THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9534 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.420 of 2018 pending on the file of II Additional Chief Metropolitan Magistrate at Hyderabad, registered for the offences punishable under Sections 420, 406 IPC and Sections 12(1) (b) of Indian Passport Act, 1967 and 24(10(b) of Emigration Act, 1983.

On receipt of complaint from L.W.1-B. Kantha Reddy, the SI of Police, Task Force, Central Zone Team, Hyderabad, alleging that he along with his staff were petrolling in the limits of Abids, he received credible information from one person is carrying on business without registration at POE(Protector of Emigrants) and sending manpower to abroad unauthorizedly by establishing an office in the name and style as 'Royal Travels' at 5-9-88/B, Siddiqui House, 2nd floor, Opposite Khan Lathif Khan Complex, Chappel Road, Hyderabad and cheating the innocent public and thereby earning profits illegally and believing it to be true, he appraised the same to his superior officers. As per the direction of DCP Task Force, he along with two mediators and staff of Central Zone Task Force raided on 'Royal Travels' and seized several documents i.e., eleven Indian Passports, Application/Bio-date Forms-13, entry books-8, visiting cards-4, one coolpad cell phone with Sim No.9394266222 under the cover of confessional-cum-seizure panchanama. As per the information of Mohammad Mustafa Kuvangal, the proprietor of Royal Travels collected passports and money from so many people for VISA processing, but he did not provide any VISA or job for them and also he did not return their passports and money.

On the basis of the report given by the SI of Police, a case in Cr.No.320 of 2016 was registered for the offences under Sections 406, 420 IPC and Sections 12 (1) (B) of IP Act and 24 (1) (b) E.A and the during investigation, the Investigating Officer examined as many as 11 witnesses, who are the victims, and on the basis of evidence collected during investigation including the statements recorded under Section 161 (3) Cr.P.C. having concluded that there is prima *facie* material to proceed against these petitioners for the said offences filed charge sheet against the accused before the Magistrate concerned as the investigation disclosed that the accused persons are running man power recruitment agency without any permission and license from Protector General of Emigration, Ministry of Labour, Government of India, New Delhi at Royal Travels premises No.5-9-88/B, Siddiqui House, Second Floor, Cheppel road, Hyderabad.

Mohammad Mustafa Kuvangal, the proprietor of Royal Travels, is having branched and he collected passports and money from Lws. 2 to 11 for Visa processing and did not provide any Visa and they did not return the money collected and thereby cheated the innocent people making false promise under the guise of providing employment in Gulf countries and thus committed the offences stated above.

Learned counsel for the petitioners contended that none of the allegations made in the complaint, except the offence under Section 12(1) (b) of Passport Act, 1967, do not attract the offences punishable under Sections 420,406 and 24(1)(b) of Emigration Act, 1983 and drawn the attention of this Court to the statement of Mohammad Abdul to demonstrate that the petitioners failed to send them abroad though they collected money for medical and advance amount and this was only due to seizure of passports by the police, but not otherwise. The allegations made in the charge sheet do not attract any offences more particularly the offences under Sections 406 and 420 IPC, so also the offences under Passport Act and requested to quash the proceedings against the petitioners.

Learned Public Prosecutor for the State of Telangana opposed the petition on the ground that the collection of huge amount by these petitioners though without having any license from the Protector General of Emigration and failed to send them to abroad and return to give Passports and money they collected would constitute the offences under the provisions of Immigration Act and also the penal provisions while conceding that the allegations do not attract the offence under Section 12 B of Indian Passport Act.

In view of the concession made by the Public Prosecutor, this Court need not discuss anything about the offence punishable under Section 12 (1) (b) of Passport Act and therefore, the proceedings against the petitioner for the offence punishable under Section 12 (1) (B) of Indian Passport Act, 1967, are hereby quashed in view of the concession given by the Public Prosecutor.

