged are under Sections 406 and 420 IPC. Merely because there is a violation of the terms of the agreement, the act of the accused cannot be termed as an act of cheating.

6. Hence, in view of the above, this court opines that this being purely a commercial dispute, the further proceedings in

the CC against the petitioners would only result in abuse of process of law.

7. With the above observations, the Criminal petition is allowed and the proceedings in C.C.No.355 of 2011 on the file of II Additional Judicial Magistrate of First Class, Tanuku, against the petitioners are hereby quashed.

As a sequel, the miscellaneous applications, if any, shall stand closed.

October 11, 2018
LMV



JUSTICE T. RAJANI