

# **Tek Systems Global Services Pvt., Ltd., vs Naveen Kumar Mamidala on 14 February, 2020**

**Author: G. Sri Devi**

**Bench: G. Sri Devi**

HONOURABLE JUSTICE G. SRI DEVI

CRL.P. Nos. 11177 of 2015, 11187 of 2015 & 1466 of 2016

COMMON ORDER:

Criminal Petition No.11177 of 2015 is filed by accused No.1, Criminal Petition No.1466 of 2016 is filed by accused No.2 and Criminal Petition No.11187 of 2015 is filed by accused No.3.

Since all these three Criminal Petitions are filed under Section 482 of Cr.P.C. to quash the proceedings initiated against the petitioners/A-1 to A-3 in C.C.No.947 of 2015, on the file of the XXV Metropolitan Magistrate, Kukatpally at Miyapur, they are being disposed off by this common order.

Criminal Petition No.11177 of 2015 shall be treated as the leading Criminal Petition.

The facts in issue are that the 1st respondent herein filed a private complaint under Section 200 of Cr.P.C., before the XXV Metropolitan Magistrate, Cyberabad at Miyapur, against the petitioners/A.1 to A3, which was referred to the police under Section 156 (3) Cr.P.C for investigation and report. Basing on the said reference, the Police, Madhapur Police Station registered a case in Crime No.803 of 2014, for the offences punishable under Sections 420 and 120-B of I.P.C. Eventually, the police, after investigating into the matter, filed a final report referring the case as "Action Drop". Against which, a protest petition was filed by the 1st respondent/complainant. Thereafter, the learned Magistrate, after perusing the protest petition, evidence and documents marked, took cognizance of the case and issued summons to accused 1 to 3. Challenging the same, all the three Criminal Petitions came to be filed by the petitioners/A-1 to A-3.

A perusal of the private complaint filed by the 1st respondent would show that the 1st respondent was an employee of the petitioner/Accused No.1 organisation (hereinafter referred to as "Accused organization/company") and joined as a Senior Software Engineer on 06.08.2009 with EMP I.D.No.1146 and he worked hard for the development of the organization. The 1st respondent had consistently produced excellent quality work by exhibiting the traits of productivity, motivation, dedication and self-reliance. He was undoubtedly reliable and consistently met deadlines and production goals. The accused organisation depended on his optimal efforts since the 1st respondent was ethically motivated to provide an honest day for his wages. The 1st respondent took pride in his abilities and also the accused No.1 organisation find frequent recognition for his perseverance at on-site job which reinforced his actions at work which resulted in promotion of position as Senior

Consultant and Client Trainer. It is also stated that the 1st respondent was doing on a low pay scale and was searching for potential opportunities. Thereafter, the 1st respondent received a call from a prestigious organisation i.e., M/s. Tech Mahindra Limited, Hyderabad, offering amazing benefits and asking him to join in their organisation. The 1st respondent submitted his resignation to accused organisation and accused No.3 had accepted his resignation and relieved him from the employment specifically mentioned in the experience/service letter in writing as follows:

"During the tenure of his employment, his interpersonal and communication skills have allowed him to develop productive working relationship with both our customers and colleagues. He has shown remarkable dedication, enthusiasm and a positive attitude towards his job responsibilities. I wish him the best of luck and recommend him for employment without reservation."

