

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION NO.8008 OF 2019

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking quashing of investigation in Crime No.37 of 2019 of P.S. Central Crime Station, Hyderabad, registered against the petitioners/A-1 and A-2 for the offences punishable under Sections 420 and 409 read with Section 34 of the Indian Penal Code.

Heard the learned counsel for the petitioners/A-1 and A-2 and the learned Additional Public Prosecutor for the State.

The facts of the case, in brief, are that A-1 is the Financial Institution and A-2 is the Head of the A-1 institution, A-2 came into acquaintance with A-3 for the last ten years, A-3 stated that Crane Services business is very lucrative and getting lot of profits, A-1 to A-8 are partners of M/s. Durga Crane Services, who have induced the *de facto* complainant to get into the said business, A-3 to A-8 offered him that they will arrange finance for purchase of DEEMAG HC 810 Crane from A-1, A-3 brought the officials of A-1 during March, 2016 who also assured him that loan would be sanctioned immediately and in turn the same can be paid to A-1, on that the *de facto* complainant submitted documents irrespective of financial credentials and without guarantee and without security, loan was sanctioned on 16.03.2016, A-1 and A-3 insisted the *de facto* complainant to transfer the amounts to A-3 firm, A-3 executed a sale deed dated 05.03.2016 regarding purchase of Crane but the said Crane was not delivered to the *de facto*

complainant, on that he contacted A-3 in this regard but he has been dodging the matter on one pretext or the other and stopped receiving phone calls of the *de facto* complainant and when visited the office of A-1, he came to know that the loan account of A-3 was in continuous default and the officials of the financial institution actively connived with A-3, conspired and transpired together, hatched a plan to dupe using the *de facto* complainant as a pawn.

It is submitted on behalf of the petitioners/A-1 and A-2 that the complaint of the *de facto* complainant goes to show that, though the petitioners have no nexus with the alleged incident that took place as alleged by the *de facto* complainant, he had simply roped them for no reason and *prima facie*, no offence is made out and nothing is attributed to any of the petitioners. It is further submitted that all the allegations levelled against them are vague, baseless, general in nature and nothing is specifically attributed against any of the petitioners or any other accused. It is further submitted that none of the alleged offences under Sections 409 and 420 read with Section 34 IPC attracts, as alleged in the complaint and as such on this ground alone, the case of the prosecution against the petitioners is liable to be quashed. More over, the petitioners have already been issued notices under Section 91/160 Cr.P.C. and hence, the petitioners cannot be treated as accused in the light of the judgment of the Apex Court in **State v. N.M.T. Joy Immaculate**¹.

¹ (2004)5 SCC 729

Learned Additional Public Prosecutor opposed the prayer for quashing of FIR and submitted that the contents of the FIR clearly disclose a cognizable offence and hence, it cannot be quashed.

The Apex Court in **N.M.T. Joy Immaculate** (1 supra) observed as under:-

“Section 160 of the Code of Criminal Procedure deals with police officer’s power to require attendance of witnesses. This section aims at securing the attendance of persons who would supply the necessary information in respect of the commission of an offence and would be examined as witnesses in the inquiry or trial therefor. This section applies only to the cases of persons who appear to be acquainted with the circumstances of the case i.e. the witnesses or possible witnesses only. An order under this section cannot be made requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary. In other words, this section has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation.”

After considering the judgment referred supra, I am of the considered view that there could be no interference with the investigation unless cognizable offence is made out from the allegations made in the FIR. Accordingly, let the investigation in this case be continued. However, no coercive steps shall be taken

against the petitioners/A-1 and A-2 till the conclusion of investigation and submission of final report.

With this direction, the Criminal Petition is disposed of.

Miscellaneous applications, if any, pending shall stand closed.

(G. SRI DEVI, J)

10th December 2019
RRB

