

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA



CRIMINAL PETITION No.2377 of 2020

Between:

1. M/s Sarvani Diesel Engineering Company, (but in the FIR shown as SRAVANI Diesel Engineering Company) Rep. by its Managing Prop., Mannava Vijaya Lakshmi, Plot No. 68, Phase III, Indira Auto Nagar, Guntur, AP
2. Mannava Vijaya Lakshmi, W/o Mannava Bala Gangadhar Tilak, aged about 60 years, R/o 4-5-66/D, Chandramouli Nagar, Guntur, AP
3. Mannava Pradeep, S/o Mannava Bala Gangadhar Tilak, aged about 38 years, R/o 4-5-66/D, Chandramouli Nagar, Guntur

...Petitioners/Accused Nos.1-3

AND

1. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court for the State of Andhra Pradesh at Amaravati
2. Bosch Limited, Rep. by authorized officer Manoj Kumar Pendyala, Reg. Office: Hosur Road, Adugodi, Bangalore


...Respondents/Complainant

Petition filed under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the records and examining the same by quashing the FIR in Crime No. 296 of 2019, dt.29-08-2019 on the file of the PS Pedakakani, Guntur District against the petitioners herein U/Sec 120-B, 406, 420, 423, 506 r/w 34 IPC 156(3) CrPC, basing on the false complaint of the 2nd respondent herein, as highly arbitrary, illegal and contrary to settled propositions of law, On a private complaint filed by the 2nd Respondent before the Honourable VI Additional Magistrate, Guntur.

I.A. NO: 1 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all further proceedings including the arrest of the Petitioners in connection with FIR in Crime No. 296 of 2019, dt.29-08-2019 of PS Pedakakani, Guntur District pending disposal of the above Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri Gorantla Sri



Ranga Pujitha, Advocate for the Petitioners and the Public Prosecutor on behalf of the Respondent No.1 and of Sri Thota Ramakoteswara Rao, Advocate for the Respondent No.2.

The Court made the following:

APHC010169622020



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]

THURSDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 2377/2020

Between:

Rep By Its Managing Prop., Mannava Vijaya ...PETITIONER/ACCUSED(S)
Lakshmi and Others

AND

The State Of Andhra Pradesh Rep By The ...RESPONDENT/COMPLAINANT(S)
Public Prosecutor and Others

Counsel for the Petitioner/accused(S):

1. GORANTLA SRI RANGA PUJITHA

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)

2. THOTA RAMAKOTESWARA RAO

The Court made the following:

ORDER:

The instant petition under Section 482 of Code of Criminal Procedure, 1973¹ has been filed by the Petitioners/Accused Nos.1 to 3, seeking to quash the proceedings against them in Crime No.296 of 2019 on the file of Pedakakani Police Station, Guntur Urban registered for the offences punishable under

¹For short 'Cr.P.C'

Sections 420, 406, 120-B, 423 and 506 read with 34 of the Indian Penal Code, 1860.²

2. The facts mentioned in the complaint, in brief, are as follows:

a. On a private complaint filed by the complainant before the learned VI Additional Magistrate, Guntur, which was forwarded to the Police, the present crime has been registered against the Petitioners/Accused Nos.1 to 3.

b. Complainant is a Public Limited Company. Accused No.1 is a firm, Accused No.2 is its Proprietor and Accused No.3 is the Authorized Signatory of A.1 firm. A.1 firm has been running business with the Complainant-firm, which is engaged in manufacturing and trading of diesel and gasoline fuel injection system and automotive aftermarket products, etc., on credit basis.

c. Accused Nos.1 to 3 are the distributors for the complainant under an agreement dated 24.08.2015. As per the said agreement, the Complainant has delivered the products to the accused under various invoices. In spite of receiving the goods under various invoices, and repeated demands, the accused had not paid any amount to the Complainant. Accused are liable to pay an amount of Rs.9,04,58,449.04 ps., to the Complainant.

d. Accused entered into a Memorandum of Understanding on 04.04.2019 and the Complainant had given an opportunity to the accused to pay the outstanding amount, by deducting the interest. Accused deceitfully and fraudulently induced the Complainant to come to an understanding and signed on the MoU, but had no intention to comply with the same.

