

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9358 OF 2014

ORDER:

This Criminal Petition is filed by the petitioner/A3 under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.254 of 2014 on the file of IV Additional Chief Metropolitan Magistrate, Hyderabad, where the crime was registered on the private complaint dated 03.02.2014 of the 2nd respondent-M/s.Garnet Marketing Pvt. Ltd., represented by its Director, C.Sudhakar, against Haier Appliances (India) Private Limited, represented by Eric Braganja, Robin and K.Chenna Keshav Rao(petitioner herein) for the offence punishable under Sections 406 and 420 I.P.C. that was taken cognizance by the learned Magistrate, stating that the alleged date of offence i.e., 15.11.2012 at Tarnaka by citing five witnesses including the complainant with averments that the officials of the accused entity approached the complainant about ten years back to supply products of the company and on their persuasion, to display and sell their products to customers, the Director and the Area manager of A1 entity approached the complainant and after negotiations the complainant had handed over a blank cheque as a security in case of default for non-performance of the written undertakings arrived between them and it is not for legally enforceable debt. However, the Director, Manager and A3-Accounant of A1 entity have assured not to present cheque without consent of the complainant, however misused and in the goods supplied by A1 entity to the complainant concerned there were some problems and lack of service from which the complainant stopped purchase and sell to its customers by asking to close down the account and by 16.09.2009 it was found Rs.2,64,400/- liable to be paid by the accused and complainant paid Rs.50,000/- through demand draft through Assistant Manager by name Ram Singh and after deduction the outstanding of accused company by the complainant is Rs.1,50,000/- and the said amount paid by the complainant by way of two cheques of RS.75,000/- each

that was encashed by the accused company and after settlement of account on 16.09.2009 referred supra for no purchases made and the stock accrued to be taken back by the accused Area Manager. However, they misused the available cheque with them as if due Rs.70,024/- and issued notice of dishonour of cheque and filed a private complaint for the offence under Section 138 of the Negotiable Instruments Act on the file of Additional Chief Metropolitan Magistrate, Patiala, New Delhi, vide C.C.No.62/1/2013 against the company and its directors where a settlement was arrived. In that settlement the accused played fraud on the complainant and induced him to deposit the cheque with them for security and deliberately misused, thereby, they are liable for the offence of cheating.

Heard both sides.

Perused the material on record. The grounds urged in the quash petition of the said private complaint case by A3 is only Area Manager and there is no allegation against him in presenting the cheque or filing of the cheque case for he is not the person, who is authorized to issue notice for the cheque presented dishonour or to file complaint and he is new and the proceedings are not sustainable against him. In fact, apart from it when the very complaint shows that there was a settlement of the cheque bounce case pending on the file of Additional Chief Metropolitan Magistrate, Patiala, New Delhi, vide C.C.No.62/1/2013 consequently in withdrawal of the case from the payment made by the complainant, there is no cause of action that survives much less to say the cheque was given as security or it was a coercive proceeding by filing the dishonour of cheque comes by misuse once that settlement was arrived, much less to say there is any element of cheating or misappropriation in filing the cheque cases and not recovering the amount. Had there been no compromise in the cheque bounce case and it was decided on contest, there could be something for the complainant to maintain the present prosecution. But once he stated that the cheque bounce case by payment of the amount there is every waiver of any right but for if any little remained only civil liability.

Having regard to the above, the prosecution no way survives. Accordingly, the proceedings are liable to be quashed.

Accordingly, this criminal petition is allowed by quashing the proceedings in C.C.No.254 of 2014 on the file of IV Additional Chief Metropolitan Magistrate, Hyderabad.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:11-09-2015

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