(2008) 01 AP CK 0004

Andhra Pradesh High Court

Case No: Writ Petition No. 24845 of 2005

D.K. Pattanaik and Another		APPELLANT
	Vs	
The Station House Officer, Nallabelly Police Station and Another		RESPONDENT

Date of Decision: Jan. 17, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 11, 13, 14, 14(2), 155(2)
- Penal Code, 1860 (IPC) - Section 415, 420

Citation: (2008) 1 ALD(Cri) 692 : (2008) 2 ALT 541 : (2008) 1 ALT(Cri) 321 : (2008) 1 APLJ 107 : (2008) CriLJ 2287

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: M. Ravindranath Reddy, for the Appellant; G.P., for Home for R. 1 and Mummaneni Srinivas Rao, for R. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

1. Accused Nos. 1 and 2 in Crime registered under FIR No. 78 of 2005 of Nallabelli Police Station, Warangal District, for the offence punishable u/s 420 IPC, filed this Writ Petition seeking invalidation of action of Judicial I Class Magistrate, Narasampet in forwarding the complaint of respondent No. 2 to respondent No. 1 for investigation and the consequential action of respondent No. 1 in registering the crime. The petitioners also seek restraint order on respondent No. 1 from proceeding with the investigation by quashing FIR dated 3-11-2005.

2. The facts to the extent they are relevant are stated hereunder: Petitioner No. 2-Hindusthan Petroleum Corporation Ltd., (for short "the Corporation"), which is a fully owned Government Company, is engaged in the business of refining and marketing of petroleum products, such as, Motor Sprit (MS), High Speed Diesel (HSD), Liquefied Petroleum Gas (LPG), Lubricants (Lubes) etc., through out the country. It carries on its business of selling the said products through its dealers, who are selected through a selection process. For the purpose of selecting its dealers, the Corporation laid down selection guidelines. Petitioner No. 1 is the Chief Regional Manager (Retail) of the Corporation.

3. In order to appoint some dealers, the Corporation issued notification dated 18-11-2003, whereunder it invited applications from the eligible candidates for awarding retail outlet dealerships at different places. Chegunta of Medak District is one such place, which is notified for this purpose. The said dealership was reserved for Scheduled Caste candidates. Respondent No. 2 is one of the applicants for the said dealership and the Corporation issued call letter dated 29-7-2005, wherein he was asked to appear for interview before the Interviewing Committee at 9-30 AM on18-8-2005 along with all the originals. Along with the call letter, the Corporation sent a brochure with the title "Guidelines for Selection of Retail Outlet Dealers". The said brochure also contains the guidelines for awarding marks.

4. In pursuance of the said call letter, respondent No. 2 appeared before the Interviewing Committee on 18-8-2005, but he was unsuccessful in getting selected. The Committee selected a person, by name, Sri K.Bhaktapal.

5. On coming to know about the non-selection of respondent No. 2, he approached the Corporation through his representations dated 29-7-2005 and 22-8- 2005, wherein he complained that the Selection Committee failed to award marks as per the Corporation''s guidelines in his favour for holding Law Degree, land, infrastructure and capital. In response to the said representations, the Corporation wrote letter dated 5-9-2005 wherein they called upon respondent No. 2 to substantiate his grievances with reference to the documentary evidence. On receiving the documents sent by respondent No. 2, the Corporation appointed petitioner No. 1 as Investigating Officer to investigate into the allegations made by respondent No. 2.

6. In the affidavit filed in support of the Writ Petition, the petitioners averred that from a news item published by a Telugu daily newspaper on 06-11- 2005, they came to know that the learned Munsif Magistrate, Narasampet, registered a criminal case against petitioner No. 1 and other officers of the Corporation for the offence of cheating and, thereafter, they obtained copy of First Information Report (FIR) dated 3-11-2005. The petitioners further averred that the contents of FIR, which was registered by respondent No. 1 discloses that the grievance of respondent No. 2 was that as against 15 marks, which shall be awarded for higher educational qualification (Law Degree), he was awarded only 8 marks and that though the

Interviewing Committee had the power and discretion to award only to the extent of 40 marks towards educational qualification, capability to generate business, age, experience, business ability, personality in the case of candidates belonging to Scheduled Castes and Scheduled Tribes, they gave marks in excess of 40 in favour of the selected candidate and, thereby, the Interviewing Committee cheated respondent No. 2.