²For short 'I.P.C.'

e. Accused conspired together and with a fraudulent and dishonest intention from the beginning had thrown the amounts into their pockets and thereby cheated the Complainant without making any payments and even committed criminal breach of trust. As such, the Complainant lodged the present complaint against the accused.

Grounds Sought for Quashment:

3. Being aggrieved by the registration of the said crime, Petitioners/ Accused Nos.1 to 3 filed the present petition seeking quashment of the proceedings, on the following grounds:

- a. Though Petitioners had not placed any purchase orders, the Complainant started billing from the year 2011. Though Petitioners sent various communications requesting the Complainant not to bill any materials without mail confirmation/purchaser orders, the Complainant continued to bill the material without the confirmation of the Petitioners and gave a false assurance that they would provide additional support, discounts and interest reversal on Petitioner No.1 meeting the annual turnover targets, but the Complainant failed to do so.
- b. In order to meet unreasonable and very high sales targets, Petitioners started selling materials to the retailers at a lower cost. Due to market down and implementation of GST in 2017, amount of sales reduced drastically, but to the shock and surprise of the Petitioners, in July, 2017, complainant informed the Petitioners that the Company Policy changed and that the Petitioners will be supplied material, only on 50% payment of the billing.

- c. Petitioners signed on the MoU on 04.04.2019 under pressure and coercion of the Complainant, which is not binding on the Petitioners. The present complaint has been filed based on the false allegations and with an ulterior motive to harass the Petitioners. The present dispute is a contractual/civil dispute and invocation of criminal proceedings is an abuse of process of law.
- d. Respondent No.2 by using its influence, has been trying to have the Petitioners arrested, with a view to blackmail the Petitioners to meet its illegal demands.

Arguments Advanced at the Bar

4. Heard Sri D. Srinivas, learned Senior Counsel representing Ms.Gorantla Pujitha, learned counsel for the Petitioners, Ms.D.Prasanna Lakshmi, learned Assistant Public Prosecutor representing the State/Respondent No.1 and Sri Thota Ramakoteswara Rao, learned counsel for Respondent No.2.

5. Learned Senior Counsel for the Petitioners would submit that it is purely a civil dispute, which was converted as a criminal case and that Petitioner/ Accused No.3 has no role to play in the alleged crime. It is also stated that Petitioner/Accused No.2 is the Managing Partner of the Company and she died, hence, Petitioner/Accused No.3 being the Authorized Signatory cannot be made liable. He would further submit that the complaint does not disclose any *prima facie* offence against the Petitioners and the present complaint has been filed with an oblique motive and malicious intention to coerce the Petitioners to accept the illegal demand of Respondent No.2. Hence, prayed to quash the proceedings against the Petitioners.

6. *Per contra*, learned counsel for Respondent No.2 and the learned Assistant Public Prosecutor, in unison, would submit that, after investigation in the above crime, charge sheet has been filed and the matter is at the stage of trial and that there are clear allegations against the Petitioners which would attract the alleged offences. It is also contended that when there are disputed facts to be revealed during trial, this Court cannot exercise its jurisdiction under Section 482 Cr.P.C., at this stage. Therefore, Court cannot quash the proceedings against the Petitioners. Hence, pray for dismissal of the petition.

Point for Determination

7. Having heard the submissions of the learned counsel representing both the parties, now the point that would emerge for determination is:

Whether there are any justifiable grounds for quashment of proceedings against the Petitioners/Accused Nos.1 to 3 in Crime No.296 of 2019 on the file of Pedakakani Police Station, Guntur Urban registered for the offences punishable under Sections 420, 406, 120-B, 423 and 506 read with 34 IPC?