The allegation against the petitioners is that they did not possess any license from the Protector General of Emigration, Ministry of Labour, Government of India, New Delhi to run consultancy or man power recruitment agency for other countries. In the absence of any license from the Protector General of Emigration, Government of India, the allegations made in the charge sheet would constitute an offence punishable under Section 24 (1) (b) of Emigration Act, 1983.

Coming to the other offences, the first offence allegedly committed by the petitioners is under Section 420 IPC. Section 406 IPC deals with punishment for criminal breach of trust. Section 405 IPC defines the criminal breach of trust and as per it, 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.

To constitute an offence punishable under Section 406 IPC, there must be an entrustment of movable property and that it must be appropriated for himself. Here, in this case, the statements recorded by the police during investigation under Section 161(3) Cr.P.C. discloses the entrustment of Passports and payment of amount for the specific purpose by all the witnesses from Rs.5,000/- to Rs.50,000/- on the promise made by these petitioners to provide employment in abroad, but the amount was not returned. When the amount was entrusted for specific purpose i.e., sending the victims to abroad on employment and failure to provide employment and appropriating the amount by the petitioners constitute an offence punishable under Section 406 IPC *prima facie* as the amount was entrusted for specific purpose of processing Visa etc., but the amount was not appropriated as directed for discharge of the trust even otherwise, it would constitute an offence punishable under Section 403 IPC. When the charge sheet is filed for major offence and after framing charge, the trial Court finds that the petitioners are not liable for the said charge, the Court can convict the petitioners for the lesser offence i.e, under Section 403 IPC. Therefore, the material on record *prima facie* discloses the commission of offence to proceed against the petitioners.

The other offence allegedly committed by the petitioners is under Section 420 IPC. Section 420 IPC deals with punishment for cheating and dishonestly inducing delivery of any property. The word cheating is defined in Section 415 IPC. To constitute an offence punishable under Section 420 IPC, the cheating must be coupled with dishonest inducement of delivery of property at the time of commission of offence itself. But here in this case, the petitioners did not obtain any license from the Protector General of Emigration for sending manpower to the other countries, thereby they are incompetent to send manpower to other countries. But, still they collected huge amount from Lws. 1 to 12 and such collection without obtaining license from the Protector General of Emigration is sufficient to conclude that he had an intention at the inception itself to cheat the victims *prima facie*.

In *V.Y.Jose v. State of Gujarat*[1] the Apex Court laid down following ingredients to constitute cheating.

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> (i) deception of a person either by making a false or misleading representation or by other action or omission;
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> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
>
> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.
>
> For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time

[1] (2009) 3 SCC 78

of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases: (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

If these principles are applied to the present facts of the case, collection of huge amount from various victims on the pretext of sending them to abroad on employment without any license would constitute *prima facie* an offence punishable under Section 420 IPC. Therefore, I am unable to exercise power under Section 420 IPC to quash the proceedings at this stage as sufficient material is available *prima facie* to proceed against the petitioners for the offence punishable under Sections 420, 406 and Section 24 (1) (b) of Emigration Act, 1983 while finding no material to proceed against the petitioners for the offence under Section 12 (1) (b) of Indian Passport Act, 1967. Therefore, the proceedings against the petitioners for the offence under Section 12 (1) (b) of Indian Passport Act, 1967 is liable to quashed while declining to quash the proceedings against the petitioners for the offences punishable under Sections 420, 406 and Section 24(1) (b) of Emigration Act, 1983.

Accordingly, this Criminal Petition is partly allowed and the proceedings against the petitioners for the offence under Section 12

(1) (b) of Indian Passport Act, 1967, are quashed while declining to quash the proceedings against the petitioners for the offences punishable under Sections 420, 406 and Section 24(1) (b) of Emigration Act, 1983. The trial Court is directed to dispose of Calender Case uninfluenced by the observations or findings if any recorded hereinabove.

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

M. SATYANARAYANA MURTHY, J

Date: 20-09-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9534 of 2018

Dt. 20-09-2018

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