7. Initially, the petitioners sought for issuance of a Writ of Mandamus to declare the action of respondent No. 1 in registering the Criminal Case against petitioners on 3-11-2005 and for quashing of the said case. At the stage of hearing and having regard to the objection raised by respondent No. 2 that the petitioners cannot maintain this Writ Petition without questioning the order of the jurisdictional Magistrate in referring the complaint to the Police for investigation u/s 156(3) of the Code of Criminal Procedure (for short "Cr.P.C"), the petitioners filed an application for amendment, which, after hearing the counsel for both sides, was allowed by this Court on 3-10-2007. By way of amendment, the petitioners sought for invalidation of the action of the learned Judicial I Class Magistrate, Narsampet, in forwarding the complaint of respondent No. 2 to respondent No. 1.

8. In the affidavit filed in support of the Writ Petition, the petitioners averred that the jurisdictional Magistrate committed a grievous error in referring the complaint to the Police for investigation without any application of mind to the contents of the complaint and that even if the allegations in the complaint are accepted on their face value, they do not constitute any offence u/s 420 IPC as the two ingredients required for constituting an offence under the said provision, viz., deception and dishonest intention to do or omit to do something are not satisfied.

9. At the hearing, Sri M. Ravindranath Reddy, learned Counsel for the petitioners, apart from reiterating the above two grounds, also submitted that the learned Judicial I Class Magistrate, Narasampet, has no territorial jurisdiction to entertain the complaint and forward the same to respondent No. 1 for investigation. According to him, no part of the offence was allegedly committed within the territorial jurisdiction of the said Court and, therefore, the said Court has no jurisdiction to receive and act on the said complaint. Though no specific contention is raised in this regard in their pleadings, since this contention relates to jurisdictional issue, I felt it appropriate to consider the said contention and in order to afford an opportunity to the learned Counsel for respondent No. 2 to get prepared to reply to the said contention, I enquired from him whether he required any time for this purpose. Sri M. Srinivasa Rao, learned Counsel representing respondent No. 2, stated that the case need not be adjourned for that purpose. Accordingly, I proceeded to hear the case.

10. Sri M. Ravindranath Reddy, the learned Counsel for the petitioner submitted that the learned Judicial First Class Magistrate, Narsampet had no jurisdiction to entertain the complaint as he had no territorial jurisdiction. The learned Magistrate,

contends the counsel, is duty bound to apply his mind before referring the complaint to police u/s 156(2) of Cr.P.C. and that his order does not disclose any such application of mind. He further contended that the allegations in the complaint, taken on their face value does not disclose commission of any offence and that therefore, the FIR is liable to be quashed.

11. Sri Mummaneni Srinivasa Rao, the learned Counsel for respondent No. 2 submitted that the writ petition is premature since the case is still under investigation stage. He further contended that the petitioner failed to file the order of the Magistrate in pursuance of which the criminal case is registered by respondent No. 2. He also contended that the allegations contained in the complaint prima facie disclose commission of offence and hence this Court may not exercise its extra ordinary jurisdiction to quash the complaint.

12. From the pleadings and the submissions of the learned Counsel for the petitioner and respondent No. 2, the following points arise for consideration:

1) Whether the learned Judicial I Class Magistrate, Narasampet, has territorial jurisdiction to entertain the complaint filed by respondent No. 2?

2) Whether the jurisdictional Magistrate is required to prima facie satisfy himself that a cognizable offence has taken place before exercising his power u/s 156(3) Cr.P.C. and, if so, whether the learned Judicial I Class Magistrate, Narasampet arrived at such a satisfaction before referring the case to Police for investigation? and

3) Whether the action of the learned Judicial I Class Magistrate, Narasampet, in referring the case to respondent No. 1 for investigation and the consequential action of registration of crime against the petitioners are liable to be declared as illegal and invalid?

