THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.6325 of 2009

ORDER:

This criminal petition is filed by the petitioner/A1 under Section 482 Cr.P.C. to quash all further proceedings in C.C.No.645 of 2008 on the file of the V Additional Judicial Magistrate of First Class, Warangal, registered for the offences punishable under Sections 417 and 420 IPC.

Heard the learned counsel appearing for the petitioner/A1, learned counsel appearing for the 2nd respondent/*de facto* complainant and the learned Additional Public Prosecutor, representing the State.

The facts in brief are that the *de facto* complainant filed a private complaint and on it being referred, the same has been registered as a case in Cr.No.377/2005 of Matwada P.S. Investigation was completed and charge sheet was filed. The allegations as contained in the private complaint, which are reflected in the charge sheet are to the effect that A1-Yada Chit Fund is a partnership firm and the non-petitioner/A2 is the Managing Director, representing A1 firm. The *de facto* complainant is said to be subscriber to the Chit Fund and was successful bidder and the A1 Firm was liable to pay a sum of Rs.95,000/- to the *de facto* complainant. The said amount was not paid and was being postponed on some pretext or the other. On demand being made, it is alleged that on 26.09.2003 A1 issued a cheque bearing No.990326, dated 26.09.2003 for Rs.95,000/- and when the said cheque was presented, the same was dishonoured, which according to the *de facto* complainant, resulting in damage his reputation in the society and the petitioner/A1 has committed offence punishable under Sections 417 and 420 IPC.

The learned counsel for the petitioner/A1 submits that a bare perusal of the contents of the charge sheet do not make out any criminal case, more particularly, one punishable under Section 420 IPC. He further submits that at best the remedy available to the *de facto* complainant is to invoke the provisions of the Negotiable Instruments Act if the cheque was dishonoured and alternatively he can as well file a civil suit for recovery of the cheque amount, but invoking the criminal proceedings stating that the petitioner/A1 cheated the *de facto* complainant at the time when the cheque was issued cannot be countenanced.

The learned counsel appearing for the 2nd respondent/*de facto* complainant submits that the petitioner/A1 has made him believe that there is balance in the chit fund account and made him to accept the cheque and when it was presented the same was dishonoured, which caused damage to his reputation and therefore, the petitioner/A1 has committed the offence of cheating.

In order to constitute an offence punishable under section 417 IPC, the ingredients of Section 415 IPC need to be fulfilled, which reads as under:

> "**Section 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 to do or omit to do anything which he would not do or omit if he were not 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".

When the cheque was issued to the *de facto* complainant, there was no deception on the part of the petitioner/A1 and he was not made to part with any property on the ground that a cheque is being issued to him. The cheque that was issued to him was issued in discharge of the alleged liability that was already existing in between the *de facto* complainant and the petitioner/A1. If the cheque is issued for the amount fell due and the same was dishonoured, that cannot attract the penal provisions of Indian Penal Code. *Prima facie,* the contents of the charges sheet do not show the ingredients of Section 415 IPC.

In ***State of Haryana and others v. Bhajan Lal and others,*** the Apex Court has laid down the following seven points, which need to be considered, while considering the petitions filed under Section 482 Cr.P.C.

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

A reading of the above principles and a perusal of the contents of the charge sheet do not make out any offence, and it is a clear case where the *de facto* complainant is trying to convert the civil liability into criminal prosecution with a malice intention, due to private and personal dealings existing in between the *de facto* complainant and the petitioner/A1.

In that view of the matter, I am of the opinion that continuing the criminal proceedings against the petitioner/A1 is nothing but misuse of the process of law and therefore the same is liable to be quashed.

Accordingly, the Criminal Petition is allowed. The proceedings in C.C.No.645 of 2008 on the file of the V Additional Judicial Magistrate of First Class, Warangal, in so far as the petitioner/A1 is concerned are hereby quashed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 24.11.2015

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