

HONOURABLE JUSTICE G. SRI DEVI

WRIT PETITION No. 24157 of 2018

ORDER:

This Writ Petition is filed under article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the respondent Nos.2 and 3 in registering Crime No.906 of 2017 and filing charge sheet which was taken cognizance as C.C.No.963 of 2017 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District, as illegal, arbitrary and violative of principles of natural justice and consequently set aside the charge sheet in C.C.No.963 of 2017.

A charge sheet came to be filed against the petitioners for the offence punishable under Section 420 read with 511 of I.P.C. The allegations in the charge sheet, in brief, are that the 1st petitioner/ A-1 working in a private organisation and as his earnings are not sufficient to lead his family, he hatched a plan to earn money easily by doing any work. Two years back his uncle brought one Vinayaka Idol, which is manufactured with green stone weighing about 50 kgs. from Tamilnadu and kept in the house of the 1st petitioner/ A1. Then, the 1st petitioner/ A-1 hatched a plan to sell the idol to the rich people and to earn money easily by cheating. The 1st petitioner/ A-1 informed the same to petitioners 2 to 5/ A-2 to A-5, for which they also agreed for the same and hatched a plan to show the idol to the businessman, they will tell

them the idol is manufactured with markatha stone, if they keep in houses and shops they will get huge income. On 10.07.2017 in the evening while the petitioners/ A-1 to A-5 were going to Abids, in the mean time, the 2nd respondent took them into custody at Nizampet Cross Roads bus stop, K.P.H.B., and seized one Vinayaka Idol which is manufactured with green stone. Thus, the petitioners/ A-1 to A-5 have committed an offence punishable under Section 420 read with 511 of I.P.C.

The 3rd respondent filed counter stating that the writ petition is not maintainable simply because there is an alternative remedy of filing criminal petition under Section 482 of Cr.P.C. is available to the petitioners. It is also submitted that during the course of investigation, Section 41-A of Cr.P.C. notices were served upon the petitioners and after obtaining personal bail bonds they were released on bail. It is further submitted that the petitioners intend to cheat the people by selling Ganesh Idols to them making them to believe that it is manufactured with marakatha stone, but the same was made with some inferior quality stone. Basing on the confession of the petitioners only the crime was registered and it proves their dishonest intention to cheat the gullible public.

Heard learned Counsel for the petitioners and learned Government Pleader for Home, appearing for the respondents.

Learned Counsel for the petitioners would submit that the above crime was registered on 11.07.2017 without any iota of truth

and only based on assumptions and surmises of the 2nd respondent and intorn the 3rd respondent without following the procedure as contemplated under Section 41-A of Cr.P.C. and even by ignoring the guidelines affected the arrest of the petitioner and all the alleged witnesses were also examined on the same day. On the face of it the procedure followed by the 3rd respondent and the registration of crime by the 2nd respondent is violative of principles of natural justice. It is also submitted that even as per the entire allegations in the charge sheet as well as in the statements, no offence is made out under Section 410 read with 511 of I.P.C. and further the procedure followed by the police is detrimental to the provisions as such the petitioners filed the present writ petition.

Learned Government Pleader for Home opposed the writ petition and prayed to dismiss the writ petition.

Before proceeding further it would be appropriate to refer to offence under Section 420 of I.P.C., which reads as under:

"420. Cheating and dishonestly inducing delivery of property.-
-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."

The essential ingredients to constitute an offence of cheating under Section 420 IPC are, (i) there should be fraudulent

or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A perusal of the material on record would show that the police anticipated that the petitioners may cheat other people and arrested them. As per the charge sheet neither the independent witness nor the alleged buyer were examined by the police. Except the police personnel and panch witness for confess-cum-seizure panchana, no independent person was arrayed as a witness in the charge sheet. Further, there is no evidence on record that the petitioners were carrying the said idol for selling purpose. Apart from that notice under Section 41-A of Cr.P.C. was issued on the petitioners on the date of arrest itself and no time has been granted to the petitioners to explain the things. Nothing is on record to show the *mens rea* of the petitioners to commit the offence under Section 420 of I.P.C. Hence, the case of the

petitioners is squarely covered with the law laid down in *State of Haryana and others v. Bhajan Lal and others*¹.

In view of my foregoing discussion, I find that it is a fit to quash the proceedings against the petitioners in C.C.No.963 of 2017 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District

Accordingly, the Writ Petition is allowed and the proceedings against the petitioners in C.C.No.963 of 2017 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District, for the offences punishable under Section 420 read with 511 of I.P.C. are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

04.03.2020
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¹ (1992) SCC (Cri) 426