K. Chandrasekhar Rao Vs The State of Andhra Pradesh and Sri Nallapu Prahlad

Criminal Petition No. 3299 of 2004

Court: Andhra Pradesh High Court

Date of Decision: Sept. 24, 2004

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 482#Penal Code, 1860 (IPC) â€" Section 120B, 34, 403, 405, 406

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: C. Padmanabha Reddy and S. Satyam Reddy, for the Appellant; Public Prosecutor for R-1 and S.M. Deshmukh, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.
The petitioner seeks to quash the proceedings initiated against him in C.C.No.793 of 2004 on the file of the V

Metropolitan Magistrate, Hyderabad, under Sections 409 417 and 420 of the Indian Penal Code (for brevity "the IPC").

2. A private complaint had been filed by the second respondent herein against the petitioner alleging inter alia the above offences upon which the

learned V Metropolitan Magistrate, Hyderabad, took congnizance of the said offences and directed the process be issued against the petitioner.

3. It is alleged inter alia in the complaint thus:- The petitioner floated a new political party in the name of Telangana Rashtra Samithi (TRS) after

having resigned from the office of Deputy Speaker of A.P. Legislative Assembly and M.L.A. of Telugu Desam Party (TDP). While floating the

party, he declared that the Congress Party did grave injustice to Telangana region and the TDP added to the woes of Telangana and thus both the

said parties were the enemies of the people of Telangana region. When the A.P. State Legislative Assembly was dissolved in the month of

December, 2003 and elections were notified consequently, the petitioner right from the dissolution of the Assembly kept the entire cadre of TRS

under the belief that it would contest all the 107 seats in the Telangana region and called upon the members of the party to file applications for

obtaining tickets to contest as its candidates in the ensuing elections. He fixed the fee per application at Rs.10,005/- assuring the cadre that all 107

seats in the Telangana region would be contested by the party and that the question of any alliance with any other political party would not arise

and that he further assured that the amount of Rs.10,005/- should be returned in case any aspirant was not allotted a ticket. The second

respondent who worked as Additional Public Prosecutor of the Court of the I Additional District and Sessions Judge, Ranga Reddy District having

been impressed by such declaration made by the petitioner, met and discussed with him the plans for achieving a separate statehood for Telangana.

Upon assurance given by the petitioner that in case the second petitioner resigns and works full time for the party he would be given a ticket to

contest in the elections, he resigned from the post and took a plunge into active politics. On 04.02.2004 he paid an amount of Rs.10,005/- along

with an application aspiring a ticket to contest from the Mahbubabad Assembly Constituency in Warangal District. A receipt in token of having

received the said amount was given to him but it had not been signed by the petitioner and the second respondent did not object to the same in

good faith. Thus, the petitioner received about 771 applications from various aspirants for the 107 Assembly segments of Telangana region and

from each applicant he collected an amount of Rs.10,005/-, in all Rs.77 lakhs and odd. While collecting applications and money from the aspirants

of TRS, the petitinoer secretly negotiated with Indian National Congress (I) and surreptitiously struck a deal and entered into an alliance whereby

the TRS had ultimately to contest only 42 out of 107 seats from Telangana region. He never allowed any of the aspirants to know of his secret deal

with Congress party till the fag end of the filing of nominations. He did not allot tickets to the complainant and many of the aspirants from whom he

collected the amounts at Rs.10,005/- each. On the contrary, he allotted tickets to outsiders who did not file applications and who were the fence

sitters and discordants of the TDP and Congress after having collected huge amounts from them ignoring the claim of the real cadre of the TRS or

those who filed their applications. The persons who were given tickets did not file their applications earlier. When with great difficulty the second

respondent and other aspirants caught hold of the petitioner on 30.03.2004 and demanded for refund of the amount, he refused to give any

reasons nor did he return the amount thus collected. Contrary to the expectations of the second respondent that the amount thus collected from the

applicants would be deposited in the account of TRS, on verification, the complainant found that the amount of Rs.77 lakhs and odd was not at all

deposited in the account of the TRS. The petitioner thus knowing in advance that he would be entering into an alliance with the Indian National

Congress (I) collected applications for all the 107 Assembly Constituencies, kept the second respondent and other aspirants under an earnest

belief that the TRS would contest from all the 107 Constituencies, collected the amounts from the aspirants at the rate of Rs.10,005/- each not

with an intention to return the amount so collected, thereby he misappropriated those amounts and cheated the second respondent and other

aspirants.

