HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 11436 OF 2017

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by accused Nos.1 to 4 in C.C.No.2447 of 2017 pending on the file of the VI Additional Judicial First Class Magistrate at Warangal, registered for the offences punishable under Sections 417, 420, 468 r/w 34 IPC to quash the proceedings in the said C.C.

2. Respondent No.2 filed private complaint before the VI Additional Judicial First Class Magistrate at Warangal, under Section 200 Cr.P.C., for various offences referred supra, alleging that he approached the Manager of Vijaya Bank, Hanumakonda Branch, for home loan of Rs.10 lakhs. The petitioners are the employees of the said bank. At that time, one Naresh Deshpandey was its Branch Manager. During the process of sanction of loan, the then Manager insisted him to produce title deeds of two immovable properties as security for the loan. Accordingly, he had mortgaged his two properties, i.e. H.No.11-29-2 to an extent of 239 sq. yards situated near CKM College, Warangal and house bearing No.11-23-1476 situated at Deshaipet Road, Warangal. At the time of advancing the loan, the Manager obtained his signature on various unfilled printed forms stating that the said forms are required for processing the loan. Respondent No.2/complainant, being semi-literate who studied upto 7th class, had no knowledge about the contents of the forms on which

his signatures were obtained and he being unaware of the contents of the said forms, bona fidely trusted the Manager and signed on various documents on which his signatures were obtained. Thereafter, the loan was sanctioned to him vide A/c.No.406408351000010. Except the said loan, no other loan was obtained by him.

3. During 2010-11, the Branch Manager of the Bank started insisting the 2nd respondent/complainant for payment of amount, being a surety for one G. Madhukar Rao, the proprietor of City Wines and that he mortgaged house bearing No.11-23-1476 as collateral security for the said loan. But, the 2nd respondent/complainant was shocked to know about the mortgage created in favour of the Bank, over House No.11-23-1476 and the said Madhukar Rao was total stranger to him and the question of mortgaging the property as security of the alleged loan obtained by the said Madhukar Rao is false and it is created by the Manager of the Bank. The Bank also filed O.A.No.508 of 2012 against the said Madhukar Rao before the Debts Recovery Tribunal, Hyderabad and the same is pending for adjudication.

4. While the matter stood thus, the 2nd respondent/complainant became sick due to spine problem and confined to bed for several years, he has been spending huge amounts for treatment and he was in need of more money for the said purpose. Meanwhile, the bank started demanding him to repay the home loan. Since the 2nd respondent/complainant has been bedridden for the past several years, he had no money to repay the loan, as such, he intended to sell the

property which is mortgaged for the home loan. In the process of sale of the property, he entered into OTS scheme with the Manager with a view to release the original sale deed bearing document No.1201/2008, but accused No.2 with a dishonest intention promised and assured him that if he repays the home loan, he would release the original document in his favour immediately. Accordingly, the 2nd respondent/complainant paid the entire amount towards the home loan under OTS scheme, but the original document was not returned. Thus, creating mortgage in favour of the bank for the loan obtained by the said Madhukar Rao, who is the proprietor of City Wines, which is the subject matter of O.A., pending before the DRT, Hydeabad, is nothing but cheating and inducing the 2nd respondent/complainant with a dishonest intention to part with the immovable property, the petitioners have committed the offences punishable under Sections 417, 420, 468 r/w 34 IPC.

5. On receipt of the complaint, the Magistrate recorded the sworn statements of Md. Shakeel and K. Prabhakar and based on their sworn statements and other material produced, took cognizance of the offences and issued process to the petitioners. Being aggrieved by the issue of process, the present petition is filed by the petitioners under Section 482 Cr.P.C., to quash the proceedings on the ground that they are only employees of the bank, they are not liable to be prosecuted for any of the offences and they did nothing in their individual capacity and that retaining the document pertaining to House

No.11-23-1476, which is mortgaged as collateral security for the loan obtained by Madhukar Rao, is only on account of the relationship of debtor and creditor in an agreement of guarantee and, therefore, the petitioners did not commit any offence much less the offences under Sections 417, 420, 468 r/w 34 IPC and prayed to quash the proceedings against them for the offences referred above.

