HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 259 OF 2008

O R D E R:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners/A.1 to A.8 challenging the order dated 04.12.2007, passed by the learned Special Judicial Magistrate of I Class, Excise, Karimnagar, in Crl.M.P. No.749 of 2005 in C.C. No.342 of 2004, whereunder and whereby the petition filed for discharge for the offence punishable under Sections 420 and 406 of the Indian Penal Code, 1860 (for short, 'IPC') against A.1 to A.6 and under Section 109 r/w 420 and 406 IPC against A.7 and A.8 was dismissed.

2. The revision petitioners herein are the petitioners/A.1 to A.8 and the respondent herein is the respondent/complainant before the Special Judicial Magistrate of I Class, Excise, Karimnagar in Crl.M.P. No.749 of 2005 in C.C. No.342 of 2004. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed before the trial Court.

3. The case of the prosecution in brief is that the petitioners are the accused in Crime No.178 of 2002 for the offence punishable under Sections 420 and 406 IPC against A.1 to A.6 and under Section 109 r/w 420 and 406 IPC against A.7 and A.8. The petitioners 1 to 6 are the partners in a partnership firm by name "Sneha Enterprises" situated at Manchirial Road, Karimnagar and they obtained a loan of Rs.5 lakh from the *de facto* complainant on 05.09.1998 by mortgaging their firm goods as primary security and petitioners 7 and 8 stood as guarantors. The petitioners run the shop till the year 2000 by maintaining the regular transactions with the bank. During the year 2000, the petitioners decided to sell away the shop to third person and

thereby the purchaser agreed to clear the bank loan of Rs.3,25,000/- and gave an undertaking to the bank and run the shop till 08.08.2001 regularly till filing of the suit in O.S.No.85 of 2001 on the file of the Senior Civil Judge, Karimnagar. The petitioners had no intention to cheat the *de facto* complainant. Finally, the petitioners requested for discharge for the offence as stated supra.

4. After hearing both the sides, the trial Court dismissed the petition for discharge on the ground that charges were framed on 07.06.2004, the case was posted for trial and the present application was filed before commencement of trial for the discharge of the accused from the proceedings. The trial Court further held that there was a *prima facie* case and merits and demerits of the case would be decided only after the trial. The trial Court also gave a finding that though the petitioners paid the entire amount, the intention of the parties at that time has got more value and the same has to be decided after full trial.

5. The learned counsel for the revision petitioners argued that the entire amount due to the bank was paid by the petitioners; that Open Cash Credit Account bearing No.1516 with the Andhra Bank was closed on 10.08.2001; that Sections 420, 415 and 406 IPC have no application to the facts of the present case; that no loss was caused to the bank; that there is no inducement committed by the petitioners; that the bank is not an aggrieved party and the purchaser of the property is an aggrieved party; that the entire loan amount was paid in O.S.No.85 of 2001 and full satisfaction memo was also filed and consequently the said suit was dismissed; that the trial Court ought to have seen that the matter is of a civil nature relating to purely civil contract, that A.5 is no more, and therefore, prayed the Court to set aside the order dated 04.12.2007 passed in Crl.M.P. No.749 of 2005 in C.C. No.342 of 2004.

6. The learned Public Prosecutor argued that the bank granted loan to the firm and A.2 deposited the title deeds on behalf of the firm; that the partners executed the documents in favour of the bank and they also hypothecated the goods to the bank; that the petitioners 7 and 8 stood as guarantors who sold the mortgaged property depriving the right of the *de facto* complainant; that all the aforesaid facts have to be decided in the trial and the trial Court rightly dismissed the impugned petition, and therefore, prayed the Court to dismiss the revision case.

7. Now, the point for determination is –

> Whether the revision petitioners/A.1 to A.8 are entitled to set aside the order dated 04.12.2007 passed by the trial Court in Crl.M.P. No.749 of 2005 in C.C. No.342 of 2004 in rejecting to discharge them for the offence punishable under Sections 420 and 406 IPC?

8. **Point**:

A perusal of the record shows that the Branch Manager, Andhra Bank, St. John's Branch, Karimnagar lodged a complaint dated 24.06.2002 alleging that the bank advanced loan facility to M/s.Sneha Enterprises, a partnership firm; that the petitioners 1 to 6, who are the partners, availed the said loan on 05.09.1998; that at the time of taking the loan, the petitioners 1 to 6 furnished personal guarantee of petitioners 7 and 8 besides mortgaging the properties of one Smt. Devanand Shashikala, Penchala Kishna Rao and Devanand Vayusena by depositing title deeds and that after availing the loan facility, the petitioners became defaulters and also disposed of the hypothecated goods and the business to one Smt. S.Bhagya Laxmi. It is also an admitted fact that the bank filed O.S.No.85 of 2001 for recovery of outstanding amount of Rs.3,30,940/-. According to the *de facto* complainant, they obtained an Encumbrance Certificate for the mortgaged property on 22.03.2002 and found that the said property was sold away by executing various Sale deeds to different purchasers in order to deprive the bank and to avoid the liability. The *de facto* complainant also alleged that the sale transactions were attested by the petitioners 7 and 8. Thus, the *de facto* complainant alleged that the petitioners are committed criminal breach of trust and cheating.

9. The S.I. of Police, II Town Police Station, Karimnagar registered the complaint of the *de facto* complainant as a case in Crime No.178 of 2002 and took up the investigation. During the course of investigation, the Investigating Officer recorded the statements of eight witnesses and filed the Charge sheet against A.1 to A.6 for the offence punishable under Sections 420 and 406 IPC and under Section 109 r/w 420 and 406 IPC against A.7 and A.8. After filing Charge sheet, the learned Magistrate took the cognizance against the revision petitioners/A.1 to A.8. It is also an admitted fact that the learned Magistrate framed the charges on 07.06.2004 and the matter was posted for trial and at that stage, the petitioners/accused filed the petition to discharge them in C.C.No.342 of 2004.

10. The main contention of the revision petitioners is that they paid the entire amount due to bank, the Open Cash Credit account was also closed and no loss was caused to the *de facto* complainant on account of the sale transaction of the mortgaged property. A perusal of the complaint given by the *de facto* complainant i.e. Branch Manager, Andhra Bank, *prima facie* shows that the petitioners 1 to 6 having knowledge that the property was mortgaged with the bank, sold away the said property without the consent and knowledge of the bank and the sale transactions were attested by the petitioners 7 and 8. It is also alleged that the petitioners 1 to 6 also sold away the stock i.e. hypothecated goods to one Smt. S.Bhagya Laxmi without the knowledge of the bank. Thus, it is alleged that the petitioners

have committed criminal breach of trust and cheating.

11. During pendency of the criminal case, the petitioners paid the entire amount and bank filed the full satisfaction memo and O.S.No.85 of 2001 was dismissed on 16th March, 2004. The learned Magistrate stated that charges were already framed on 07.06.2004 and at the time of taking cognizance, the trial Court felt that there is a *prima facie* case and the merits and demerits of the case would be decided only after the trial. A perusal of the complaint given by the *de facto* complainant i.e. bank shows that there is a *prima facie* case against the petitioners. Therefore, the trial Court rightly dismissed the petition to discharge the accused for the offence punishable under Sections 420 and 406 IPC against A.1 to A.6 and under Section 109 r/w 420 and 406 IPC against A.7 and A.8. Hence, the petitioners have not made out any case to set aside the order passed in Crl.M.P. No.749 of 2005 in C.C. No.342 of 2004, dated 04.12.2007.

12. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 12.03.2015
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