Subsequently, the 1st respondent had joined in M/s. Tech Mahindra Limited, Hyderabad on 25.06.2014. As a part of joining formalities and as per the policy of M/s. Tech Mahindra Limited, background verification of the each employee in the organisation is conducted. As a normal practice, a reputed agency is assigned to handle the task of back ground verification and the same was done to verify the 1st respondent's details with his previous employer i.e., accused organization. After due verification and referral check, the Accused organization has submitted a report to M/s. Tech Mahindra Limited, that the reason for the 1st respondent for leaving employment is "Involuntary termination". It is further stated that the accused gave a baseless and highly derogatory report by suppressing the real fact of giving service/experience letter to the 1st respondent and cheated him to deprive his right of better employment of his option with a dishonest intention and thereby the accused caused wrongful loss to the 1st respondent. It is also stated that the accused with a dishonest intention concealed the real fact of issuance of service/experience certificate to the 1st respondent while relieving from the company and with a deceptive motive misrepresented to M/s. Mahindra Satyam about the demeanour of the 1st respondent in another proceedings is nothing but a cheating. The 1st respondent got issued a legal notice, dated 13.09.2014, calling upon the accused to give an unconditional apology in writing and to correct the conflict of interest that breaches the duty of loyalty and also calling upon the accused to show cause as to why the complainant should not proceed against the accused by way of a criminal prosecution for defamation and also by way of a suit for damages. Though notice was received by the accused on 15.09.2014, they did not comply with the demand made in the notice. It is also stated that accused Nos.1 to 3 issued experience/service letter to the 1st respondent that he is recommended for employment at any place without any reservation and later dishonestly contradicted their own statements/reports and discovered conflict of interest/ impropriety where the accused are bound to protect their declaration expressed in the form of a written document and which is a valuable property to the 1st respondent instead violated. The legal contract has been damaged by the accused and is very clear from their actions, which reflect their ill intentions and criminal designs to cheat the 1st respondent and as such they have committed the offence of cheating and criminal conspiracy.

Learned Counsel for the petitioners/accused submitted that the 1st respondent/complainant was working with the company as a Senior Software Engineer from 10.08.2009 till 26.07.2013. On 15.11.2012, a complaint of sexual harassment was received by the company from a woman employee

of the company against the 1st respondent and that on 19.11.2012, the officials of the company called the 1st respondent and gave him a strong warning against his misconduct towards his colleague and also against misuse of his official e-mail ID for unofficial purposes. On 04.07.2013, the said woman employee again approached the officials of the company and pointed out that the 1st respondent was continuously harassing her, despite receiving a strict warning and that the said woman employee filed a complaint before the Police, Madhapur, against the 1st respondent, which was registered as Crime No.636 of 2013. Thereafter, the 1st respondent sent an email to the company, on 22.07.2013, stating that he was arrested and released on bail with a condition that he shall be 3 K.Ms. away from the premises of the person, who raised the complaint and requested to either grant work from home or mark it as leave. On 26.07.2013, the Manager of the company informed the 1st respondent about the disciplinary action as well as termination. In response to the same, the 1st respondent vide e-mail dated 26.07.2013 admitted that he used to have a close rapport with the woman employee. On 02.08.2013, the company issued a reply, whereby the 1st respondent was informed that a copy of e-mail dated 26.07.2013 shall be kept in his employment file and he was further informed that due to his misconduct, the petitioner company decided to terminate his employment and his last day of employment shall be 26.07.2013. Subsequently, the 1st respondent repeatedly begged upon the petitioner company to issue him the experience and relieving letters. On 26.05.2014, purely on humanitarian grounds and without accepting the alleged resignation of the 1st respondent, nor the reasons thereof, the company issued experience and relieving letters. On 07.07.2014, an e-mail was received by the company from one Shital Throat of KPMG with respect to background verification of the 1st respondent, wherein the details of the employment of the 1st respondent including the reasons for his leaving the company as per its records were sought and that on 09.07.2014, the company gave a reply to the said email that the reason for leaving was 'involuntary termination'. On 13.09.2014, the 1st respondent issued a legal notice to the company asking for an un-conditional apology in respect of the report/response submitted by the company to KPMG. On 13.10.2014, the company got issued a reply to the 1st respondent. On 25.11.2014, the 1st respondent preferred a private complaint against the company before the learned Magistrate for the offences punishable under Section 420 and 120-B of I.P.C. and the said complaint was referred to the Police, Madhapur, for investigation and that after conducting due investigation, the Police, Madhapur, filed final report referring as "Action is dropped". Aggrieved by the same, the 1st respondent filed protest petition and after recording evidence the learned Magistrate took cognizance of the case.

It is also submitted by the learned Counsel for the petitioners/accused that the criminal proceedings initiated against the petitioners are gross abuse of process of law and the allegations in the complaint do not disclose any offence. It is also stated that the complaint is not maintainable as the ingredients of Section 420 and 120B of I.P.C. are not made out against the accused. On the request made by the 1st respondent and on humanitarian grounds only, the company issued the experience and relieving letters. It is also stated that from the beginning the accused have no dishonest intention towards the 1st respondent. The learned Magistrate without considering the facts and the evidence placed before it, allowed the protest petition in a mechanical manner. It is also stated that the impugned order is bereft of any reasons. In support of his contentions, he relied on the following citations.