4. Sri C. Padmanabha Reddy, learned senior counsel appearing for the petitioner, represents that the complaint does not disclose any of the

offences alleged inasmuch as the essential ingredients constituting the said offences are not discernable from the complaint; that the complaint was

calculated to wreak political vengeance as the complainant was not given ticket to contest from Mahbubabad Assembly Constituency in Warangal

District; that the political parties would act according to the exigencies and by the mere fact that there has been an electoral understanding and

alliance with the other parties on account of the circumstances prevailing, the party cannot be said to have cheated its members or aspirants for

tickets from 107 Assembly Constituencies; and that the allegation that the second respondent approached the petitioner seeking refund of the

amount alleged to have been paid by him is palpably false as the very receipt annexed to the complaint does not bear any signature of any of the

authorized signatories of the party.

5. Per contra, Sri K.G.Kannabiran, learned senior counsel appearing for the second respondent represents that the subsequent conduct is also

material so as to infer the intention of the parties at the beginning; that merely because the act of the accused has also a civil profile, the criminal

case cannot be thrown out on that ground; and that in a petition u/s 482 of the Code, the Court shall be circumspect and should interfere only in

rarest of rare cases only when the facts in the complaint or the charge sheet, as the case may be, do not prima facie constitute a case.

6. Obviously, the offence of criminal breach of trust punishable u/s 409 of the IPC is not attracted in this case inasmuch as the petitioner is not a

public servant by then. Notwithstanding the same, if the facts attract the offence of criminal misappropriation or criminal breach of trust punishable

under sections 403 and 406 of I.P.C, although those Sections have not been mentioned in the complaint, still the complaint can be maintained and

cannot be jettisoned on that score at the threshold. Label is not the criterion provided the allegations made inter alia in the complaint on a holistic

consideration of the same attract the offences of dishonest misappropriation of property or criminal breach of trust punishable under Sections 403

and 406 respectively of the IPC.

7. It is apposite therefore at the outset to consider the provisions in the IPC germane in the context for brevity and better understanding. Section

403 reads as under:

403. Dishonest misappropriation of property: -

Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description

for a term which may extend to two years, or with fine, or with both.

Section 405 reads as under:

405. Criminal breach of trust: -

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly, misappropriates or converts to his own

use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to

be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other

person so to do, commits ""criminal breach of trust"".

From a perusal of the above provisions, it is obvious that misappropriating or converting the money dishonestly to his own use by a person is

punishable u/s 403 of the IPC which is known as ''dishonest misappropriation of property''. If a person is entrusted with property or given control

over the property, when dishonestly misappropriates that property or converts it to his own use, or uses or disposes of the same dishonestly in

violation of any direction of law prescribing the mode in which such trust is to be discharged, or in violation of any legal contract, express, or

implied, which he has made touching the discharge of such trust, he is said to have committed the offence of criminal breach of trust.

8. The learned senior counsel for the petitioner seeks to contend that there has been no entrustment in this case and, therefore, no

misappropriation. To buttress the said contention, much reliance has been placed on the Judgment of the Allahabad High Court in C.L. SAGAR v.