Re Point No. 1:

13. Section 177 Cr.P.C. envisages that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. u/s 190 Cr.P.C., any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf under Sub-section (2) may take cognizance of any offence in accordance with the provisions of Clauses (a) to (c) of the said provision. u/s 14, subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits to the areas within which the Magistrates appointed u/s 11 or u/s 13 may exercise all or any of the powers with which they may respectively be invested under the Code. Sub-Section (2) of Section 14 prescribes that unless otherwise defined, the jurisdiction and powers of every such Magistrate shall extend throughout the district. Under sub-Section (1) of Section 156 Cr.P.C., the powers of a Police Officer to investigate any cognizable offence is coextensive with the powers of the Magistrate to enquire into or try a cognizable criminal case as

regards the jurisdiction over the local area.

14. The above mentioned provisions, thus, clearly indicate that the jurisdiction of a Magistrate is confined to a defined territorial area and if his jurisdiction is not specifically fixed by the Chief Judicial Magistrate, subject to the control of the High Court, the same will extend throughout the district. This would necessarily mean that unless a Magistrate is specifically empowered to enquire and try the offences committed beyond the territorial limits of a district, his territorial jurisdiction is either limited to the area specified within the district or in the absence of such specification it will not extend beyond the district. It is not the case of Respondent No. 2 that the jurisdiction of the Judicial First Class Magistrate is fixed beyond Warangal district.

15. A careful reading of the complaint filed by respondent No. 2 before the learned Judicial I Class Magistrate shows that in response to the call letter issued by the Corporation he attended the interview on 18-8-2005 at 9-30 AM and the Interviewing Committee cheated him by calling for interview conducted at Secunderabad and, thereby, he incurred an expenditure of Rs. 9,000/- for applying for and attending the interview. Respondent No. 2 also alleged that marks were not properly awarded by the Interviewing Committee. In the FIR registered by respondent No. 1, against Col.5 - "Place of occurrence, (a) direction and distance from P.S" it was written in Telugu as "Western side, 150 K.Ms"; and against Col.5(b) - ''Address'' - it was written as ''Secunderabad''. It is, therefore, clear from the contents of the complaint and the FIR that it is the admitted case of respondent No. 2 that the alleged offence had taken place at Secunderabad where the Selection Committee met and interviewed respondent No. 2 and it is not even faintly alleged that any part of the offence was committed within the territorial limits of the Court of Judicial Magistrate of I Class, Narasampet or for that matter within Warangal district. It is indeed interesting to notice from the record produced by the learned Government Pleader for Home that on presentation of the complaint before the learned Magistrate, Narasampet, the same was returned by the Magistrate on 3-10-2005 with the following endorsement:
Returned on 3-10-05: State how this complaint is maintainable for the offence u/s 420 IPC and jurisdiction. Sd/xxxxxx JFCM.

It was resubmitted with the following endorsement:

Re-submitted:

The complaint is maintainable Under Sections 420 IPC as the complainant stated in the complaint and for jurisdiction u/s 182(1) of IPC. Call at Bench. Sd/xxxx Advocate for complainant, 5-10-2005.

The office then made the following endorsement:

Sir, Objection not complied. However, the advocate for the complainant has endorsed that ''call at bench''

Thereupon, the complaint was entertained by the Magistrate and referred the same to respondent No. 1 u/s 156(3) Cr.P.C. for investigation.

16. From the above reproduced endorsements contained in the Court proceeding sheet, it appears that the counsel for respondent No. 2 relied upon the provisions of 182(1) Cr.P.C., which reads as under: "Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person".

