

THE HON'BLE SRI JUSTICE Dr B. SIVA SANKARA RAO

CRL.P.No.5839 of 2015

ORDER:

This criminal petition is filed by the petitioners/A.1 to A.3 under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.511 of 2015 on the file of the learned Additional Judicial First Class Magistrate, Srikakulam, where the learned Magistrate has taken cognizance for the offence punishable under Section 138 of Negotiable Instrument Act (for short "N.I.Act"), which is outcome private complaint of the 2nd respondent-de facto complainant for dishonor of cheque.

2. The sum and substance of the case of the complainant is that she worked as Prof. & HOD in the entity of A.1 i.e., in the Department of Radiology in GEMS & Hospital, Srikakulam (A.P) and A.2 and A.3 are responsible persons for the affairs of the institution being in-charge of A.1 entity. But due to irregularity in paying the salaries from October, 2012 to the complainant, she approached the accused and demanded for back salaries, then the accused persons instead of making cash payments, issued four cheques bearing Nos.956696 to 99, three cheques for Rs.1 lakh each, dated 31.07.2013, 01.08.2013 & 01.08.2013 and another cheque for Rs.92,390/- dated 03.08.2013 in total Rs.3,92,390/- to discharge their legally enforceable liabilities, which were drawn on Andhra Bank, RCB, Srikakulam in the account of A.1. It is further averred that the complainant presented the four cheques at a time for payment during its period of validity on 13.01.2014, despite waiting upto 10.01.2014 as advised by the accused persons, the same were returned dishonored for insufficient funds. Having received the memo of dishonor, the complainant sent notice to the accused including through E-mail and Fax and the accused having received, failed to pay, and with no reply, and thereby, they are liable for the offence under Section 138 of N.I Act.

3. It is further averred that the accused persons supra not only committed the offence under Section 138 of N.I Act, but also cheated the complainant by inducing her to continue in the institution by paying Rs.2 lakhs on 24.02.2014 into her account towards back salaries without paying the amount of the cheques to escape from penal liability, and hence to take action.

4. The contentions in the quash petition in impugning the same are that the

case originally filed in Berhampur, later transferred to Srikakulam on the point of jurisdiction and the accused issued the cheques in question could not honour due to financial turmoil and the complainant was informed the same not to present the cheques and as the accused were willing to pay the amount and despite without intimation, she presented the cheques but they were returned dishonoured for insufficient funds. It is further averred that the complainant have issued legal notice, and when the accused contacted the complainant, and informed her that they are ready to pay the amounts and asked her to come and collect the same by bringing the cheques and they were under the impression that she would do it. But however, she falsely filed the case and she was under the impression that the accused could not even issue any reply notice to the legal notice and that the accused obtained fresh DDs from Andhra Bank, Srikakulam bearing Nos. 169306 to 309, three for each Rs.1 lakh and one for Rs.92,390/- in total Rs.3,92,390/-, and duly enclosing the memo submitted before the trial Court, and the Court below directed to give the said DDs to the complainant when she appears. However, the complainant is deliberately avoiding to receive the DDs in order to harass the accused, and thereby, the acts of the accused do not constitute any offence under Section 138 of N.I Act, and proceedings are liable to be quashed.

5. A perusal of the four cheques in question shows that on behalf of A.1 entity from the account of A.1, A.2 as President-cum-Chairman and A.3 as Secretary, both signed on the cheques being the drawers. Once they are drawers of the cheques issued admittedly for the legal enforceable debt towards arrears of salary, practically, there is no defence, if not paid within the statutory time and after receiving of legal notice.

6. The acknowledgement of the legal notice issued suffice to A.1 entity, as per the latest expression of Apex Court in **Krishna Texport & Capital Markets Ltd. v. Ila A. Agarwal & others**, of even issued to A2 and A3 also. As can be seen from the postal stamp, which was un-served on 20.2.2014, and the four cheques in question are for the total amount of Rs.3,92,390/-, and what they averred as per the complaint, and for their quash petition submission, tendered on 24.02.2014 to the account of the complainant towards back salaries is only Rs.2 lakhs, and even taking the same into consideration, it represents two cheques amount out of four cheques, and so far as the claim in the quash proceedings are that they obtained DDs for Rs.3,92,390/- and when they wanted to deposit before trial Court, it was

directed to pay to the complainant concerned in the quash petition, but no particulars of the DDs are given, even Xerox copies of it were not filed and nothing is even shown for the discharge, pursuant to the statutory notice within the statutory time.

7. In the absence of such evidence, they cannot be exonerated from the penal consequences also from the expression of Apex Court in ***Indian Bank Association & others vs. Union of India & others***. As it is not even a case of non-service of legal notice and they came to know of it only after receipt of summons in the criminal case there under. Even as per Apex Court three judgments expression in ***CC Alavi Haji Vs. Palapetty Muhammed*** to pay within 15 days of service of summons.

8. It is needless to say that subsequent payment or tendering to pay, will not exonerate from the penal consequence, but for, if at all to take a lenient view. Unless the complainant chosen to receive and come forward to compound as laid down by this Court in CrI.A.No.805 of 2006 dated 25.04.2014 referring to ***R. Gopi Krishna Pilla v. Sank Narayan Nair*** and ***M/s Thekkan & Company v. M. Anitha***.

9 .Having regard to the above, there are no grounds to quash the proceedings. However, it is made clear that none of the observations shall prejudice the defence of the accused persons before the trial Court. It is needless to say in the event of filing of any petition under Rule 37 of Criminal Rules of Practice for one to represent the others or any special vakalat petition under Section 205 Cr.P.C., the learned Magistrate shall hear and permit with necessary conditions.

10. With the above observations, this criminal petition is dismissed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

JUSTICE Dr B. SIVA SANKARA RAO.

Date : 04-11-2015

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