6. The relationship between the Branch Manager, Vijaya Bank, Hanumakonda and the 2nd respondent/complainant is that of creditor and debtor. During the course of hearing, learned counsel for the petitioners, Sri E. Madan Mohan Rao, contended that when mortgage was created as collateral security for due payment of the amount borrowed by Madhukar Rao, the bank is entitled to retain the document and unless the debt is cleared, the bank is not under obligation to return the document deposited with an intention to create mortgage by deposit of title deed and as long as the loan is not discharged, failure to return the document is not an offence and therefore, petitioners did not prima facie commit any offence much less the offences under Sections 417, 420, 468 r/w 34 IPC and apart from that, O.A., is pending before the DRT, Hyderabad for adjudication. He further contended that filing complaint is only an abuse of process of Court and prayed to quash the proceedings in C.C.No.2447 of 2017.

7. On the other hand, Sri M. Rama Krishna, learned counsel for the 2nd respondent/complainant, contended that when the

2nd respondent/complainant never intended to create mortgage by deposit of title deeds in respect of the home loan, they are utilized for the purpose of creating mortgage by the bank for the loan amount secured by Madhukar Rao by obtaining the signatures on blank unfilled printed forms from the 2nd respondent/complainant who is semi-literate (studied upto 7th class) and creating such mortgage by the then Branch Manager of the bank for due payment of loan obtained by Madhukar Rao, itself is an offence and prayed to dismiss the petition.

8. In "***R.P. Kapur v. State of Punjab***[1]", the Apex Court laid down the following principles:

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

9. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous,

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[1] AIR 1960 SC 866

vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar***[2]***"***

10. In "***State of Haryana v. Bhajan Lal***[3]***"*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) 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.

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[2] AIR 1990 SC 494
[3] 1992 Supp (1) SCC 335

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) Where the 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.

(4) 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.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with mala fide 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.

11. Turning to the facts of the present case, petitioners are only employees in the bank and the 2nd respondent/complainant borrowed house loan creating mortgage over H.No.11-29-2 to an extent of 239 sq. yards situated near CKM College, Warangal by deposing title

deed. This transaction is not in dispute. But according to the petitioners, the 2nd respondent/complainant himself deposited the title deed relating to house bearing No.11-23-1476 situated at Deshaipet Road, Warangal, but did not intend to create any mortgage to secure the due payment of the loan amount borrowed by the said Madhukar Rao. But, the Manager of the bank obtained signatures on blank unfilled printed forms and created the transaction and created mortgage on the said property as collateral security for the loan amount borrowed by Madhukar Rao, proprietor of City Wines and the same is the subject matter of O.A.No.508 of 2012 pending on the file of the DRT, Hyderabad. Therefore, the dispute as to creation of mortgage is the subject matter of the said O.A., but the 2nd respondent/complainant lodged the complaint as if the then Manager of Vijaya Bank, Hanumakonda Branch created the alleged transaction of mortgage. It is not in dispute that the 2nd respondent/complainant signed on the printed pro forma, which is filled subsequently or at the time of obtaining signature itself. Whether the then Branch Manager obtained signatures on blank printed forms of the 2nd respondent/complainant and created mortgage is not the question to be decided in a criminal case since O.A., is already pending. Even otherwise, the then Branch Manager was alone responsible for such act, but not the petitioners herein who are employees working in Hanumakonda Branch of Vijaya Bank. When a mortgage was created as per the documents available with the bank against property bearing H.No.11-23-1476 situated at Deshaipet Road, Warangal, as collateral security for due payment of loan obtained by the said Madhukar Rao, proprietor of City Wines, the bank or its employees are not under obligation to return the documents in terms of the provisions of the Transfer of Property Act. Therefore, the failure of the petitioners to return the title deeds pertaining to property bearing H.No.11-23-1476 situated at Deshaipet Road, Warangal, does not constitute offence much less the offences alleged against the petitioners even if the allegations made in the complaint are taken accepted as they are.