17. In my considered view, Section 182(1) Cr.P.C., has no application on the facts of this case. In the complaint, respondent No. 2 has not specifically pleaded what are the letters or telecommunication messages, by means of which deception is allegedly practised by the petitioners and if there are any such letters or communications, whether they were received within the territorial limits of the jurisdiction of the Magistrate of Narasampet. Not only that, no such allegations were made, but, as already noted above, in the FIR the place of occurrence was mentioned as ''Secunderabad'' which is admittedly outside the territorial jurisdiction of the Judicial Magistrate of I Class, Narasampet.

18. I have, therefore, no hesitation to hold that the Judicial I Class Magistrate, Narasampet, had no territorial jurisdiction to receive and forward the complaint filed by respondent No. 2 to respondent No. 1 for investigation. u/s 201 Cr.P.C., if the complaint is made to a Magistrate, who is not competent to take cognizance of the case, he shall, if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; and if the complaint is not in writing, he shall direct the complainant to the proper Court. Having raised the issue of jurisdiction, it is not known why the learned Judicial I Class Magistrate, Narasampet, has not followed the provisions of Section 201 Cr.P.C., in the absence of anything on record to show that he was satisfied with the endorsement made by the learned Counsel for respondent No. 2 while re-submitting the papers.

19. Point No. 1 is answered accordingly.

Re Point No. 2:

20. Sri M. Ravindranath Reddy, learned Counsel for the petitioners, contended that before referring the complaint for investigation u/s 156(3) Cr.P.C., the jurisdictional Magistrate shall apply his mind and be prima facie satisfied that a cognizable offence is made out from the allegations contained in the complaint. In support of

his contention, he relied upon the judgments of the Supreme Court in Tula Ram and Others Vs. Kishore Singh, and Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, .

21. Section 190 Cr.P.C., empowers the jurisdictional Magistrate to take cognizance of any offence - (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer or upon his own knowledge that such an offence has been committed.

22. u/s 200 Cr.P.C., the Magistrate taking cognizance of an offence shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. This is, however, subject to two exceptions envisaged in Clauses (a) and (b) of the proviso to the said Section where the complaint is made by a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192 Cr.P.C.

23. u/s 202 Cr.P.C., the Magistrate, on receipt of the complaint, if he thinks fit, may postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding, subject, however, to two exceptions, viz., (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

24. u/s 156(3) Cr.P.C., any Magistrate empowered u/s 190 Cr.P.C., may order such an investigation to be made by the Police Officer into a cognizable offence.

25. On a careful examination of the above mentioned provisions, we can find that there are two stages where the Magistrate can order for investigation by the Police. The first stage is pre-cognizance stage and the second stage is post-cognizance stage. When a complaint is received u/s 190 Cr.P.C., the Magistrate before taking cognizance can refer the same for investigation by Police u/s 156(3) Cr.P.C. This is pre-cognizance stage. However, after taking cognizance also, in order to decide whether or not there is sufficient ground for proceeding further, the Magistrate can refer the complaint for investigation by Police.

26. At the pre-cognizance stage if the Magistrate was satisfied that a cognizable offence was made out, there was no necessity for him to direct any investigation by the Police. Similarly, where the Magistrate is satisfied that the allegations in the complaint do not disclose commission of any offence, no further question arises and he will refuse to take cognizance. The need for investigation by police is necessary only in cases where the Magistrate is prima facie satisfied that the allegations

contained in the complaint point to the commission of an offence, but they require further investigation to enable him to finally decide whether to take cognizance of the offence or not. The Magistrate is therefore bound to apply his mind to know whether there are grounds to straightaway take cognizance of the offence u/s 190 Cr.P.C., or refuse to take cognizance or to direct investigation of further facts before taking cognizance by exercising power u/s 156(3) Cr.P.C. Without application of mind, the Magistrate cannot decide which of the above mentioned three courses, as open to him, should be adopted.

27. In Tula Ram and Others Vs. Kishore Singh, , the Supreme Court examined, whether reference of complaint to the Police for investigation by itself constitutes act of taking cognizance by the Magistrate, and held thus:

It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

The Supreme Court referred to its earlier judgment in Jamuna Singh and Others Vs. Bhadai Sah, - and extracted the following portion in the said judgment:

It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offence mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation u/s 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence.