MAYAWATI1. A learned single Judge of the said Court was considering a case u/s 406 of the IPC. In para 20, it was held thus:

In the case on hand, it is not the case of the petitioner that he had entrusted rupees fifty thousand to respondent No.1 and that she

misappropriated the same. Rather his assertion in the complaint is that on being assured of a party ticket to contest the Assembly election, he paid

her rupees fifty thousand and in support thereof he relied upon the receipt issued by her Private Secretary, the co-accused. The case of respondent

No.1 is that the petitioner, being the district President of Bahujan Samj Party, deposited rupees fifty thousand in party''s account of General

Election, Lok Sabha/Vidhan Sabha, 1996 to meet the election expenses of Faridpur Vidhan Sabha Constituency. The allegation as made in the

complaint that on her assurance to provide ticket to contest Assembly election, he made such deposit, is false and baseless and the same does not

find mention in the receipt which he relied upon in support of such allegation. Besides such discrepancies, on facts as alleged in the complaint, no

offence u/s 406, I.P.C., is made out against respondent No.1.

9. The facts of that case clearly show that the amount deposited was reflected in the accounts of the party and shown to have been expended

towards expenses of the propaganda. Unlike in the instant case, in that case there has been no allegation that the President of the political party

promised to return the amount. The facts in the instant case are entirely different from the facts of that case.

10. Reliance has also been placed on the Judgment of the Apex court in MADHAVRAO JIWALI RAO SCINDIA v. SAMBHAJIRAO

CHANDROJIRAO ANGRE2. In para 8, it was held thus:

A case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil

wrong and may or may not amount to a criminal offence. In the instant case, a complaint was filed for offences punishable under Ss.406 467 read

with Ss.34 and 120B of the Penal Code. The property was trust property and one of the trustees was member of the settlor"s family. The criminal

proceedings were quashed by High Court in respect of two persons but they were allowed to be continued against the rest. It was held that the

case in question was one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting.

Therefore, the criminal proceeding had to be quashed.

11. The Apex Court in S.W.PALANITKAR AND OTHERS v. STATE OF BIHAR AND OTHERS3 held thus:

Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent

misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a

civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii)

that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that

property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be

discharged, (ii) of any legal contract made, touching the discharge of such trust.

12. In MUSHTAQ AHMAD v. MOHD. HABIBUR REHMAN FAIZI4 in para 4, the Apex Court held thus:

According to the complaint, the respondents had thereby committed breach of trust of government money. In support of the above allegations

made in the complaint copies of the salary statements of the relevant periods were produced. In spite of the fact that the complaint and the

documents annexed thereto clearly made out a prima facie case for cheating, breach of trust and forgery, the High Court proceeded to consider

the version of the respondents given out in their petition filed u/s 482 CrPC vis-Ã¯Â¿Â½-vis that of the appellant and entered into the debatable area of

deciding which of the versions was true, - a course wholly impermissible in view of the above-quoted observations in the case of State of Haryana

and others Vs. Ch. Bhajan Lal and others,

13. In SOM NATH v. STATE OF RAJASTHAN5. the Apex Court held thus:

Section 405 I.P.C. does not provide that the entrustment of property should be by someone or the amount received must be the property of the

person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular

manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance

with the terms of entrustment and for the benefit of the owner. The expression ""entrusted"" in Section 409 is used in a wide sense and includes all

cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession

has been handed over. A person authorised to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him.

14. Turning to the other offence of cheating, Section 415 of the IPC need be noticed at the outset. It reads as under:

415. Cheating: -

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, 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 deception within the meaning of this section.

15. A perusal of the above provision shows that by playing fraudulent deception with necessary dishonest intention if any person induces another

so deceived to deliver any property or to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act

or omission causes or is likely to cause damage or harm to any person, it is said that he is cheated. Illustrations (f) and (g) given under the section

would elucidate the provision clearly. It is expedient to extract them hereunder thus:

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him

money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and

thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to

deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach

of contract.

16. The learned senior counsel seeks to contend that there has been no element of deception at the outset and subsequent alliance with the

Congress -I party cannot attract the offence of cheating. In support thereof, he seeks to rely upon the Judgment of the Apex Court in MOBARIK

ALI AHMED v. STATE OF BOMABY6. At page 863 in para 8, the Apex Court held thus:

In a case of this kind a question may well arise at the outset whether the evidence discloses only a breach of civil liability or a criminal offence.