Determination by the Court

8. A bare perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) *to give effect to any order under the Code or*, (ii) *to prevent abuse of the process of any Court or*, otherwise (iii) *to secure ends of justice*. A court while sitting in Section 482 jurisdiction is not functioning as a trial court, court of appeal or a court of revision. A court under Section 482 must exercise its powers to do real and substantial justice, depending on the facts and

circumstances. This Court in **Gade Venkateswara Rao v. State of A.P.**,³ encapsulated this principle in the following terms;

*“8. Section 482 Cr. P.C. powers must be invoked for compelling reasons of abuse of process of law or glaring injustice or violation of sound principles of criminal jurisprudence. Specific circumstances warranting invocation of powers under Section 482 have been strongly emphasized in a catena of decisions. To cite a few, **State of Haryana v. Bhajanlal**⁴ at paras 102 and 103, **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra**⁵ at para 57.”*

9. It is a well settled principle of law that when a prosecution is sought to be intervened by quashment, the test to be applied is to see whether the uncontroverted allegations as made, *prima facie* establish the offence alleged or not. Admittedly, in the instant case, Accused No.1 is Proprietary Concern. Accused No.2 is the Proprietor, who died, and Accused No.3 is the Authorized Signatory. Perusal of the material on record would disclose that Respondent No.2 appointed the A-1 as Mico Distributor of their products w.e.f 20.01.2003. Vide Clause 21 of the said appointment agreement, if any disputes between the parties could not be resolved by mutual negotiations, they may be referred to Arbitration.

10. Admittedly, on 04.04.2019, both parties agreed for certain terms, which was also signed by Accused No.3, who is the Authorized Signatory of A.1- Company. It is not in dispute that material has been supplied by Respondent No.2 to the Petitioners and the Petitioners must pay an outstanding amount of Rs.9,04,58,449.04 ps., to the Complainant. To that effect, legal notices were issued to Accused No.2 on 20.09.2018 and 03.05.2019 demanding to pay the

³ 2023 SCC OnLine AP 4021

⁴ 1992 Supp (1) SCC 335

⁵ (2020) 10 SCC 118

outstanding amount. But, as Accused No.2 died on 31.07.2020, a notice dated 21.09.2020 was issued by Respondent No.2 under Section 21 of the Arbitration and Conciliation Act, 1996 addressing a copy to Accused No.3, initiating Arbitration proceedings against Petitioners, as they failed to adhere to the terms of the settlement talks and nominated Arbitrator to preside over the Arbitration to adjudicate all the disputed that have arise between them.

11. Though it is contended by the learned counsel for the Petitioners that Petitioner/Accused No.3 cannot be held liable to pay the outstanding amount, Para No.2 of the Arbitration Notice dated 21.09.2020 would clearly show that Accused No.3 being the son of Accused No.2 was engaged in conducting the business and to deal with the customers and clients on behalf of Accused No.2. As such, Accused No.3 is fully aware and participated in all transactions between Respondent No.2 and A.1. In such a case, there is no merit in the contention that Accused No.3 cannot be held liable for the alleged crime.

12. It is further contended by the learned counsel for the Petitioners that, as the present case is purely civil/contractual in nature and arbitration proceedings have already been initiated by Respondent No.2, the proceedings against the Petitioners can be quashed. In support of his contention, learned counsel for the Petitioners relied on the decisions of the Hon'ble Apex Court rendered in **Indian Oil Corporation v. NEPC India**⁶, and **Anand Kumar Mohatta and another v. State (Govt. of NCT of Delhi) and another**⁷.

⁶ (2009) 6 SCC 736

⁷ (2019) 11 SCC 706

13. In **Indian Oil Corporation** (referred supra), the Hon'ble Apex Court made pertinent observations concerning the application of jurisdiction under Section 482, which reads thus;

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

(emphasis supplied)

14. The Hon'ble Apex Court traced the history of litigation between the parties in **Indian Oil Corporation** (referred supra), and stated that defences that are to be checked at the time of trial, cannot be justifications sought in a quash petition, in the following terms;

"15. Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. It has filed C.S. No.425/1997 in the Madras High Court and O.S. No.3327/1998 in the City Civil Court, Chennai seeking injunctive reliefs to restrain the NEPC India from removing its aircrafts so that it can exercise its right to possess the Aircrafts. It has also filed two more suits for recovery of the amounts due to it for the supplies made, that is CS No.998/1999 against NEPC India (for recovery of Rs.5,28,23,501/90) and CS No.11/2000 against Skyline (for recovery of Rs.13,12,76,421/25), in the Madras High Court. IOC has also initiated proceedings for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.

