

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10541 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner /Accused to quash the proceedings against him in C.C.No.472 of 2015 on the file of III Metropolitan Magistrate, Visakhapatnam, registered for the offence punishable under Section 420 IPC.

2. The 2nd respondent lodged a report on 16.02.2015 alleging that the petitioner collected an amount of Rs.4,70,000/- on different dates with a promise to provide Vambay house, but he did not provide the same and thereby cheated him and therefore sought to take action against the petitioner. Basing on the said report, the Station House Officer, Kancharapalem Police Station, Visakhapatnam District, registered the aforesaid crime against the petitioner and issued FIR for the offence punishable under Section 420 IPC. On the basis of the said FIR, the Inspector of Police took up investigation, examined as many as four witnesses and recorded their statements under Section 161 (3) Cr.P.C. Basing on the material collected during the course of investigation, the Inspector of Police concluded that there is *prima facie* material to proceed against the petitioner and filed charge sheet against him for the offence punishable under Section 420 IPC.

3. The present petition is filed to quash the proceedings against the petitioner on the ground that the 2nd respondent having bore grudge against the petitioner, as he filed a suit in O.S.No.324 of 2015 on the file of Principal Senior Civil Judge, Visakhapatnam,

for recovery of an amount of Rs.4,98,800/- basing on a promissory note, dated 02.05.2012, said to have been executed by him, filed the present complaint; that the allegations in the complaint are vague and do not constitute the offence punishable under Section 420 IPC and requested the Court to quash the proceeding against this petitioner.

4. During hearing, learned counsel for the petitioner reiterated the contentions in the petition, whereas learned Public Prosecutor for the State would contend that the date of offence is on 16.02.2015, whereas the suit was filed on 11.03.2015 for recovery of amount basing on the promissory note, dated 02.05.2012 and thereby the suit proceedings cannot be connected with the proceedings in the Calendar Case pending before the Court below and requested the Court to dismiss the petition.

5. As seen from the allegations made in the charge sheet, the petitioner allegedly committed the offence prior to 16.02.2015 at Madhavadhara, Visakhapatnam by collecting Rs.4,70,000/- from the petitioner with a promise to provide house. The said allegation is supported by statement of witnesses (L.Ws.1 to 3) recorded under Section 161 (3) Cr.P.C. Thus, the material collected during the course of investigation is consistent with the statements recorded under Section 161 (3) Cr.P.C. that the petitioner collected an amount of Rs.4,70,000/- from the *de facto* complainant promising to provide Vambay house in his favour. The petitioner is unconcerned with the allotment of Vambay house and collection of any amount promising to get the Vambay house allotted is nothing but cheating. It would clearly attract the offence punishable under

Section 420 IPC, since the petitioner is not a competent person to allot house and collection of such amount clearly indicates that he has intention to cheat the complainant from the beginning.

6. The jurisdiction of this Court under Section 482 Cr.P.C. is very limited and this Court time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in **State of Haryana v. Bhajan Lal**¹, seven guidelines were laid down and they are as under:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which

¹ 1992 Supp. (1) SCC 335

no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

The case of the petitioner does not fall under any one of the guidelines framed by the Apex Court, so as to quash the proceedings against the petitioner since the material collected during investigation *prima facie* disclose commission of offence by the petitioner. Therefore, I find no ground to quash the proceedings against the petitioner at this stage and consequently, the criminal petition is liable to be dismissed.

7. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

OCTOBER 04, 2018

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:04.08.2018

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