THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.10148 of 2014

ORDER:

This is a Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 by the petitioners/Accused 1 and 2 requesting to quash the proceedings against them in CC.No.376 of 2007 on the file of the learned I Additional Chief Metropolitan Magistrate, Vijayawada taken on file for the offences punishable under Sections 409 and 420 read with Section 34 of the Indian Penal Code ('the IPC' for brevity).

2. I have heard the submissions of the learned counsel for the petitioners/A1 and A2, the learned Additional Public Prosecutor appearing for the 1st respondent/State and the learned counsel appearing for the 2nd respondent/complainant. I have perused the material record.

3. Now the points for determination are:

1. **Whether the petitioners/A1 and A2 had made out valid and sufficient grounds for quashing the proceedings against them in CC.No.376 of 2007 on the file of the learned I Additional Chief Metropolitan Magistrate, Vijayawada?**
2. **Whether the uncontroverted allegations made in the complaint do not disclose *prima facie* the commission of any offence, much less the alleged offences, and make out a case against the petitioners?**

4. POINTS:

4. (a) The introductory facts, in brief, are as follows: -

'The 1st respondent is the State. The 2nd respondent is the complainant. The complainant had filed a private complaint against the petitioners/A1 and A2 ('A1 and A2' for brevity) alleging *inter alia* that the complainant had handed over some of his share certificates and those of his wife and his relatives to A1 and A2 to sell the same; and that he had also handed over a blank promissory note signed by his wife and blank cheques signed by him and his wife as security, in case it is to be found that there is bad delivery of the shares given by him; however, A1 and A2 had misused the same and had filed several cases against them in various courts. The private complaint filed by the complainant was referred to the police. On that, a case in crime No.19 of 2000 was registered. When there was no progress in the investigation, the complainant had filed a writ petition in WP.12835 of 2005 before this court to direct the police concerned to complete the investigation and file a final report. However, no investigation was made by the investigating officer and no witnesses including the complainant were examined. The police having colluded with A1 and A2 had filed a final report stating that no further action is needed and that the subject matter is pending before the civil court. The police had further stated that the offences are non cognizable. A notice was given to the complainant before the filing of the final report to the above effect. Then, the complainant had filed objections. The learned Magistrate having examined the complainant and one Govardhana Rao as PWs1 and 2 had taken the case on file against A1 and A2 for the offences punishable under Sections 409 and 420 read with Section 34 of the IPC and had directed issuance of summonses to them. On receipt of the summonses in the said CC No. 376 of 2007, A1 and A2 had appeared before the learned Magistrate. However, after the case was adjourned from time to time, on 11.03.2010 the learned Magistrate had dismissed the complaint under Section 256 of the CrPC observing that the complainant was not co-operating for commencement of the trial and that the case is of the year 2007. On that the complainant had filed CrlRP41 of 2010 before the learned Metropolitan Sessions Judge, Vijayawada. By orders dated 20.07.2011, the learned Metropolitan Sessions Judge had allowed the revision and had restored the CC to file. Now the case is again being sought to be prosecuted by the complainant against the accused."

4. **(b)** The case of A1 and A2 in support of their request to quash the proceedings against them in the aforementioned calendar case is this: - "On verification of the entire record, A1 and A2 came to know that the complainant had filed a protest petition on 21.10.2005 to the final report of the police and that thereafter on 25.09.2006 he had filed a petition to receive documents and that after examining PW1 on 08.03.2007 and one M. Govardhana Rao as PW2 on 21.03.2007 the learned Magistrate had directed on 30.03.2007 for issuance of summonses against the accused. Thus, cognisance was taken and the CC was taken on file not on the protest petition filed by the complainant but on the petition filed by the complainant to receive documents. The protest petition/objections filed by the complainant to the final report was misplaced and not traced. The trial is about to commence without any protest petition or objections to the final report of the police. The said fact was also observed by the learned Magistrate in the order dated 30.03.2007. On a copy application filed, the Registry returned the application stating that CFR.16441 of 2005 is not placed in the record, hence returned. A1 herein had filed a suit OS.No.567 of 1997 against the wife of the complainant for recovery of amount under the promissory note executed by her. After receipt of summonses in the said suit she had put in appearance through an advocate and had filed a written statement in the year 2009 resisting the suit. In the written statement she had averred to the following effect: 'The husband of this defendant taking advantage of his position as husband has forcibly, under coercion and undue influence, fraud and misrepresentation had obtained the signatures of this defendant on two blank cheques, one blank pronote with the signatures on the back side of the blank promissory note etcetera…….. The plaintiff is an utter stranger to this defendant and this defendant has no occasion or necessity either to borrow or execute any pronote much less the suit pronote in favour of the plaintiff.' Whereas during the course of investigation, the complainant/LW1 and his wife /LW2 who is the defendant in the above said suit have made statements which are contrary to the statements of each other. On this ground alone, charges cannot be framed. Further, A1 had also filed CC.No.420 of 1997 against the wife of the complainant under Section 138 of the NI Act. The said case also was contested. A2 had also filed CC.No.412 of 1997 against the complainant. During the pendency of the said cases, the present private complaint was filed against the petitioners herein with all false allegations and with an intention to create a defence in the above said cases filed by A1 and A2 and to harass them. The suit OS.567 of 1997 was decreed. The complainant and his wife were convicted in the above said criminal cases. The matters were carried in appeal in AS.378 of 2013 and Crl.RC.22 of 2006 and are pending and in other matters, the orders/judgments of the trial court are confirmed. The complainant also filed a civil suit OS.254 of 2008 on the file of the XIII Additional District Judge's Court, Vijayawada for recovery of the alleged amount covered by the share transactions. The said suit was dismissed for default. The restoration petition seeking restoration of that suit was also dismissed. The present private complaint is nothing but an after thought and is filed to harass A1 and A2. Therefore, the continuation of the proceedings in the calendar case is nothing but an abuse of process of court and the same may be quashed."