1. V.P.Shrivastava v. Indian Explosives Limited and others<sup>1</sup>

2. Chaman Lal and others v. State of Punjab and another<sup>2</sup>

3. Anil Mahajan v. BHOR Industries Ltd. And another<sup>3</sup>

4. Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others<sup>4</sup>

5. Ashok Chaturvedi and others v. Shitul H.Chandhani and another<sup>5</sup> Reiterating the contentions made in the complaint, learned Counsel appearing for the 1st respondent/complainant submits that the relationship between the 1st respondent/de facto complainant and the company is not strained during his voluntary resignation from the employment. He further submits that the Accused No.2 on behalf of the company gave an adverse report about the demeanour of the de facto complainant contradicting their own certificates that he was 'involuntarily terminated' and 'not eligible for rehire' which lead to termination from employment of the company. He further submits that Accused No.3 relieved the 1st respondent/de facto complainant from employment with appreciations in writing on 26.07.2013 and on 09.07.2014 they gave an adverse feed back to M/s Tech Mahindra Limited and (2010) 10 SCC 361 (2009) 11 SCC 721 (2005) 10 SCC 228 (1976) 3 SCC 736 (1998) 7 SCC 698 that it goes to show that Accused Nos.2 and 3 together criminally conspired and dishonestly, intentionally damaged the bright career of the 1st respondent/complainant. He further submits that the 1st respondent/complainant was acquitted in the case i.e., C.C.No.171 of 2014 on the file of the XXV Metropolitan Magistrate, Kukatpally, filed by one Bezawada Sirisha, woman employee of the A-1 company with regard to sexual harassment. He further submits that when the employment relieving process had taken place upon the voluntary resignation of the 1st respondent/complainant, the company itself admires his efficiency and performance in the experience certificate and as such the company is barred to take multifarious defence that the 1st respondent was involuntarily terminated from service and that the said relieving and experience certificates are issued on humanitarian grounds. He further submits that the action of the petitioners/accused is in gross violation of principles of natural justice. He further submits that if any organisation intends to terminate an employee from the employment on the reason of bad conduct or any other reason, the termination should be in writing with signature and seal of the employer with prior termination notice and duly acknowledged by the employer. In the present case, the company has not followed any of such practice or procedure rather claiming that they have terminated the 1st respondent/de facto complainant through an e-mail, which is purely illegal and arbitrary.

I have considered the respective submissions made by both the learned Counsel appearing for the parties and I have also gone through the case laws cited by the petitioners. In the light of the above contentions raised by both the learned Counsel appearing for the parties, the following is the main point for consideration by this Court:

" Whether in exercise of power under Section 482 Cr.P.C., this Court can enter into the controversy that any case is made out against the petitioners or not?

The scope and exercise of powers under Section 482 Cr.P.C. has time and again come before the Apex Court. It is settled position of law that the power under Section 482 Cr.P.C.

has to be exercised sparingly, carefully and with great caution.

It is also settled position of law that if any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

In this regard, the land mark judgment is the State of Haryana v. Bhajan Lal<sup>6</sup> in which Hon'ble Apex Court has laid down the following guidelines.

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra- ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or 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 a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156 (1) of (1992) SCC (CrL.) 426 the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155 (2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The ingredients required to constitute an offence of cheating have been laid down by the Apex Court in *Ram Jas v. State of U.P.*<sup>7</sup>, which are as under:

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently.

In *Chaman Lal and others case* (2 supra), the Apex Court held as under:

(1970) 2 SCC 740 "16. xxxxxx The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in

order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-

conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

For an offence punishable under Section 120-B of I.P.C., the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

In the instant case, a perusal of the material on record would show that the 1st respondent/complainant was working as a Senior Software Engineer in accused No.1 company from 10.08.2009 till 26.07.2013. On 15.11.2012, accused No.1 received a complaint of sexual harassment against the 1st respondent and on the basis of the said complaint, the accused No.1 company, warned the 1st respondent. Since the 1st respondent was continuously harassing the said woman employee, in spite of giving a strong warning by accused No.1 company, the said woman employee lodged a complaint before the Police, Madhapur, against the 1st respondent, which was registered as Crime No.636 of 2013, wherein the 1st respondent was arrested and released on conditional bail. The condition in the said bail is that he shall be 3 K.Ms. away from the premises of the person, who raised the complaint as such the 1st respondent sent e-mail dated 22.07.2013 requested accused No.1 company to either grant work from home or mark it as leave. As the 1st respondent failed to attend the office worksite due to bail condition, accused No.1 issued relieving letter and experience letter on 26.07.2013 and the same was informed to the 1st respondent through the e-mail, dated 02.08.2013, which reads as under:

