THE HON'BLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION Nos.1897 and 1892 of 2016

COMMON ORDER:

Crl.P.No.1897 of 2016 is filed challenging the charge sheet in C.C.No.817 of 2014 on the file of the I Additional Judicial First Class Magistrate, Khammam registered against the petitioner/A1 and other accused, who are not before this Court in this petition.

2. Crl.P.No.1892 of 2016 is filed challenging the charge sheet in C.C.No.102 of 2014 on the file of the I Additional Judicial First Class Magistrate, Khammam (for juvenile justice) registered against the petitioner/juvenile delinquent.

3. The facts in brief as per the charge sheet are that the de-facto complainant has got acquaintance with the petitioner/A1 when she was residing at Jangareddygudem. Out of the said acquaintance, the petitioner/A1 approached the de-facto complainant requesting to lend Rs.70,000/- for her business purpose. Accordingly, the de-facto complainant has advanced the said amount and

subsequently, the petitioner/A1 has returned the said amount along with interest as agreed.

4. Again, later, the petitioner/A1 approached the de-facto complainant stating that she has been doing business in Sharada Jetro Form Crude Oil business and lured the de-facto complainant that there are heavy profits in the business and asked her to invest in the said business. The petitioner/A1 has also stated that she would return the said money with profits. Believing the words of the petitioner/A1, the de-facto complainant paid an amount of Rs.15 lakhs on 22.12.2011. Later, the petitioner/A1 again approached the de-facto complainant stating that the money invested by her is not sufficient and asked her to invest some more money on which the de-facto complainant has invested Rs.25 lakhs by selling her house, gold etc. The petitioner/A1 has sent A3/ juvenile delinquent, who is the petitioner in Crl.P.No.1892 of 2016, who is no other than the daughter of A1. Accordingly, A3 collected Rs.25 lakhs from the de-facto complainant. Subsequently, on further request of A1, the de-facto complainant has also given Rs.10 lakhs.

5. After taking the said amount, the petitioners and other accused failed to give any profits as promised and on persistent demand also, neither the principal nor interest was given and started not responding to the calls of the de-facto complainant. On realizing that she was deceived and cheated by the petitioners and other accused, the de-facto complainant filed the complaint against all the accused before the police and the same was registered as FIR in Crime No.269 of 2013 for the offence under Section 420 IPC.

6. During the course of investigation, police concerned have recorded the statement of the de-facto complainant and her brother in law and sister and also a panchanama of crime scene was also recorded and finally on completion of investigation, charge sheet is filed against all the four accused alleging that they have committed the offence under Section 420 IPC.

7. Aggrieved by taking cognizance of the offence against all the accused for the offence under Section 420 IPC, these petitions are filed by A1 and juvenile delinquent, who

is no other than the daughter of A1, seeking quashment alleging that even if the contents of the charge sheet are accepted to be correct, there are no ingredients under Section 420 IPC and the police, without there being any material, have mechanically filed the charge sheet.

8. Heard both sides and perused the record.

9. Now, the point for determination is whether the charge sheet against the petitioners can be quashed?

10. The simple case of the de-facto complainant is that she has given Rs.50 lakhs in three installments to the petitioners on the false promise made by them and other accused that she will get more profits in the crude oil business. The petitioners having received the said amount have failed to return the said amount to the de-facto complainant. On enquiry, the de-facto complainant came to know that the petitioners and other accused are not doing any business, more so, the business in oil.

11. The only ground of the petitioners is that there are no ingredients to fasten the liability under Section 420 IPC. Section 420 IPC read 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."

In order to fasten the liability under Section 420 IPC, the de-facto complainant is expected to allege and place material to show prima facie that the petitioners with an intention from the inception has induced her intentionally to invest money in the business by luring her that she would get more profits and thereby on account of such inducement, the de-facto complainant has invested the money thereby lost the entire amount.

12. A perusal of the averments of this petition seeking quashment, the petitioners have not denied the contention of the de-facto complainant that she has advanced money as alleged in the complaint. Therefore, prima facie, the

petitioners have not disputed that the de-facto complainant has invested the money.

13. Now the questions to be considered are whether there is any prima facie material to hold that the petitioners and others with an intention to defraud the de-facto complainant from the beginning have approached her and lured her to invest. According to the de-facto complainant and also the statements of witnesses, A1 has developed the acquaintance when A1 and the de-facto complainant were residing at Jangareddygudem.

14. It appears to this Court that in order to gain the confidence of the de-facto complainant, A1 has initially borrowed Rs.70,000/- stating that she has got a business and she will return the said amount with interest and as a part of the strategy, A1 has returned the entire amount of Rs.70,000/- with interest as agreed, thereby A1 has gained the confidence of the de-facto complainant. Subsequently, after gaining the confidence, A1 and other accused have again approached the de-facto complainant and made her to invest Rs.15 lakhs and subsequently Rs.25 lakhs and

then Rs.10 lakhs alleging that the amount she has invested earlier is not sufficient.

15. As observed and held by the Supreme Court in **R.K. Vijayasarathy v. Sudha Seetharam**[1], the ingredients to constitute an offence under Section 420 are as follows:

> "(*i*) a person must commit the offence of cheating under Section 415; and
>
> (*ii*) the person cheated must be dishonestly induced to:
>
> (*a*) deliver property to any person; or
>
> (*b*) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

16. The conduct of the petitioners in respect of the ingredients under Section 420 IPC would reveal that when A1 has told the de-facto complainant that she has been doing business in crude oil, the de-facto complainant has not checked whether the petitioner/A1 has really doing the business in oil as alleged, but since A1 has made her to believe, she has blindly invested the money. When the petitioners and other accused have failed to return the

[1] (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454

money, on her enquiry the de-facto complainant has realized that the accused are not doing any business, which clearly go to show that the petitioners and other accused have made up their mind from the inception to deceive the de-facto complainant and made the de-facto complainant that they are doing business in oil to see that she invests some money.

17. It is vehemently submitted by the learned counsel for the petitioners that even if the allegations of the de-facto complainant that the petitioners and others have borrowed money is correct, it is a case of recovery of money and criminal liability cannot be fastened on her. In case if it is simple a case of recovery of money, the de-facto complainant cannot use the criminal Court for recovery of the said money by way of filing a complaint. However, it is not the simple case of recovery of money, but it is a case where A1 from the inception has hatched a plan to get the money from the de-facto complainant and was successful as discussed above.

18. If really A1 and other accused were doing business in oil and if they are not able to return the money either on account of sustaining loss in business or for other reason, certainly there is a case for the petitioners, but as discussed above, the petitioners and other accused have never done any business and the entire story is created for seeking investment from the de-facto complainant and as per the plan, they have not paid back the amount to the de-facto complainant.

19. In **M/s. Neeharika Infrastructure Private Limited vs. State of Maharashtra**[2], a Three-judge Bench of the Apex Court laid certain conclusions for the purpose of exercising powers by High Court under Section - 482 Cr.P.C and also Article - 226 of the Constitution of India, which are as under:

> "….
> iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
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> v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
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> vi) Criminal proceedings ought not to be scuttled at the initial stage;

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[2] AIR 2021 SC 1918

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

> xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

20. In view of the above authority and considering the circumstances discussed above, this Court is of the opinion that there is a strong prima facie material for fastening the criminal liability under Section 420 IPC against the petitioner/A1 and the juvenile delinquent. Therefore, the provision under Section 482 Cr.P.C., cannot be invoked to quash the proceedings against the petitioner/A1 in C.C.No.817 of 2014.

21. In the result, both the criminal petitions are dismissed.

Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 27.09.2022
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