

* THE HON'BLE SRI JUSTICE K. SURENDER
+ CRL.P. No. 10439 of 2022

% Dated 10.01.2023

#Mohammed Hassan & Another ... Petitioners

And

\$ The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & Another

... Respondents

! **Counsel for the Petitioners:** Sri. Mohd Gulam Rassol

^ **Counsel for the Respondents:** Sri S.Sudershan,

Additional Public Prosecutor for R1

Sri A.L.Raju for R2.

>**HEAD NOTE:**

? **Cases referred**

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.10439 OF 2022

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioners in C.C.No.1470 of 2019 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, for the offences under section 420, 406, 354, 506 of IPC.

2. The case of the prosecution is that A1 promised to construct a residential building in the plot of the 2nd respondent situated at Road No.10 Banjara Hills. Initially an amount of Rs.10.00 lakhs was collected and promised to complete the construction within a time frame of 18 months. Total amount of Rs.1,06,20,628/- was given by the complainant and according to him, construction was worth only Rs.50.00 lakhs. However A1 absconded without completing the work. The complainant/2nd respondent traced the 1st petitioner and pursued with the payment of remaining amount. On 20.09.2018 at 7.00 p.m, both the petitioners entered into the house of complainant and abused the complainant and went away with the

complainant's hand bag. The hand bag contained blank cheque books and other important documents. Suspecting that the cheques would be misused, 'stop payment' instructions were given to the Bank. Again on 07.10.2018, both the petitioners trespassed into the house of the complainant along with some others and abused him and his wife. The petitioners threatened that they would eliminate all the family members. After the said incident, complaint was lodged with the Banjara Hills Police Station on 10.10.2018. The Police, Banjara Hills P.S called the petitioner, who stated that the MOU documents and cheques were all destroyed. However, one cheque for Rs.5.00 lakhs was presented, but the same was returned unpaid for the reason of the 'stop payment' directions from the complainant. On 04.07.2019 around 9.30 a.m, two persons stopped the complainant and threatened to transfer an amount of Rs.80.00 lakhs in the name of the 1st petitioner, failing which, the said persons threatened of dire consequences. Aggrieved by the said acts, a complaint was again filed with the Banjara Hills Police Station on

05.07.2019. The police having investigated the case, filed charge sheet.

3. Learned counsel appearing for the petitioners would submit that though there was settlement in between the parties on 07.09.2019 and 05.08.2019, the petitioners have been falsely implicated and prosecuted. Since there is an outstanding, the complainant has deliberately made false accusations of criminal trespass and filed the case.

4. On the other hand, learned counsel for the 2nd respondent would submit that the petitioners have trespassed into the premises of the complainant and assaulted the complainant and his wife amounting to criminal offence of trespass and outraging the modesty of woman. He further submits that the amount was taken for the purpose of construction and the petitioners have misappropriated the amount and cheated the complainant.

5. Having perused the record, the allegation is that an amount of Rs.1,06,20,628/- was taken by A1 for construction. However, the completed construction work was estimated as only Rs.50.00 lakhs by the complainant.

The said allegation has no scientific basis or any logical basis to assess that the construction amount was only to the extent of Rs.50.00 lakhs. The quality and cost of material used for construction would have huge variance in terms of prices, for which reason, only a scientific method or actual construction cost of materials and labor can only divulge the details of the expenditure incurred. Admittedly, when the construction was done, the question of having any criminal intention from the inception to cheat is not made out. For the said reason, no offence is made out under Section 420 of IPC.

6. For the very same reasons mentioned in the above paragraph regarding the offence not being made out under Section 420 of IPC, the question of criminal misappropriation does not arise. A vague statement that construction cost was only Rs.50.00 lakhs when Rs.1.06,20,628/- was given, cannot form basis to frame a charge under Section 406 of IPC.

7. The argument of the learned counsel for the petitioners that though the alleged incident of trespass and snatching away the bag had taken place nearly eight months prior to

the complaint, it is highly improbable that no complaint was lodged at the earliest point of time. All the incidents narrated in the complaint have been falsely made up for the purpose of prosecuting the petitioners in a criminal offence.

8. As seen from the complaint, though there arises any amount of suspicion regarding the correctness of the allegations, in view of the differences and disputes between the parties, it cannot be decided whether such an incident of criminal trespass and assault had taken place or not in the quash proceedings. Only when the witnesses are examined by the prosecution and the accused have a chance of cross-examining the witnesses, the court would be in a position to ascertain the correctness or otherwise of the allegations made by the complainant.

9. In view of the above discussion, the prosecution under Section 420 and 406 of IPC are quashed. However the trial Court is at liberty to frame appropriate charges on the basis of the allegations mentioned in the complaint.

10. With the above directions, the Criminal Petition is partly allowed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 10.01.2023

Note: LR copy to be marked.

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10439 OF 2022

Date: 10.01.2023.

kvs

