

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.2248 OF 2014

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ORDER:
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1. This Criminal Revision Case is filed by the petitioner-accused aggrieved by the order dated 23.7.2014 passed in CrI.M.P.No.894 of 2012 in C.C.No.513 of 2011 by the II Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. The brief facts of the case are as follows:

L.W.1-Proprietor of M/s Reliable Stevedores Private Limited, Dabagardens, entered into oral agreement with the accused, who is the proprietor of M/s Bijay Auto Services (Petrol Bunk) located at 75 feet Road, Visakhapatnam for supplying HSD (High Speed Diesel) to cater the needs of fuel. At the time of agreement, L.W.1 issued post dated heques and cash of Rs.2 lakhs to the accused. While so, L.Ws.2 to 6, who are working under L.W.1 as maintenance supervisors, identified that there was shortage of 10 litres oil on every 200 litres tank filling of a vehicle. On that L.Ws.2 to 6 informed the same to L.W.1 through L.W.7. On that, L.W.1 stopped payment to the accused. Later, the accused used to contact L.W.1 over phone and insisted for payment in harsh words and threatened him with dire consequences. The accused also send SMS messages threatening L.W.1. Basing on the report of L.W.1 a case was registered against the petitioner. After completion of investigation, the charge sheet was filed and the learned Magistrate took cognizance of the same for the offences under Sections 66-A of I.T. Act, 2000 and Sections 420 and 506 IPC and registered as C.C.No.513 of 2011.

3. The petitioner-accused filed the above CrI.M.P. under Section 239 Cr.P.C. praying the Court to discharge him from the offences under Sections 66-A of I.T. Act, 2000 and Sections 420 and 506 IPC in

the above Calender case on the ground that there was an oral agreement between himself and the de facto complainant in the year 2008 regarding the supply of diesel oil and that the agreement is purely civil in nature and that the de facto complainant made false allegations in respect of supply of oil to avoid payment of due amount. It is further stated that the de facto complainant committed default in regular payment for the supply of oil to a tune of Rs.38,00,000/- and in spite of repeated reminders issued by the petitioner-accused, the de facto complainant issued cheques and those cheques were dishonoured and then the petitioner-accused sent a notice through his advocate to the de facto complainant and the de facto complainant received the same and gave reply with false allegations.

4. After hearing both sides, the trial Court dismissed the above discharge application filed by the petitioner. Aggrieved by the same, the petitioner filed the present revision.

5. Heard and perused the material available on record.

6. Learned Counsel for the petitioner submitted that Section 66-A of the Information Technology Act was already struck down by the Apex Court and therefore, there cannot be any further proceedings insofar as the said offence is concerned.

7. Admittedly, the above provision viz., Section 66-A of the I.T Act was struck down by the Apex Court. Therefore, there cannot be any prosecution against the petitioner for the said offence, and as such, the petitioner is entitled to be discharged for the offence under Section 66-A of the Act, which was already struck down.

8. Insofar as the offences under sections 420 and 506 IPC are concerned, it is the case of the prosecution that the petitioner without supplying diesel to the quantity as mentioned in the way bill, used to raise bills and also insist the de facto complainant for payment of

amount for the said deficient supply, whereas it is the case of the petitioner that for the diesel supplied by it, the de facto complainant issued cheques and the said cheques were dishonoured and for the said offence, the case against the de facto complainant for the offence under Section 138 of the Negotiable Instruments Act is pending .

9. In order to substantiate the fact that there was shortage of the diesel supplied by the petitioner herein contrary to the bills claimed, no material either documentary or any other evidence was placed by the prosecuting agency. Even if it is assumed that there was shortage in supply of diesel, it would not attract the ingredients of Section 420 IPC. Therefore, this Court is of the view that no offence is made out for the offence under Section 420 IPC. Hence, the petitioner-accused is entitled to be discharged for the offence under Section 420 IPC.

10. Under the above circumstances, the petitioner is discharged for the offence under Sections 66-A of the Information Technology Act and Section 420 IPC in the above C.C.

11. Insofar as the offence under Section 506 IPC is concerned, it is left open to the trial Court to proceed against the petitioner herein for the offence under Section 506 IPC. Further, if the contents in the SMS messages, alleged to have been sent by the petitioner to the de facto complainant, disclose any other offence, the trial Court is at liberty to frame appropriate charges by invoking Section 216 Cr.P.C, after affording an opportunity to both the parties.

12. With the above directions, the Criminal Revision Case is disposed of. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Date : 18.11.2015

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL REVISION CASE No.2248 OF 2014

DATED 18th November, 2015.

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