12. Section 417 IPC deals with punishment for cheating. Cheating as defined under Section 415 reads as under:

> "Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

13. Even if the definition of "cheating" is applied to the facts of the present case, the then Branch Manager who allegedly induced the 2nd respondent/complainant fraudulently with a dishonest intention to deliver any property and retaining the same, would constitute an offence, but the petitioners herein have nothing to do with the offence punishable under Section 417 IPC as defined under Section 415 IPC. The other offence allegedly committed by the petitioners is under Section 420 IPC, i.e. cheating and dishonestly inducing delivery of

property. To constitute offence punishable under Section 420 IPC, there must be an allegation in the complaint that petitioners had any fraudulent intention at the time the very transaction commences. Even if the allegations made in the complaint are accepted to be true and correct, in the absence of any allegation that the then Branch Manager had any intention to cheat the 2nd respondent/complainant and induce him with a dishonest intention, it would not constitute an offence punishable under Section 420 IPC. In every offence under Section 420 I.P.C. the element of cheating must be present. The essential ingredients of cheating are (1) deception of any person, (2) (a) fraudulently or dishonestly inducing that person: (i) to deliver any property to any person, or (ii) to consent that any person should retain any property, or (b) intentionally inducing that person to do or omit to do anything which that person would not have done or omitted 1o do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

14. In ***V.Y.Jose v. State of Gujarat***[4] 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;

[4] (2009) 3 SCC 78

(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 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."

15. In "***Hridya Rajan Pd. Verma and Ors. v. State of Bihar and another***[5]" the Apex Court discussed about the offence of 'cheating'. In the facts of the above judgment, a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful

[5] AIR 2000 SC 2341

gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced the complainant to enter into negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***[6]" wherein the Apex Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code of Criminal Procedure could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to the decisions in "***Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill***[7]", "***Rajesh Bajaj v. State NCT of Delhi***[8]" and "***State of Kerala v. O.C. Kuttan***[9]" wherein the principle laid down in Bhajan Lal (supra) was reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in Bhajan Lal (supra) and whether the allegations made in the FIR or the complaint if accepted in entirety did make out a case against the accused-Appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable Under Section 420 of the Indian Penal Code. Scanning the definition of

[6] 1992 Supp (1) SCC 335
[7] AIR 1996 SC 309
[8] (1999) 3 SCC 259
[9] AIR 1999 SC 1044

'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:

> "16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

16. After laying down the principle the Bench referred to the complaint and opined that on reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly

stated nor indirectly suggested in the complaint. All that the respondent No.2 therein had alleged against the appellants therein was that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No.2 part with property was not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent No. 2 was not made out even accepting all the averments in the complaint on their face value and, accordingly, ruled that in such a situation continuing the criminal proceeding against the accused would be an abuse of process of the Court.

17. Even if the ingredients constituting offence punishable under Section 420 IPC are applied to the facts of the present case, the allegations made in the complaint do not satisfy the first requirement that the petitioners had intention to cheat the 2nd respondent/complainant.

18. The other offence allegedly committed by the petitioners is under Section 468 IPC, which deals with forgery for the purpose of cheating. The word "forgery" is defined under Section 463 IPC and according to it, whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property,

or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

19. But, in the present case, none of the petitioners are the persons who prepared false documents with a view to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud. Therefore, the petitioners cannot be proceeded against in a criminal court in the garb of criminal litigation. When a civil case is given the flavour of a criminal offence, Court can exercise its power in view of the law laid down in the judgments referred to supra.

20. In view of the aforesaid discussion, I do not find any material against the petitioners to constitute the offences punishable under Sections 417, 420, 468 r/w 34 IPC even if the allegations made in the complaint are accepted on their face value. However, this Court is confident that the issue will be decided in the O.A. pending before the DRT, Hyderabad and in case the Tribunal records any finding to the effect that then Branch manager of Vijaya Bank, Hanumakonda, created mortgage in favour of the bank, by obtaining the signatures of the 2nd respondent/complainant on the blank printed forms as collateral security for the purpose of loan obtained by Madhukar Rao, proprietor of City Wines, the petitioners, may, if so advised, approach the Court by filing separate complaint.

21. With the above observations, proceedings in C.C.No.2447 of 2017 pending on the file of the VI Additional Judicial First Class Magistrate at Warangal, registered for the offences punishable under Sections 417, 420, 468 r/w 34 IPC, are hereby quashed.

22. Criminal petition is accordingly allowed.

As a sequel, miscellaneous petitions, if any pending, stand closed.

M.SATYANARAYANA MURTHY, J

July 24, 2018
MRR