THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.166 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/*de facto* complainant is directed against the orders dated 14.02.2006 of the learned Special Judicial Magistrate of First Class for Excise, Chittoor passed in Crl.MP.No.2221 of 2005 in CC.No.268 of 2005 filed by the sole accused under Section 239 of the CrPC for his discharge.

2. I have heard the submissions of the learned counsel for the petitioner/*de facto* complainant ('the petitioner' for brevity), the learned counsel appearing for the 2nd respondent/accused ('the accused' for brevity) and the learned Additional Public Prosecutor appearing for the 1st respondent/State. I have perused the material record.

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

The petitioner filed a private complaint under Section 200 of the CrPC against the accused on the file of the learned IV Additional Judicial Magistrate of First Class, Chittoor alleging *inter alia* as under: 'The petitioner had availed a loan for her business under the name and style of 'Mourya Enterprises' from State Bank of India, Greamspet Branch. Since the petitioner had committed default in payment of the instalments of the said loan, the said bank had brought a suit against the petitioner in OS.No.210 of 2002 on the file of the learned Additional Senior Civil Judge, Chittoor. On receipt of the summonses in the said suit, the petitioner had engaged the accused to appear on her behalf and defend her in that suit. She had executed a vakalat and had paid his fee as demanded by the accused. The accused had represented that if the petitioner fails to deposit the amount into court the mortgaged properties would be brought to sale immediately. Further, the accused had demanded the petitioner to pay Rs.22,830/- to him and had represented that he would deposit that amount into the Court and to the credit of the aforementioned suit. Believing the words of the accused, the petitioner had paid the said sum by way of cash on 14.02.2002 and had obtained a receipt from the accused. Subsequently, the petitioner was informed by the authorities of the bank that a scheme of one time settlement was introduced and was asked to meet the Manager to settle the claim out of Court. Accordingly, the petitioner had met the bank authorities and made a request in writing for giving concession in regard to interest. Considering her request, the interest was waived under the one time settlement scheme and hence, the petitioner had paid the amount due to the bank and settled the claim. At that time the petitioner informed the bank authorities that a sum of Rs.22,830/- was paid to the accused who is her advocate in the said suit. The bank Manager stated that they had no knowledge of any such deposit of amount into Court and had advised the petitioner to verify the same from the Court. On verification from the office of the Court the petitioner had found that no such amount was deposited into court. The petitioner had questioned the accused about the illegal act, misrepresentation and misappropriation of her amount. The accused gave an evasive reply. Having visited the office of the accused bout 70 times, the petitioner had decided that the accused having misrepresented and having taken a cash of Rs.22,830/- from the petitioner had misappropriated the same for his personal gain and that the accused has committed breach of trust taking advantage of the confidence reposed by her on him. Thus, the accused by his false representation had induced the petitioner to pay the said amount and had misappropriated the said amount and had cheated the petitioner. The petitioner had also lodged a complaint with the Bar Council of Andhra

Pradesh against the accused. Therefore, the accused is liable to be prosecuted and punished for the offences punishable under Sections 409 and 420 of the IPC.'

3. **(b)** On reference of the said complaint to the police, a case in crime No.175 of 2002 was registered by the Station House Officer, II Town Police Station, Chittoor and after investigation, a charge sheet was laid. Before the said court, the accused filed the Crl.MP for his discharge under Section 239 of the CrPC. In the said petition, the accused contended as follows: - 'On the demand of the husband of the petitioner for return of the amount of Rs.22,830/- the same was returned. Further, the accused had caused a notice on the husband of the petitioner. Neither the petitioner nor her husband gave any reply. In the absence of reply denying the contents of the legal notice got issued by the accused, the case filed by the petitioner with allegations of misappropriation is not sustainable. The accused is a Vice President of District Congress Committee, Chittoor and he was aspiring to contest as a member of Legislative Assembly or Parliament. The case is filed with false allegation to defame the accused and damage his reputation in his political and professional fields. There are no sufficient grounds to proceed against him. Hence, he may be discharged of the alleged offences under Sections 406 and 420 of the IPC.'

3. **(c)** The case of the petitioner is already stated while extracting her case pleaded in the complaint. In the counter it is *inter alia* contended by the petitioner that the truth or otherwise of the averments in the complaint has to be decided only after full fledged trial and that even on a strong suspicion arising from the averments in the complaint, a charge has to be framed and therefore, the accused is liable to face trial and is not entitled to plead for discharge.

