HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.847 of 2011

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/A.3 seeks to quash the proceedings in C.C.No.134 of 2010 on the file of Additional Judicial First Class Magistrate, Huzurabad, Karimnagar.

2) The prosecution case is that the complainant is running his business under the name and style of K.B.Durga Prasad & Co. at Jammikunta and deals in purchasing cotton from farmers and market yards and processing in ginning mills and selling processed cotton to the spinning mills. Whereas A.1 firm deals in the business of converting the processed cotton into yarn and selling the same to textile manufacturers. A.1 to A.3 are Directors and A.4 is their Agent. The *defacto* complainant doing his business since 1996 and A.1 firm got business dealings with him since 2001 through A.4. He supplied processed cotton through delivery challans during 2001-03 to A.1 firm worth Rs.54,71,764/-. As huge amount was outstanding, the complainant made repeated requests to A.2 and A.3 for the amount and also when A.2 and A.3 visited Jammikunta on 01.02.2003 and atlast, A.2 issued 10 cheques for Rs.50,00,000/- with post date of 21.05.2003 towards part discharge of the amount due. A.2 and A.3 promised to pay the balance amount of Rs.4,71,764/- in due course.

a) The further case of the prosecution is that though the complainant wanted to present the cheques on 21.05.2003 but surprisingly A.2 and A.3 came to Jammikunta on 20.05.2003 and requested him not to present them on 21.05.2003 as they were going to pay amount in cash and requested him to keep the cheques as security. Having relied, the complainant did not present the cheques and thus A.2 and A.3 could see that the cheques were lapsed very cleverly by making a false promise that they would pay the amount. Subsequently having understood the tactics played by A.2 to A.4, he went to Coimbatore along with witnesses and requested them to pay the due amount but A.2 and A.3 either avoided him meeting or evaded payment on one pretext or other and thereby the complainant suffered heavy financial loss. All the while, the complainant has been showing the amount due to him by A.1 firm in his Income Tax Returns as Sundry Debtors. Subsequently the complainant approached A.2 and A.3 at Coimbatore along with A.4 and other witnesses on 23.11.2004 and 02.02.2005 and requested them to pay the amount but A.2 and A.3 repeated the same pretext and did not pay the amount and thereby caused him wrongful loss. Due to long distance, the complainant could not pursue is requests repeatedly and ultimately he stopped supply of material to A.1 by the end of 2003. The principal and interest due to him comes to Rs.82,52,515 by the end of 2006.

b) While-so on 23.06.2008 both A.2 and A.3 came to Jammikunta in connection with their business affairs. Knowing this, the complainant again approached them with witnesses and met at the office of Vaibhav Cotton Mills and requested to pay the amount. This time A.2 to A.4 totally denied to have any transactions with the complainant and disowned their liability and denied to have issued any cheques to him. Hence the complainant.

c) The Police of Jammikunta P.S after investigation laid charge sheet against A.1 to A.4 for the offences under Sec.420, 506 r/w 34 IPC.

3 a) Opposing the charge sheet allegations, learned counsel for petitioner/ A.3 firstly argued that even if charge-sheet allegations are uncontroverted no offence can be made out against any of the accused since it is a case of non-payment of amount by A.1 firm towards purchase of Cotton from the complainant and it is purely a civil transaction which the accused converted into a criminal case only to intimidate and harass the accused who reside at a far-off place Coimbatore and therefore continuation of the criminal case will amount to abuse of process of law.

b) Secondly, learned counsel argued that even on his own admission, the complainant has never presented the 10 cheques for realization of the amount and without doing so and bouncing back of cheques, there cannot be any offence either under Sec.138 of N.I. Act or under Sec.420 IPC. So at the outset, no offence was at all made out against any of the accused including petitioner/A.3.

