

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Petition No.6007 of 2023

Order:

The petitioners herein are accused Nos.1 and 3 in C.C.No.3634 of 2021 on the file of the learned II Additional Chief Metropolitan Magistrate, Visakhapatnam District, registered for offences punishable under Sections 420 and 188 read with 34 of Indian Penal Code.

2. The allegations against the petitioners herein and the other accused in the said case are that the petitioners had been administering Covid rapid tests to patients and collecting amounts far higher than the rates fixed by the Government.

3. The said allegations would not in any manner make out a case under Section 420 of Indian Penal Code, as there is no mention of any dishonest inducement by any of the accused. Mere charging of a price higher than the rate prescribed by the Government, would not amount to an offence under Section 420 of Indian Penal Code.

4. In the case of Section 188 of Indian Penal Code, the allegations in the charge sheet would definitely make out a case under Section 188 of the Indian Penal Code. However, Section 195 of Cr.P.C stipulates that a complaint under Section of 188 of Indian Penal Code can be made only by an authority whose order has been flouted or an

authority to whom the authority issuing the order is sub-ordinate. In the present case, the complaint was given by the Sub-Inspector of Police. Consequently, the bar under Section 195 of Cr.P.C would be applicable and the present complaint would not be maintainable.

5. Further, in the affidavit filed by the complainant, he categorically mentioned that the doctors have charged an amount of Rs.750/- from his friend namely Mohan for Covid test. It is stated that there was a misunderstanding and miscommunication between him and his friend with regard to the charges collected by the hospital and it is his fault to lodge a complaint against the petitioners herein and others that they charged an amount of Rs.750/- for Covid test. It is further stated by the complainant that he inclined to withdraw the case which has been filed as against the petitioners herein and others in CC No.3634 of 2021 on the file of the learned II Additional Chief Metropolitan Magistrate, Visakhapatnam. Without going into the said aspect, where the complainant has filed an affidavit, going by the factual aspects, an offence under Section 420 IPC would not attract as against the petitioners herein for the reason that there is no dishonest intention on their part right from the inception. It is quite evident that the complainant's friend namely Mohan has obliged to give the said amount to the doctors for the treatment given to his son by the petitioners herein. Viewed from any angle, the offence under Section

420 IPC would not be made out against the petitioners herein. Further, the complainant himself has filed an affidavit to the extent that he is not willing to proceed with the case. When the offences that are alleged under Sections 188 and 420 IPC are not made out against the petitioners herein, allowing them to face rigmarole of criminal trial is nothing but abuse of process of Court.

6. Accordingly, this Criminal Petition is allowed quashing C.C.No.3634 of 2021 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam District, against the petitioners herein.

As a sequel thereto, the miscellaneous applications, if any, pending in this Criminal Petition shall stand closed.

Date:16.08.2023
Nsr

K. SREENIVASA REDDY, J.

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