That of course would depend upon whether the complainant in parting with his money to the tune of about Rs.51/2 lakhs acted on the

representations of the appellant and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge

of the appellant and whether the appellants had a dishonest intention from the outset.

17. Reliance has also been placed upon yet another Judgment of the Apex Court in HARI PRASAD v. BISHUN KUMAR7. In para 4, the Apex

Court held thus:

For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the

appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of

the respondents u/s 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at

the time the appellant parted with Rs.35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs.35,000

by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid

the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents

subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and

would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten

criminal liability on the respondents for the offence of cheating.

18. Unlike the facts in the above case, here in the instant case, there have been allegations that the accused at the time of making the declaration

that the TRS would contest all the 107 seats and it would not have any alliance either with Congress-I or TDP, surreptitiously started parleys with

Congress-I party and invited the applications for all the 107 seats but ultimately struck a deal with Congress-I party which limited the seats to be

contested by TRS to 42 only. If these allegations are found to be true at the culmination of trial tomorrow, the necessary intention at the outset of

the transaction may possibly be discerned.

19. In RAJESH BAJAJ v. STATE NCT OF DELHI8, the Apex Court held thus:

A bare reading of the definition of cheating would suggest that there are two elements thereof, namely, deception and dishonest intention to do or

omit to do something. In order to bring a case within the first part of Section 415, it is essential, in the first place that the person who delivers the

property should have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently

or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided

the property is to be obtained by deception.

20. Recently the Apex Court in S.W.PALANITKAR AND OTHERS v. STATE OF BIHAR AND OTHERS (referred to supra) in para 11 held

as regards the offence of cheating thus:

To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his

mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be

presumed.

21. Very recently, the Apex Court in K.C.BUILDERS v. C.I.T.9 considered the essential ingredients that constitute the offence of cheating

punishable u/s 420 of the IPC. In para 29, it was held thus:

It is also settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest

intention at the time of making promise or misrepresentation. From his making failure to keep up promise subsequently, such a culpable intention

right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent

intention, the question of committing offence u/s 420 IPC does not arise.

22. From the conspectus of the above decisions, it is obvious that a mere breach of contract cannot give rise to a criminal prosecution. The

distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time of the alleged

inducement which must be judged by his subsequent act but of which the subsequent act is not the sole criterion. In every case of cheating, there is

implicit an agreement between the parties inter se. If the terms of the agreement are not carried out, it may attract civil as well as criminal

consequences. The vital factor to be considered is whether at the time of the agreement there was intention to carry out the terms of the agreement

or not. If at the inception there was no intention to carry out the terms, it would constitute the offence of cheating. On the contrary, if there is

nothing to show that there has been no want of intention at the time of agreement but there has been failure to fulfill the terms of the agreement it

would only be a case of breach of contract.

23. The notion of a trust in the ordinary sense of that word is that there is a person, a trustee or the entrusted in whom confidence is reposed by

another who commits property to him. A person who by playing a trick makes another to deliver property to him bears no resemblance to a

trustee inasmuch as a trustee obtains possession of property by free consent. Obviously, there can be no consent by a person who is cheated. The

essence of criminal breach of trust is the dishonest conversion of the property entrusted. Even the act of cheating also involves conversion. The

conversion signifies depriving the owner of the use and possession of his property. ""Entrustment"" means the handing over of the property by lawful

means and on the contrary if it is obtained by playing a trick or by any other unlawful means, there can be no entrustment. Thus, a subtle but a real

distinction between two offences could be seen. The distinction would turn upon the offence of fraudulent or dishonest inducement which is the

essence of cheating. In a case where a person is induced for delivery of certain goods and the goods taken thereafter are converted by the latter to

his own use or misappropriated, the offence would be regarded as cheating rather than misappropriation. In other words, it would be seen that

while dishonest intention is the foundation or the essence of one crime, it is by no means of the other. It is possible that a person may honestly

come into possession of a property in which case his taking of the money from the other person would be honest thus excluding the element of

cheating but by the subsequent retention or conversion may be dishonest. In such cases, the offence of criminal appropriation is deemed to have

been committed by such person.