4. At the time of hearing, the learned counsel for both the sides advanced arguments in line with the respective pleadings. The admitted fact is that the accused was the advocate of the petitioner and he was engaged to defend the petitioner in OS.No.210 of 2002 on the file of the Court of the Additional Senior Civil Judge, Chittoor filed by a bank against the petitioner for recovery of the loan obtained by her from the bank for the purpose of her business. It is also an admitted fact that at the instance of the accused the petitioner had paid Rs.22,830/- to the accused under a receipt for being deposited into court towards the claim of the bank in the said suit. Later, the petitioner on coming to know that the bank has initiated one time settlement scheme had settled the matter with the bank and had paid the amount due to the bank as the bank has given concession in regard to the interest under the scheme.

5. Be that as it may, according to the case of the petitioner she came to know at that time from the bank authorities that the amount given to the accused by her was not deposited into court and the bank authorities had advised her to verify the facts from the Court and that on verification from the Court she found that the amount was not deposited. It is her further case that despite several demands the accused did not repay the said amount and had misappropriated the amount of the petitioner for his personal gain having received the money on a misrepresentation that it is necessary to deposit the said amount into Court. Therefore, the petitioner alleges that the money obtained on a false representation and inducement from her was misappropriated by the accused and therefore, he is liable to be convicted for the offences punishable under Sections 409 and 420 of the IPC.

6. Per contra, the case of the accused is that he had returned the amount to the husband of the petitioner and that he had also caused a legal notice to the husband of the petitioner in that regard and that neither the petitioner nor her husband gave a reply notice to his notice and that therefore, there is neither misrepresentation nor cheating.

Thus, the defence of the accused is one of discharge/repayment of the amount. It is the further case of the accused that for the reasons stated in his petition for discharge, a false complaint was filed by the petitioner against him basing on the receipt only after he had caused a notice dated 06.11.2003 on the husband of the petitioner and that admittedly, when a specific plea was taken in the notice caused that the amount was returned to the husband of the petitioner, the said contention was not rebutted by the petitioner by issuing a reply notice.

7. I have bestowed my attention to the facts and the submissions. It is true that the law is well settled that at the time of framing a charge or at the time of considering a request for discharge, the court has to only consider whether the averments in the complaint/report/charge sheet make out a *prima facie* case for proceeding against the accused. The requirement of the law is that the accused must be afforded an opportunity of being heard before considering the final report and the documents filed along with it. Therefore, while proceeding in the matter as per the provisions of Sections 227 and 239 of the CrPC, a duty is enjoined upon the court to afford an opportunity to hear the accused and then decide whether it is necessary to proceed to the next stage of the matter. In fact, the learned Judge of the trial court had placed reliance on the following ratio in the decision of the apex Court in **Satish Mehra v. Delhi Administration**[1]. **'But when the Judge is fairly certain that there is no prospect of the ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or skip the**

proceedings at the stage of Section 227 of the code itself.' The civil suit filed by the bank against the petitioner was settled out of court by payment of the amount due to the bank under a settlement scheme introduced by the bank. Even before the complaint was lodged, the accused had caused a notice to the husband of the petitioner stating that the money received by him was returned. There was no reply to the said notice. The trial Court having regard to the facts and law allowed the petition filed by the accused for his discharge since the chances of conviction are too remote even if the accused is made to face trial. Having accurately dealt with the facts and following the ratio in the decision, the trial Court had recorded a finding that the civil suit in which the accused was engaged as an advocate of the petitioner was settled and that in the facts and circumstances of the case the ratio in the decision of the Supreme Court applies to the facts of the case. The accused was 71 years of age by the year 2008 when this revision was filed. To attract the ingredients of cheating in a case of this nature, there must be a *prima facie* case or at least a strong suspicion that the accused dishonestly and intentionally induced the petitioner to part with the money. In this case, it is not possible to hold that the requirements of law are satisfied as the accused, who is an advocate of the petitioner, had admittedly issued a receipt at the time of receiving money for depositing into the court towards the amount due to the plaintiff-Bank. Had the accused entertained a dishonest intention at the inception, he would not have issued a receipt. The fact that he had issued a receipt would show that there was neither deception nor fraud nor dishonest inducement on the part of the accused. Having considered the facts peculiar to this case and the ratio in the decision, this court finds itself in agreement with the well considered finding of the trial court that this is a fit case for accepting the plea of discharge of the accused.

8. Viewed thus, this court finds that there is no merit in the revision and the revision is liable to be dismissed.

9. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this revision shall stand closed.

M.SEETHARAMA MURTI, J

06th February 2015
Vjl

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[1] 1996(2) ALT (Crl) 269 (SC)