4. **(c)** At the time of hearing, the learned counsel for A1 and A2 had reiterated the pleadings urged in the petition whereas the learned counsel for the complainant had submitted that at this stage this Court shall not deeply examine the evidence collected/recorded and that this Court has to consider the uncontroverted contents of the complaint and that the truth or otherwise of the averments in the complaint and the evidence collected will have to be decided after full fledged trial and that a reading of the complaint would make it manifest that a *prima facie* case is pleaded and that there are sufficient averments to show that A1 and A2 have committed the offences which are alleged against them and that a *prima facie* case is made out against A1 and A2 and that the contentions now raised in the petition filed by A1 and A2 are not sufficient to come to a safe conclusion in their favour and that on mere ground that the matter appears to be of civil nature the complaint case cannot be quashed and hence, the criminal petition is devoid of merit and is liable to be dismissed.

5. I have given detailed and thoughtful consideration to the facts and the submissions. The 1st petitioner/1st accused had filed a civil suit OS.567 of 1997 on the file of the Court of the Senior Civil Judge, Guntur against the wife of the complainant by name K. Lalitha Lakshmi for recovery of an amount of Rs.6,37,064/- with interest and costs. The said suit was filed on the foot of a promissory note dated 01.06.1995 for Rs.4 lakhs. The said suit was resisted by the said defendant who is the wife of the complainant herein by filing a detailed written statement. Since a cheque which was said to have been issued for Rs.2 lakhs towards part payment of the debt under the promissory note was dishonoured for want of sufficient funds in her account, a calendar case in CC.420 of 1997 was also filed against the wife of the complainant. Another CC.412 of 1997 was also filed by A2/the 2nd petitioner herein against the complainant. Thus, there are civil cases between the parties, even by the year 1997 and all those cases were filed by A1 or A2 whereas the private complaint was filed by the complainant in the year 2000 against A1 and A2/the petitioners herein. In the private complaint, as already noted, it was alleged as under: '*The complainant had handed over some of his share certificates and those of his wife and his relatives to A1 and A2 to sell the same and that he had also handed over a blank promissory note signed by his wife and blank* *cheques signed by him and his wife as security, in case it is to be found that there is bad delivery of the shares given by him and that A1 and A2 had misused the same and filed the cases against them in various courts*.' When that complaint was referred to the police, a case in Cr.No.19 of 2000 was registered for the offences punishable under Sections 409, 420 and 423 of the IPC. Police had filed a final report stating that no cognizable offence is made out and that the disputes are of civil nature and are subject matter of civil proceedings. A notice was also issued to the complainant and it appears that a protest petition was filed. However, the protest petition is now not traceable in the court record of the court below is not in dispute. Be that as it may. After examining PWs1 and 2 the calendar case was taken on file ignoring the final report of the police. That calendar case was dismissed for default. On a revision petition filed and allowed the calendar case is now restored to file. In the meanwhile the suit OS.567 of 1997 which was renumbered as 897 of 2008 was decreed with costs in favour of the first petitioner [A1] and against the wife of the complainant. Subject to the orders of stay granted by this court in the first appeal, half of the decretal amount and costs were deposited by the wife of the complainant. The calendar case CC.No.420 of 1997 filed for the offence punishable under Section 138 of the NI Act also ended in conviction. A plain reading of the material documents would show that in OS.897 of 2008 (old OS567 of 1997) the complainant had also appeared as a witness/DW2. DW2 in that civil suit had testified to the effect that the plaintiff and one VV Subba Rao, in pursuance of their conspiracy had forged and fabricated several documents and got filed criminal case under Section 138 of the NI Act and also CC.29 of 1998 on the file of the VI Metropolitan Magistrate, Hyderabad through K. Ramesh after getting exhibit X1 notice issued and that the plaintiff i.e., the 1st petitioner herein had also filed CC.642 of 1997 on the file of the III Metropolitan Magistrate against the complainant and CC.420 of 1997 on the file of the V Additional