24. Turning to the jurisdictional aspect and the limitations engrafted thereon it is appropriate to consider the dictum of the Apex Court in

MADHAVRAO JIWALI RAO SCINDIA v. SAMBHAJIRAO CHANDROJIRAO ANGRE (referred to supra). In para 7, it was held thus:

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction

are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

25. The learned senior counsel appearing for the petitioner seeks to place reliance upon a Judgment of the Apex Court in M/s.PEPSI FOODS

LTD. v. SPECIAL JUDICIAL MAGISTRATE10. In para 28, the Apex Court held thus:

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. The 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.

26. The learned senior counsel for the second respondent, on the other hand, relies upon the Judgment of the Apex Court in S.W.PALANITKAR

AND OTHERS v. STATE OF BIHAR AND OTHERS (referred to supra). The Apex Court held in para 13 thus:

Quashing of FIR or a complaint exercising power u/s 482 Cr.P.C. should be limited to a very extreme exception; merely because an act has a

civil profile is not enough to stop action on the criminal side. It is further held that a provision made in the agreement for referring the disputes to

arbitration is not an effective substitute for a criminal prosecution when the disputed act constitutes a criminal offence.

27. In STATE OF KARNATAKA v. M.DEVENDRAPPA11, the Apex Court held in para 8 thus:

It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly

inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations.

When exercising jurisdiction u/s 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is

reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial

process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion

and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a

private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an

accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate

prosecution.

28. The learned senior counsel for the second respondent represents that the complaint has to be considered as a whole so as to see whether a

prima facie case is made out or not and it is not necessary that the essential ingredients that constitute the offence shall be produced verbatim in the

complaint. In support of his contention, he seeks to place reliance upon a Judgment of the Apex Court in RAJESH BAJAJ v. STATE NCT OF

DELHI (referred to supra). It was held thus:

It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is

it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the

definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the

complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash

criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an

FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are

absolutely necessary for making out the offence.

29. Finally, he relies upon an unreported Judgment of this Court in Criminal Petition No.1368 of 2001 dated 26.09.2001 in KOMMIREDDI

RAMULU v. STATE OF ANDHRA PRADESH REPRESENTED BY STATION HOUSE OFFICER, MALKAJIGIRI POLICE STATION.

It was held in the said Judgment at page 3 thus:

It is now well settled that in the report made to set the criminal law into motion, the essential ingredients that constitute offence need not be

reproduced verbatim. Even if some of the ingredients are found absent in the report it is of no consequence. However the essential foundation for

taking criminal action need be mentioned in the report. Therefore, it shall be the endeavour of the Court to see that on a holistic consideration of

the entire report or complaint whether the necessary foundation is laid attracting the offence or not and the court shall not be hyper-technical by

looking at the report of the complaint as the case may be so as to making an endeavour to discern the essential ingredients that constitute the

offence as envisaged by the concerned penal provisions.

30. Apropos the matrix of the case on hand, a copy of the receipt said to have been given to the complainant has been annexed to the complaint.

Apparently it does not bear signature of any person acknowledging the receipt of the amount of Rs.10,005/-. The receipt does bear the name of

the second respondent, date, receipt number and the amount. It is his specific case that the receipt was not signed and that he did not object on

account of good faith. The contentious issue on account of the stance taken by the petitioner that as to whether the second respondent paid the

amount or not towards the application fee shall have to be decided only at the time of trial. Similarly, when it is asserted by the second respondent

that there had been unequivocal declaration on the part of the petitioner that he would return the amount in case the party tickets have not been

given to the aspirants, the petitioner emphatically denied the same. It therefore becomes a contentious issue and shall have to be decided during the

course of trial. Such process of inquiry cannot be undertaken in this quash petition. Assuming the allegations made in the complaint as true, whether

any case has been made out or not, shall have to be seen and shall be the endeavour of the Court.

