

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION NO.7465 OF 2016

ORDER:

This petition is filed by the petitioners-A1 and A2 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.1536 of 2015 on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri, which took cognizance of the offences punishable under Sections 406, 420 and 506 IPC.

2. Heard learned counsel for the petitioners, learned Assistant Public Prosecutor representing the 1st respondent-State, Mr.Mohd.Mumtaz Pasha, learned counsel for the 2nd respondent-de facto complainant and perused the record.

3. Learned counsel for the petitioners would submit that the allegation that the petitioner-A1 has cheated the de facto complainant by taking loan of Rs.65,00,000/- from him is false. It is also false that the petitioner-A1 obtained loan of Rs.65,00,000/- from the de facto complainant in view of their friendship with a promise to return the same as soon as possible. The allegation that the petitioner-A1 had kept certain documents, cheques and promissory notes with the de facto complainant as security for the amount borrowed and on 15.10.2014 and that the petitioner-A1 called the de facto complainant stating that he will return the money and receives all the documents, cheques and promissory note and did not return the same with an intention to cheat and making wrongful gain are false. The continuation of criminal proceedings is an abuse of process of law. The criminal proceedings are instituted in order to harass the petitioners. No offence is made out as alleged under Sections 406, 420 and 506 IPC and ultimately, prayed to quash the proceedings in C.C.No.1536 of 2015. Relied on a decision

reported in **PARAMJEET BATRA V STATE OF UTTARAKHAND AND OTHERS** ¹.

4. Learned Assistant Public Prosecutor would submit that there is element of cheating, inducement and delivery of property is present and ultimately, prayed to dismiss the petition.

5. Learned counsel for the 2nd respondent-de facto complainant would submit that the petitioner-A1 and the de facto complainant are friends and in view of their friendship, an amount of Rs.65,00,000/- was lent to the petitioner-A1 on 15.10.2014. The petitioner-A1 called the de facto complainant stating that he would return the money. In that process, the petitioner-A1 has collected all the original documents from the de facto complainant and thereafter, did not return the money. The petitioners cheated the de facto complainant. There are also ingredients constituting the offences punishable under Sections 506 and 406 IPC and ultimately, prayed to dismiss the petition.

6. In view of submissions made by both sides, whether the request of the petitioners-A1 and A2, who are brothers, can be acceded to?

7. It is alleged that the petitioner-A1 and the de facto complainant are old friends. The petitioners-A1 and A2 are brothers. The de facto complainant said to have given an amount of Rs.65,00,000/- to Ganesh Marble Owner-N.Ganesh (A1). The petitioner-A1 made a promise that he would return the money as soon as possible. It is also alleged that the petitioner-A1 kept some documents, cheques and promissory notes with the de facto complainant as

¹ (2013) 11 SCC 673

security for the amount borrowed. On 15.10.2014, those documents were taken back by the petitioner-A1 from the de facto complainant stating that he would return the money due, on the next day. Admittedly, the date of transaction and mode of payment is not mentioned. Further, the purpose of money lent is also not mentioned. Even if it is believed that some money is lent by the de facto complainant to the petitioner-A1, the course available to the de facto complainant is to file a suit for recovery of money. As per the record, the petitioner-A1 executed certain documents in favour of the de facto complainant. Generally, no person will return the promissory note/documents without receiving the amount due. As far as other allegations constituting the offence punishable under Section 506 IPC are concerned, it cannot be said that those are invented for the purpose of instituting the criminal proceedings against the petitioners. The purport of the citation relied on by the learned counsel for the petitioners is that when a criminal case is instituted, which is of civil in nature, the proceedings have to be quashed so as to prevent the abuse of process of law. *Prima facie*, the material on record reveals that the dispute between the parties to the litigation is relating to recovery of money, which is a civil dispute. It is cloaked with some allegations constituting the offence punishable under Section 506 IPC. It appears that a false report was lodged with the police on 15.10.2014 to put the criminal law into motion.

8. In view of the circumstances of the case as well as material on record, continuation of proceedings against the petitioners is nothing but abuse of process of law. Therefore, the criminal proceedings are liable to be quashed.

9. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners-A1 and A2 in C.C.No.1536 of 2015 on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri. Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 22-01-2018.

Hsd