Metropolitan Magistrate against the wife of the complainant and that thereafter the complainant has given a report to the police and that as they did not take action he filed CC.376 of 2007 against the petitioners and it is pending and that thereafter he had also filed OS.254 of 2008 for recovery of the amount. In the judgment dated 31.12.2012 in OS.897 of 2008 findings were recorded against the complainant/2nd respondent herein and in favour of the first petitioner [A1] who was examined as PW1 in that suit. A finding was recorded in the judgment in the civil suit to the effect that the defendant who is the wife of the complainant herein had failed to establish entrustment of shares to plaintiff and V.V.Subba Rao. The civil court had noted that for the first time that too after eight years after filing of suit, such a plea regarding V.V. Subba Rao was got added in the year 2005 stating that the plaintiff worked as sub agent under V. V. Subba Rao and carried on business in shares. The civil court in it's judgment had also taken note of the fact that the cheque was dishonoured and that on the complaint filed by the plaintiff, the defendant was convicted for the offence punishable under Section 138 of the NI Act. Thus, in regard to transactions of civil nature, after the civil proceedings were initiated against the complaint's wife in the year 1997 a belated complaint was filed in the year 2000 against A1 and A2. The police investigation had revealed that the matter is of civil nature and hence the police had filed a final report for closure of the case, however, after the orders in the writ petition of the year 2005. In the year 2006, pursuant to a petition filed along with the documents before the learned Magistrate evidence of the complainant and his supporting witness was recorded and cognizance was taken in the month of March of the year 2007. Thus, the chronology of events makes it manifest that the belated launching of the present criminal proceeding is a clear counter blast to the civil proceeding initiated for recovery of money by A1 against the complainant's wife and also the two criminal proceedings under section 138 of the NI Act launched by A1 and A2 against the complainant's wife and the complainant. More over the trial Court in the civil proceedings had already disbelieved the version of the complainant and his wife; and, one of the criminal proceedings which had ended in conviction has become final according to the submissions made. Be that as it may, a careful consideration of the facts and the chronology of events would show that the dispute is essentially of a civil nature involving issues related to recovery of monies etcetera and, therefore, the pending proceedings will take care of all the issues. The issues like the forged/fabricated documents are pressed into service are also being dealt with in the pending proceedings. In fact some issues incidentally decided in the other proceedings were admittedly held in favour of the petitioners herein and some such issues have become final. In no proceeding the contentions of the complainant and his wife were so far accepted. The Courts which are ceased of the Civil proceedings and the proceedings related to the offences punishable under the provisions of the NI Act will any how decide those matters on merits and in accordance with the procedure established by law. The complaint belatedly instituted as an after thought deals with a dispute which is essentially of a civil nature and a criminal texture is given to it. Thus, it is obvious that the complainant intends to give the dispute of civil nature a cloak of criminal nature. Therefore, as rightly contended on behalf of the petitioners/accused, the present complaint which is belatedly filed as a counter blast to the civil and criminal proceedings launched by the petitioners way back in the year 1997, is purely an after thought and is intended to harass the petitioners/accused. The view of this Court finds support from the decision in **Paramjeet Batra v. State of Uttarakhand and others**[1].

6. Viewed thus, this Court finds that this is a fit case for exercise of the jurisdiction under section 482 of the CrPC to prevent the abuse of the process of the Court and to secure the ends of justice.

Therefore, this court is of the well considered view that the petitioners made out valid and sufficient grounds for quashing the proceedings against them in the calendar case. Points are accordingly answered in favour of the petitioners/accused.

7. In the result, the criminal petition is allowed and the proceedings against the petitioners/A1 and A2 in CC.No.376 of 2007 on the file of the Court of the I Additional Chief Metropolitan Magistrate, Vijayawada are hereby quashed.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

19th January, 2015
Vjl

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[1] (2013) 11 SCC 673