28. Though the two judgments of the Supreme Court referred to above have not directly dealt with the question whether the Magistrate is required to apply his mind for ordering investigation u/s 156(3) Cr.P.C., the above reproduced paragraphs contained in the said judgments nevertheless suggest by implication that the Magistrate is bound to apply his mind even for the purpose of ordering investigation u/s 156(3) Cr.P.C.

29. On a careful consideration of the Scheme of the Code and the above mentioned judgments, I am of the view that even for ordering investigation by Police u/s 156(3) Cr.P.C., the Magistrate cannot act merely as a post office and he is bound to apply his mind before so doing.

30. The endorsement of the Magistrate, by which he directed the Police to investigate the complaint, does not show that there was any application of mind whatsoever. There is nothing to suggest therein whether he felt that the allegations, prima facie, made out an offence alleged and a further investigation is required or not. For this purpose, in my considered view, the Magistrate is bound to disclose his mind by a brief indication of the reason for ordering such an investigation. Otherwise, it is not possible to know whether the Magistrate has mechanically forwarded the complaint to the Police or he had done so after application of mind.

31. For the above mentioned reasons, I hold that before a Magistrate orders for investigation by Police u/s 156(3) Cr.P.C., he has to apply his mind to know whether the allegations in the complaint, prima facie, make out a case. I further hold that the learned Judicial Magistrate of I Class, Narasampet, failed to apply his mind before referring the complaint to Police for investigation.

32. The second point is ordered accordingly.

Re Point No. 3:

33. The scope of Judicial intervention by the High Courts in exercise of their extraordinary powers under Article 226 of the Constitution of India or inherent powers u/s 482 Cr.P.C., is well delineated by the Apex Court in a plethora of judicial precedents.

34. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court laid down broad guidelines in this regard and they are as follows:

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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of 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 FIR 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 u/s 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.

35. In State of Orissa and Another Vs. Saroj Kumar Sahoo, , the Supreme Court while dealing with the scope of exercise of power u/s 482 Cr.P.C. by the High Courts held that it envisages three circumstances under which the inherent jurisdiction may be exercised, viz., (i) to give effect to an order under Cr.P.C; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is also held that inherent jurisdiction under the said provision, though wide, has to be exercised sparingly, carefully and with caution, and only when such exercise is justified by the tests specifically laid down in the section itself; authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has the power to prevent abuse; and that the High Court in exercise of its powers is justified to quash any proceedings if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

36. In State of Karnataka Vs. M. Devendrappa and Another, , the Supreme Court held that in a proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive and if the allegations set out in the complaint do not constitute an offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code.

37. In Amway India Enterprises v. Union of India WP 20470 OF 2006 AND BATCH DT.19-7-2007, a Division Bench of this Court, of which I am a party, delved into the issue of scope of interference with the criminal proceedings and declined to interfere with the prosecution launched against the petitioner therein by applying the above settled principles of law as the Court found that the allegations contained in the FIR and the material filed in support of the same prima facie disclosed commission of an offence.

38. Keeping in view the above mentioned settled legal principles, I would like to examine whether the complaint, the FIR registered on the directions of the learned Judicial I Class Magistrate, Narasampet, and the material filed along with the same disclose commission of any offence against the petitioners.

39. In the complaint filed before the Magistrate, respondent No. 2 referred to the brochure issued by the Corporation containing the guidelines for selecting the dealers, in particular, he referred to guideline Nos. 16.1 and 16.1.2. He gave the break up of the marks provided under guideline No. 16.1.1 and alleged that under 16.1.2 (a) the candidates belonging to Scheduled Caste and Scheduled Tribe categories are entitled to 60 marks for the land, infrastructure/facilities and capability to provide finance, and that the three men Interviewing Committee appointed by the Corporation has to conduct interview only for the balance 40 marks. He then referred to the break up marks to be awarded by the Committee for possessing educational qualifications. The two paragraphs containing the gravamen of the allegations constitute the core of the complaint and it is necessary to extract them hereunder:

As per the said guidelines brochure, the complaint has to get 15 marks being the law Graduate, but the Three men Interview Committee gave the complaint only 8 marks instead of 15 marks. Though the complainant has submitted his law Graduate certificate and also the certificate issued by the Bar Council of A.P. As such the three men Interview Committee i.e., accused No. 2 cheated the complainant in giving the marks less.