"In response to your e-mail, dated July 26, 2013, we will maintain a copy of this communication in your employment file. Your last day of employment remains

Friday, July 26th. You have indicated to us in a previous e-mail, that you are unable to physically come to the office worksite as a result of your arrest and probation. As we have previously discussed, you must be in attendance at the office worksite in order to meet the requirements of your job and daily responsibilities. In order to ensure the business requirements of the customer are being met, we are unable to grant leave or allow you to work outside of the office. As you are in failure to attend to your performance duties due to attendance, in addition to the prior final written warning around your misconduct, we have made the decision to terminate your employment. As per the employment agreement 'termination due to misconduct' hence you are not eligible for any payout allowance."

A perusal of the said e-mail, dated 02.08.2013, clearly shows that the 1st respondent was informed that accused No.1 company had decided to terminate his employment due to misconduct. Though accused No.1 issued the experience and relieving letter on 26.07.2013 itself, but nine months later i.e., on 26.05.2014 at 2.19 P.M., the 1st respondent sent an e-mail to accused No.3 stating as under:

"This is to inform you that due to my personal reasons, I could not continue my service and please consider my resignation as on 26.07.2013 and proceed with further process of discharge of my duties. Please request you to arrange my relieving and service letter by tomorrow EOD."

In reply to the said e-mail dated 26.05.2014, accused No.3 sent e-mail to the 1st respondent on the same day at 4.09 P.M. stating as under:

"Please find your Experience and relieving letter for your reference. Kindly get in touch with us if you require any clarification on the above. We wish you all the best for your future endeavours."

The record further shows that on receipt of e-mail from an agency with respect to background verification of the 1st respondent, accused No.1 company gave a reply that the reason for leaving was 'involuntary termination'.

To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit known or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. But, it is manifest from the aforesaid discussion, a mere mention of the word 'cheating' in the private complaint is not sufficient to infer that the accused had dishonest intention right at the beginning. The accused have performed their duty and the communication made by them in response to the letter from an Agency was done with bona fide intention as it was their bounden duty.

That apart, no reasons are recorded by the learned magistrate while issuing summons to accused No.1 to 3 and the impugned order reads as under:



"Heard perused the petition, evidence and documents marked. Prima facie offence under sections 420 and 120-B of I.P.C. are made out against accused. Hence, issue summons to accused Nos.1 to 3 on payment of process. Call on 30.10.2015."

An identical issue came up before the Apex Court in Pepsi Foods Limited and another v. Special Judicial Magistrate and others<sup>8</sup> wherein the Apex Court held as under:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

In the instant case also, no reasons are reflected that the learned Magistrate has applied his mind to the facts of the case and the law applicable thereto. He has failed to record and (1998) 5 SCC 749 examine the nature of allegations made in the complaint and the evidence both oral and documentary.

On over all consideration of entire material placed on record and the contentions urged before this Court by the learned Counsel for the petitioners and learned counsel for the first respondent, the law declared by the Apex Court in the judgments referred supra, it is suffice to conclude that the contentions raised by the learned Counsel for the first respondent are without any substance and the material produced before this Court, directly indicates the mala fides in prosecution of criminal proceedings against the petitioners, so also, by abuse of process of the Court, as an arm-twisting method to bring the petitioners to the terms of the first respondent.

In view of my foregoing discussion, I find that it is a fit case to exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings in C.C.No.947 of 2015 on the file of the XXV-Metropolitan Magistrate, Kukatpally at Miyapur, against the petitioners in all the Criminal Petitions.

Accordingly, all the Criminal Petitions are allowed and the proceedings against the petitioners/accused Nos.1 to 3 in C.C.No.947 of 2015 on the file of the XXV-Metropolitan Magistrate, Kukatpally at Miyapur, for the offences punishable under Sections 420 and 120-B of I.P.C., are hereby quashed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI 14.02.2020 gkv/Gsn

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