

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRLP.No.4045 of 2015

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ORDER :

This Criminal Petition is filed by the petitioner/ sole accused in C.C No.822 of 2011 on the file of the III Metropolitan Magistrate Court, Vijayawada, Krishna District, under Section 482 Cr.P.C seeking to quash the calendar case proceedings taken cognizance for the offence punishable under Section 420 I.P.C.

2) The sum and substance of the submission by the learned counsel for the petitioner in the course of hearing before admission and before ordering any notice to 2nd respondent is that, every breach would not give rise to an offence of cheating. He placed reliance upon the judgment of Apex Court in ***Uma Shankar Gopalika vs State of Bihar and another*** in the last lines of para No.6, it was held as follows:

"It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC."

3) The learned counsel also placed reliance upon other two expressions of this Court in **Bheemudu Narasimha Knniyappan vs State of AP rep. by Sub-Inspector of Police, Jangareddigudem Police Station, West Godavari District and others and M/s.Sri Revensasiddesehwara Traders and another vs State of AP and another.**

4) It is the contention of the learned counsel for the petitioner therefrom

that this is a purely dispute of civil nature and for the sin of the petitioner was working as employee of Nimmagadda Computer Services for few years, she cannot roped into the case by the complainant for the recession period in their not getting any prospective or lucrative jobs they expected, as the petitioner did nothing beyond introducing to their entity being an employee and that too when they entered into contract in this regard with the entity, any breach of contract at best prone to civil liability and for that obtained cheques and pro notes.

5) A perusal of the material on record in fact falls short for this Court while accepting the propositions of law laid down in Uma Shankar Gopalika (1 supra) to admit the application under Section 482 Cr.P.C, but for to dispose of the application by giving liberty to the petitioner either to file an application or make oral submissions under Section 239 Cr.P.C before framing charges, if these are grounds to consider for discharge as contemplated by Section 239 Cr.P.C read with Section 240 Cr.P.C. Further, in the event of filing any application by the petitioner, since claimed as employee working and facing difficulty to attend for every adjournment personally, under Section 205 Cr.P.C, the trial Court shall hear and pass appropriate orders according permission to represent by Special Vakalat Holder with conditions including for any personal appearance as and when required.

6) Accordingly, the Criminal Petition is disposed of.

7) Consequently, miscellaneous petitions, pending if any in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

08.06.2015

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRLP.No.665 of 2014

Date:08.06.2015

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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