40. The complainant humbly submits that the three men Interview Committee accused No. 4 gave 77.5% for the selected candidates as per their whims and fancies. The three men Interview Committee has to conduct the interview for only 40 marks for the candidates belongs to SC and ST categories, but they gave 77.5 marks to the selected candidates and gave 57.5 marks to the complainant and declared the results at 7 P.M. on the same day. As such the complainant requested the accused to supply the Xerox copy of the marks of the selected candidates, but they refused to supply the same. As such the accused Nos. 1 and 2 cheated the complainant by calling him for the interview of Retail Outlet Diesel and Petrol of H.P.C.L. Ltd., in the place of Chegunta (v) though the complainant has supplied required documents and gave perfect answers for i.e., questions posed by the three men interview committee the complainant put to shock and mental agony and also incurred heavy expenditure in attending Chegunta (v) to bring some material documents and also for the interview conducted at Secunderabad. In all the complainant incurred an expenditure of Rs. 9,000/- for applying and attending the interview of the accused company".

41. To put in brief, the accusations made against the petitioners, as can be gathered from the above reproduced paragraphs, are two fold, viz., (1) as against the 15 marks, which respondent No. 2 is entitled to be awarded, the Selection Committee awarded only 8 marks; and (2) though the Selection Committee was entitled to award only 40 marks, in respect of candidates belonging to Scheduled Caste and Scheduled Tribe categories, they awarded 77.5 marks to the selected candidate and 57.5 marks to respondent No. 2. From this action of the Selection Committee,

respondent No. 2 alleged that the Committee cheated him and that in order to attend the interview and produce the documents called for by the Committee, he incurred an expenditure of Rs. 9,000/- apart from suffering shock and mental agony. On the above mentioned allegations, respondent No. 1 registered a case u/s 420 IPC.

42. Whether the said allegations, taken on their face value, disclose commission of offence u/s 420 IPC, is the question that falls for consideration.

43. Section 415 IPC defined ''cheating'' as under:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ''cheat''.

Explanation: A dishonest concealment of facts is a deception within the meaning of this section.

The above reproduced definition shows that it contains two parts. The first part relates to fraudulent or dishonest deception to induce the person deceived to deliver property and the second part relates to intentional inducement of the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and such an act causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

44. In the instant case, there is no allegation that by the alleged intentional inducement respondent No. 2 delivered any property, and, therefore, the first part of the provision is not attracted. The second part of the provision, for the sake of convenience, is extracted hereunder by omitting the first part:

Whoever...intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ''cheat''

45. To constitute an offence under this part, the following ingredients are required to be satisfied, viz., 1) there must be deception, 2) the person so deceived must have been intentionally induced to do or omit to do anything, and 3) the act or omission on the part of the person so deceived must have caused or likely to cause damage or harm to that person in body, mind, reputation or property.

46. By applying this part of the provision to the allegations contained in the complaint, it is possible to say that by inviting respondent No. 2 for attending the interview, he was induced to attend the interview. But, to constitute an offence

under this part, respondent No. 2 shall show that the petitioners have deceived him and intentionally induced him to do the act, viz., to attend the interview. Explanation to Section 415 IPC described deception as dishonest concealment of facts. It is not the case of respondent No. 2 that by concealing any fact he was made to attend the interview. There is also no allegation that the petitioners intentionally induced respondent No. 2 to attend the interview. Respondent No. 2 has also not attributed any intention or motive to the petitioners to allegedly deceive and induce him. The ingredients of deception and intentional inducement which are sine qua non for constituting the offence of cheating are thus conspicuous by their absence in the complaint.