c) Thirdly, he argued that even assuming the 10 cheques were issued in discharge of the alleged legal liability, those cheques were admittedly issued by A.2 but not by petitioner/A.3 and therefore, no liability either under Sec.138 of N.I. Act or under other enactments can be imputed against petitioner/A.3. He further vehemently argued that, apart from not a signatory of the disputed 10 cheques, she resigned from the Directorship way-back on 01.06.2002 itself i.e, long prior to the date of issuance of cheques i.e, 01.02.2003 and this fact is evident from Form 32 issued under the Companies Act, 1956 and therefore, by no stretch of imagination any liability, muchless criminal liability can be tacked to petitioner/A.3. He would submit that continuation of criminal proceedings in this back drop would amount to severe abuse of process of law. Learned counsel relied upon the decision reported in ***Pooja Ravinder Devidasani vs. State of Maharashtra and another*** and argued that in similar circumstances having found that one of the directors long back resigned from the company and not the signatory of the cheques issued, the Apex Court quashed the proceedings against her.

d) Finally, he argued that the complainant having failed to present the cheques in time, now turned round the events and filed a false case against the accused only to harass them. He thus prayed to allow the petition.

4 a) In oppugnation, vehemently opposing the petition, learned counsel for respondent/complainant firstly argued that it is not a case of converting a mere civil liability into a criminal case to harass the accused but on the other hand the deceptive intention of the accused in making false representations from time to time before the complainant to ultimately cause him a wrongful loss is manifest from the facts and circumstances and therefore, the criminal case is very much maintainable against all the accused including petitioner/A.3

who was also a part of the deception. Expatiating his argument, he would submit, the case on hand is not the one under Sec.138 of N.I. Act so that a complaint is maintainable only against that Accused-Director who being incharge of and responsible for the conduct of the business of the firm issued subject cheques but on the other hand, it is a case of cheating perpetrated by all the accused of A.1 firm irrespective of their capacity and thereby causing wrongful loss to the complainant and in this regard the criminal role of petitioner/A.3 is manifest from the charge sheet that she along with A.2 approached complainant to Jammikunta on 20.05.2003 just one day prior to the date of post-dated cheques i.e, 21.05.2003 and made a false promise to the complainant that they would be going to pay him the amount due for supplying of cotton and thereby made an inducement to the complainant not to present the cheques and saw that the cheques period was lapsed. Learned counsel argued that but for the inducement of A.2 and A.3, the complainant and for that matter, no businessman would desist from presenting the cheques for realization of huge amount due to him. Not only that, subsequently when the complainant went to Coimbatore several times, A.2 and A.3 evaded payment on one or other pretext and finally on 23.06.2008 when A.2 and A.3 came to Jammikunta in connection with their business and when complainant approached them and requested for his due amount, they denied to have any transaction with him and disowned their liability. All these acts, he argued, would cumulatively show the dishonest intention since inception on the part of the accused including petitioner/A.3 and therefore, she cannot repudiate her criminal liability on a lame pretext that she did not sign on the cheques issued to complainant. He reiterated that since it is not a case under Sec.138 of N.I. Act, the question of her signing or not signing on the cheques and whether she was in charge of and responsible for the conduct of the business or not will not fall for consideration in this case of cheating. He submitted that for the act of cheating, making of a false representation is a core ingredient as laid down by Apex Court in ***Devender Kumar Singla vs. Baldev Krishan Singla*** and in this case such false representation on the part of A.2 and A.3 is evident that they came down to Jammikunta on 20.05.2003 and requested the complainant not to present the cheques on the false promise that they would make the payment. He submitted that the decision cited by the petitioner will have no application as that was a case relating to the offence under Sec.138 of N.I. Act and ingredients of that offence are different.

b) Secondly, opposing the claim of the petitioner that she resigned from her Directorship w.e.f 01.06.2002 as false, learned counsel vehemently argued that she has been regularly attending the firm meetings and signing in the capacity of a Director and in fact she signed on the minutes as Director on 20.09.2002 i.e, subsequent to her alleged resignation and therefore, the plea of resignation may not be accepted.

c) Finally, he submitted that A.2 and A.3 were arrested with the help of local police at Coimbatore and they absconded and a separate FIR was registered and suppressing all these facts the present petition is filed. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

6) **POINT**: It is a petition filed under Sec.482 Cr.P.C seeking quashment of the criminal proceedings which culminated in filing charge-sheet. In the famous case of ***State of Haryana vs. Bhajan Lal***, the Apex Court had given certain guidelines for exercising inherent jurisdiction to quash the proceedings, one of which is thus:

> *"(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."*

In the light of above guidelines, the case on hand has to be scrutinized.

