

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

WRIT PETITION No.14093 of 2016

ORDER:

This Writ Petition is directed questioning the initiation of criminal proceedings against the petitioner, who is arrayed as accused in C.C.No.405 of 2016 on the file of the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad.

2. Heard Sri A.Sharat Chandra, learned counsel, who argued on behalf of Sri Parsa Ananth Nageswar Rao, learned counsel on record for the petitioner, as well as learned Government Pleader for Home who is representing respondent Nos.1 and 2. Notice sent to respondent No.3 returned with an endorsement "left".

3. Making his submission, learned counsel for the petitioner contends that the whole case arises out of a contract that was entered into between the petitioner and respondent No.3 and breach of contract, if any, is a subject matter for civil adjudication and therefore, initiation of criminal proceedings against the petitioner is undesirable. Learned counsel states that the ingredients

of either Section 420 or 506 IPC were not made out and even on that ground, the proceedings are liable to be quashed.

4. On the other hand, learned Government Pleader for Home states that unless and until the case is put on trial, a decision cannot be taken whether a case is made out under Sections 420 and 506 IPC or not and therefore, the Writ Petition is not maintainable.

5. The matrix of the case, as could be perceived through the contents of the charge sheet, is that respondent No.3-defacto complainant, with the consent of the buyer, KJS Cement Limited, entered into a RB-1 Coal Fines Sale and purchase contract on 31.3.2014. In the said contract, it is clearly mentioned that Rs.2,250/- per ton would be transferred into the account of respondent No.3 as commission soon after receiving the amount from the buyer. Initially, the petitioner received contract for 30,000 metric tons and thereby, he received a sum of Rs.2,29,68,750/-. He sent a mail to that effect to respondent No.3. The amount was transferred into the account of the petitioner. As per the contract, the total

commission that has to be paid to respondent No.3 is Rs.82,68,750/-. The petitioner issued a cheque dated 11.4.2014 for an amount of Rs.20 lakhs in favour of respondent No.3 and promised that he would deposit another sum of Rs.20 lakhs into the account of respondent No.3. He also assured that the remaining balance would be paid immediately. However, when the cheque was presented, it was returned with an endorsement "funds insufficient". When respondent No.3 contacted the petitioner, the petitioner threatened him with dire consequences.

6. The whole case, as submitted by the learned counsel for the petitioner, rests upon the terms and conditions of the contract entered into and the understanding between the petitioner and respondent No.3.

7. Making a submission that in the cases like these, initiation of criminal proceedings is undesirable, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case between **Vesa Holdings Private Limited and another Vs. State of**

Kerala and others¹ wherein their Lordships at paras 12 and 13 of the judgment held as follows:-

“12. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words 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 the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

¹ (2015) 8 SCC 293

In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

8. By the above decision, it is clear that when breach of contract is projected, the same cannot be termed to be an offence of cheating where there was no deception at the very inception of the contract. Further more, as submitted by the learned counsel for the petitioner, the dispute is purely civil in nature.

9. The settled proposition of law is that criminal proceedings are not short cut for other remedies. Though it is narrated in the charge sheet that respondent No.3

was threatened by the petitioner, at least the place where such an incident happened, the date and time were not mentioned. Even respondent No.3 did not mention those essential details in his statement given to Police under Section 161 Cr.P.C. Thus, even if the proceedings are permitted to be continued against the petitioner, the net result would not favour respondent No.3. Further more, as the dispute is purely civil in nature, continuation of proceedings against the petitioner would certainly amount to abuse of process of Court. Therefore, this Court considers it desirable to quash the proceedings.

109. Resultantly, this Writ Petition is allowed. The proceedings that are pending against the petitioner who is arrayed as accused in C.C.No.405 of 2016 on the file of the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

11. As a sequel, pending miscellaneous applications, if any, shall stand closed.

Dr.CHILLAKUR SUMALATHA, J

08.12.2022
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