47. The whole grievance of respondent No. 2 is that in the interview, the Selection Committee has not awarded the marks as prescribed by the guidelines. Assuming that this allegation is correct, the same, by itself, does not constitute an offence of cheating under the provisions of Section 415 IPC. Therefore, in my considered view, the definition of cheating, u/s 415 IPC, is, ex facie, not attracted to the alleged act of giving reduced marks to respondent No. 2 and higher marks to the selected candidate.

48. In G.V. Rao v. L.H.V. Prasad : 2000CriLJ3487 , after analyzing the definition ''cheating'' u/s 415 IPC, the Supreme Court held as under:

5. The High Court quashed the proceedings principally on the ground that Chapter XVII of the Indian Penal Code deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and, consequently, the FIR was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the definition relates to property, the second part need not necessarily relate to property. The second part is reproduced below:

415. ...intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ''cheat''

6. This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

7. As mentioned above, Section 415 has two parts. While in the first part, the person must ''dishonestly'' or ''fraudulently'' induce the complainant to deliver any property;

in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney Vs. The State of Bombay, - a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, ''mens rea'' on the part of that person, must be established. It was also observed in Mahadeo Prasad Vs. State of West Bengal, - that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

49. On a careful reading of the entire complaint, I am of the view that the complaint filed by respondent No. 2 lacks in the allegations constituting essential ingredients of the offence of ''cheating''.

50. The learned Counsel for the petitioners invited my attention to call letter dated 29-7-2005 issued to respondent No. 2 (the original is filed along with the complaint of respondent No. 2 and available on record produced before me), wherein it is mentioned that eligibility of all the candidates will be ascertained on the date of submitting their applications. He contended that as on 26-12-2003, the last date of receipt of applications, respondent No. 2 was not a Graduate in Law and that he obtained Law Degree only by the date of interview i.e., 18-8-2005, as evident from the Provisional Law Degree Certificate, dated 16-2-2005. He, therefore, submitted that as admittedly respondent No. 2 did not have Law Degree as on the cut off date, he was entitled only to eight marks and not fifteen marks.

51. I have perused the record, which contained the documents filed along with the complaint filed by respondent No. 2. The copy of the consolidated Memorandum of Marks issued by the Kakatiya University shows that examinations were held in December, 2004 and the said Memo was issued on 16-2-2005, i.e., much after the cut off date, viz., last date for submission of applications. Learned Counsel for respondent No. 2 has not disputed this fact.

52. As regards the other allegation, viz. that the Selection Committee awarded marks in excess of the maximum of 40 marks, which they are authorized to award, the petitioners categorically mentioned in the affidavit filed in support of the Writ Petition that the Committee conducted interview only for 40 marks and the allegation that the Committee awarded 77.5 and 57.5 marks to the selected candidate and respondent No. 2 respectively was a mistaken understanding of respondent No. 2. It is mentioned that the said figures are not the actual marks, but the percentages of the marks obtained by the candidates.

53. Learned Counsel for the petitioners, at the hearing, asserted that the maximum marks of 35 for land and 25 for capability of finance (total 60 marks) were automatically awarded to all the candidates belonging to Scheduled Caste and Scheduled Tribes and that interviews were held only for the remaining 40 marks.

54. Though this contention of the learned Counsel for the petitioners appears to be worthy of acceptance, I refrain from going into the same as it falls in the realm of appreciation of evidence. Even without going into these aspects, I am convinced that the allegations contained in the complaint filed by respondent No. 2 do not disclose commission of any offence, much less an offence u/s 420 IPC, and that registration of the complaint is nothing but a sheer abuse of process of the Court.

55. In view of the aforementioned findings on Points 1 to 3, the Writ Petition is allowed and the order of the learned Judicial Magistrate of I Class, Narasampet whereby he referred the complaint u/s 156(3) of Cr.P.C., and the First Information Report in Crime No. 78 of 2005 issued by the Station House Officer, Nallabelly Police Station, Warangal District (respondent No. 1) are quashed.