31. It is alleged inter alia in the complaint that the petitioner while making an unequivocal declaration that the party would not have any alliance

either with Congress or TDP, even from the beginning was surreptitiously making parleys with Indian National Congress (I) and surreptitiously

struck a deal whereunder the TRS had to contest only 42 out of 107 Constituencies and the petitioner never allowed any of the aspirants to know

the secret deal with Congress till the fag end of the filing of nominations. It is further alleged that knowing that such a deal would be struck in

between TRS and Indian National Congress (I), the petitioner made a false declaration that the party would contest from all the 107

Constituencies in the Telangana region of Andhra Pradesh State and invited applications from various aspirants who are the members of the

Samithi and ultimately allotted tickets to 42 candidates who are outsiders, who are fence sitters of Congress party and TDP and who were

discarded eventually by those parties even though they did not file the applications earlier ignoring the interests of the second respondent and other

aspirants. The grievance of the second respondent appears to be that he having been made to believe that he would be given ticket if resigned from

the post and worked for the party, ultimately denied of the ticket and even the amount paid by him along with the application was refused to be

refunded contrary to the assurances and promises unequivocally made by the accused. It is further alleged that all the amounts collected thus from

various aspirants numbering 771 were not accounted for in the party accounts and, therefore, it was misappropriated. Truth or otherwise of the

above allegations made inter alia in the complaint cannot be the subject matter of enquiry in a quash petition filed u/s 482 of the Code, as discussed

herein above. Whether these allegations made in the complaint would attract the essential ingredients that constitute the offences of criminal breach

of trust or criminal misappropriation and the offence of cheating, shall have to be seen.

32. It is alleged inter alia in the complaint that the aspirants for tickets in 107 Assembly Constituencies numbering 771 paid amounts either in cash

or by other means while seeking for such tickets all of them knew pretty well that all 771 aspirants would not get the tickets when seats available to

be contested are only 107. The allegation that money would be returned in the event a ticket is not given, in that view of the matter, gains strength.

If that were be a fact it becomes a plain obligation on the part of the petitioner to hold the money thus collected in trust and to refund the same as

and when the occasion arises.

33. The contention, at this stage, of the petitioner is that if the application fee collected by a political party, when not refunded, is said to have

attracted the offence, it has far reaching consequences and no dishonest intention can squarely be attributed to it, and the other contention that like

any other political party, TRS also invited applications and prescribed fee therefor, collected amounts along with applications and that amount

would go towards party fund and, therefore, there is no exception in this case and hence it cannot be said that there has been entrustment or

dominion over the property, for the reasons herein above discussed, cannot be countenanced. When it is alleged that the parties have specifically

understood that the amount is liable to be returned in the event a ticket is not given to the aspirant who paid the said amount, and if proved, it

creates a trust or obligation inter se between the parties. As discussed herein above, whether such an understanding has been there or not and it is

common as in the case of every political party, shall be the subject matter of enquiry at a later stage in the proceeding.

34. When it is alleged that the petitioner acted with necessary dishonest and fraudulent intention while making the declaration that TRS would not

be having any alliance with Congress-I or TDP started parleys with Congress-I at the same time surreptitiously, that ultimately a deal was struck

whereby the number of seats to be contested by TRS was limited to 42 in having the necessary alliance with Congress-I and all outsiders were

given tickets in preference to the second respondent and other aspirants from the cadre of the party; that the second respondent who was made to

resign from the post of Additional Public Prosecutor was denied of the ticket; that the petitioner having collected the amount on the premise that

the amount would be returned in case a ticket is not given, refused to refund the amount nor accounted for in the account of the political party, in

my considered view, would prima facie attract the offences alleged. It is a matter to be enquired into during the process of trial. Therefore, it is not

desirable, nay hazardous to thwart the case at the threshold.

35. For the foregoing reasons, the Criminal Petition fails and is dismissed.