16. The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. They have taken pains to point out that the aircrafts are continued to be stationed at Chennai and Coimbatore Airports; that the two engines of VT-NEK though removed from the aircraft, are still lying at Madras Airport; that the two DART 552 TR engines of VT-NEJ were dismantled for the purpose of overhauling/repairing; that they were fitted to another Aircraft (VT- NEH) which had been taken on lease from 'M/s Aircraft Financing and Trading BV' and that the said Aircraft (VT-NEH) has been detained by the lessor for its dues; that the two engines which were meant to be fitted to VT-NEJ (in places of the removed engines), when sent for overhauling to M/s Hunting Aeromotive, U.K., were detained by them on account of a dispute relating to their bills; and that in these peculiar

*circumstances beyond their control, no dishonest intent could be attributed to them. But these are defences that will have to be put forth and considered during the trial. **Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, we are only concerned with the question whether the averments in the complaint spell out the ingredients of a criminal offence or not.***

(emphasis supplied)

15. In view of the above judgment, contention of the Petitioners that, as the present case is purely civil/contractual in nature and arbitration proceedings have already been initiated by Respondent No.2, the proceedings against the Petitioners can be quashed, cannot be considered as the points raised by them in support, are defences which should be put to test in the due course of trial before the trial Court. That apart, in **Indian Oil Corporation** (referred supra), as well, the Hon'ble Supreme Court reiterated the position in **Rajesh Bajaj v. State (NCT of Delhi)**,⁸ wherein it was held that a complaint in its body need not verbatim reproduce all the ingredients, and in many cases, the offence of cheating is committed during the course of commercial or money transactions. In this context, it was observed as;

*"11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. **The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.***

(emphasis supplied)

16. It is submitted by the learned counsel for Respondent No.2 that charge sheet has been filed in the present case and the matter is coming up for cross

⁸ (1999) 3 SCC 259

examination of P.W.1 and the present petition is filed to quash the proceedings against the Petitioners in Crime No.296 of 2019 on the file of Pedakakani Police Station, Guntur Urban. The law on this point is no more res integra. Mere filing of charge sheet during pendency of a petition seeking quashment of F.I.R., would not render the petition infructuous, as held by the Hon'ble Apex Court in **Anand Kumar** (referred *supra*) and **Joseph Salvaraj A. v. State of Gujarat**⁹

17. This Court is of the view that the Petitioners raised several contentions touching the factual aspects of the matter and this is not the stage to decide the veracity of the said allegations. Truthfulness of the said contentions can be revealed during the course of trial. Evaluation of the merits of the allegations made on either side cannot be resorted to at this stage, as it would be premature and the trial Court should evaluate the case on merits. Hence, this Court concludes that the allegations made against the Petitioners, in this case, are *prima facie* sufficient enough for the trial to be taken up. Thereby, the proceedings against the Petitioners are not liable to be quashed and hence, the petition lacks merit

18. In the result, the Criminal Petition is dismissed, without prejudice to the defence available in future.

Pending miscellaneous petitions, if any, shall also stand closed.

⁹ 2011 (15) SCC 449

Sd/- A. VENU GOPAL RAO
ASSISTANT REGISTRAR

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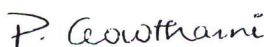

SECTION OFFICER

One fair copy to Hon'ble Smt Justice VENKATA JYOTHIRMAI PRATAPA
(for her Ladyships kind perusal)

To

1. The VI Additional Magistrate, Guntur, Guntur District.
2. The Station House Officer, Pedakakani Police Station, Guntur, Guntur District.
3. One CC to Sri Gorantla Sri Ranga Pujitha, Advocate [OPUC]
4. Two CCs to The Public Prosecutor, High Court of Andhra Pradesh at Amaravathi [OUT]
5. Eleven (11) L.R. Copies.
6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
7. The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravathi.
8. **Three CD Copies**

TK
Cnr



HIGH COURT

DATED:29/02/2024

ORDER

CRLP.No.2377 of 2020



DISMISSING THE CRIMINAL PETITION

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