7) From the petition averments and tenor of arguments, it is explicit that the petitioner is not disputing with regard to their business connections with the complainant and issuance of the cheques singed by A.2. It is her main contention that it is purely a business transaction wherein the complainant without presenting the cheques within the stipulated time and on their bouncing back taking recourse under Sec.138 of N.I.Act, converted the civil proceedings into a cheating case to harass the accused and therefore, the criminal case is not maintainable. For this reason and other reasons connected to petitioner/A.3, she seeks quashment.

8) It is true that Apex Court and various other High Courts have time and again laid down that mere breach of performance will not give raise to the criminal prosecution for cheating. The Apex Court in ***Hridaya Ranjan Pd. Verma and others vs. State of Bihar and another***, has held thus:

> *"<u>Para 15</u>: In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. 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.*
>
> *<u>Para 16</u>: 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."*

In the light of above principle, the facts of this case when put on test by uncontroverting the same, we would understand that it is not a mere case of a simple non-performance of the contract i.e, non payment of the amount due for purchase of cotton. On the other hand, the facts would reveal, particularly showing the culpability of A.2 and A.3 to the effect that having given 10 cheques by putting a post date of 21.05.2003, both of them allegedly went all the away from Coimbatore to Jammikunta on the previous day i.e, on 20.05.2003 and requested the complainant not to present the cheques on the next day or on subsequent dates on the promise that they would pay the amount. In this regard the argument of the complainant that in the normal course, no businessman due to receive Rs.54 lakhs and odd would desist from presenting the cheques unless some strong event took place appears to be logically correct. So if the charge sheet allegations are believed, they would show that A.2 and A.3 promised to pay the amount to complainant and believing that promise, he refrained from presenting the cheques. In that manner they saw that the cheques were time lapsed. So the misleading representation which is one of the ingredients of cheating is manifest here. Not only that, the other allegations are to the effect that subsequently when the complainant approached A.2 and A.3, they evaded payment on one or other pretext and finally when they came to Jammikunta on 23.06.2008 and complainant met them and requested for his amount, they allegedly denied having any transaction with him and disowned their liability. So the cumulative effect of all these allegations is that the offence of cheating is made out against the accused. The petitioner relied upon the decision reported in ***Pooja Ravinder Devidasani***'s case (1 supra). It must be said that the decision has no application to the facts of the present case since that case relates to an offence under Sec.138 of N.I.Act. On factual side, it was found that the petitioner who was one of the Directors, had already resigned and she was not found to be incharge of and responsible for the conduct of the business of the company and she did not issue the cheques. In that view of the matter, Hon'ble Apex Court quashed the proceedings against the petitioner therein. For an offence under Sec.420 IPC, there is no need of a qualification that the accused should sign on the cheque and should be incharge of and responsible for the conduct of the business.

9) The next contention of the petitioner is that she already resigned from the Directorship by 01.06.2002 and so apart from not signing on

the disputed cheques she had nothing to do with the cheques and subsequent transactions. A copy purported to be Form 32 is filed showing that petitioner/A.3 resigned as Director on 01.06.2002. However, it is the strong contention of the respondent/complainant that she was regularly attending the meetings and signing on the minutes as Director and even on 20.09.2002 also she signed the minutes in the capacity of Director. The veracity of the respective contentions and the authenticity of Form 32 a photostat copy of which is filed in the Court, in my view, have to be decided only after a full-fledged trial. Thus as the matter stands there are no strong grounds to quash the proceedings against petitioner/A.3.

10) In the result, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.04.2015

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